

IFQ Medical Lease Provision Discussion Paper February 2018¹

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1 Introduction

The Individual Fishing Quota (IFQ) Program was designed to ensure that the sablefish and halibut fisheries are predominately owner-operator fisheries where the quota share (QS) holders fish the annual IFQ allocation. Objective 6 of the original EIS for the IFQ Program was included to “*assure that those directly involved in the fishery benefit from the IFQ Program by assuring that these two fisheries are dominated by owner/operator operations.*”² To achieve this objective the program initially allocated QS to persons that were historical participants and limited transfers of catcher vessel QS to IFQ crewmembers.³ This means that catcher vessel classes of QS could only be purchased by individuals who were initially issued QS or individuals that are U.S. citizens who were not initially issued QS, but have demonstrated 150 days of experience working as a part of harvesting crew in any U.S. commercial fishery.

To help prevent a means of circumventing the owner-operator objective of the IFQ Program, leasing of IFQ derived from catcher vessel shares has generally been prohibited since 1998. However, provisions are included in the program that allowed for temporary leasing of catcher vessel IFQ under specific conditions. Those conditions include medical leases as described in this paper, survivorship transfer privileges for up to three years after the QS holder’s death, and military leases when an individual is called to active duty and is unable to fish their quota. Leases are also allowed through Community Quota Entities, which hold QS and transfer the IFQ to qualified individuals to fish so that the harvesting and processing provides benefits to small

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² https://alaskafisheries.noaa.gov/sites/default/files/analyses/Amd15_20seis.pdf

³ Except for non-individual entities (businesses, partnerships, etc.) which were initial recipients of catcher vessel QS and able to acquire catcher vessel QS until December 1, 2014.

fishing communities. IFQ may also be leased through the guided angler fish transfers provision that was designed to transfer IFQ out of the commercial fishery to guided anglers as part of the Catch Sharing Plan.⁴

A hired master may be used to fish catcher vessel QS that was initially issued to the QS holder or that was received by transfer prior to the end of February 12, 2010 in any regulatory area (79 FR 43679). The primary difference between the use of a hired master to fish IFQ and leasing IFQ is that leasing IFQ requires a formal leasing transfer application, and the IFQ permit is issued in the lessee's name. In contrast, a hired master must obtain a hired master's permit, but their harvest is debited from an IFQ permit authorized under the name of the QS holder. The QS holder remains liable for any fishing violations associated with that permit. Additionally, for the use of hired masters, regulations require the QS holder to have a 20% ownership interest in the vessel used to harvest the IFQ, demonstrated for at least a 12-month period.

The IFQ Program review identified issues with the medical lease provision that National Marine Fisheries Service (NMFS) staff noted the North Pacific Fishery Management Council (NPFMC) may wish to address. NMFS staff also indicated that an appropriate means to begin considering potential remedies was to develop a discussion paper that identified the issues of concern and offered alternatives for the Council to consider. The Council accepted that approach and requested the preparation of this discussion paper.

1.1 What are the issues?

Regulations authorize the NMFS Restricted Access Management (RAM) to approve IFQ leases without representation or regard as to the likelihood or ability of applicants to resume IFQ fishing. From the nature of many of the conditions reported as well as specific statements made to NMFS RAM staff, it is clear that at least some applicants are using the provision to continue to hold QS with the intent to lease the IFQ and have no expectation, ability, and/or desire to actively participate in harvesting their IFQ. As initial issuees and other current QS holders age, use of medical transfers is likely to increase; especially as high lease rates provide incentive to continue to hold QS (see transfer reports on the NMFS website: <http://alaskafisheries.noaa.gov>).

NMFS staff is neither qualified nor interested in accessing the validity of medical opinions and should not be placed in the position of having to do so in order to approve IFQ or other transfers. However, some interpretation has been necessary to apply regulations appropriately and fairly. A common example is whether an applicant's current reported condition is the "same" as a previously reported one. NMFS's practice is that when an applicant reports multiple conditions in the same medical report, NMFS considers the next use of any of the reported conditions to be the second and final allowed use of all of the conditions. However, in some cases an applicant reports a medical condition that has multiple effects (such as diabetes or arthritis) yet reports one effect at a time. And, some conditions such as "age" are unquestionably medical, but may not meet Council intent for use of the catcher vessel lease prohibition exemption. Absent additional requirements NMFS has no choice but to approve such transfer requests. Thus, there are several

⁴ The Catch Sharing Plan authorized supplemental individual transfers of commercial halibut IFQ as guided angler fish (GAF) to qualified charter halibut permit holders for harvest by charter vessel anglers in Areas 2C and 3A. GAF allowed charter halibut permit holders to offer charter vessel anglers the opportunity to retain halibut up to the limit for unguided anglers during years the limits differed.

ways in which applicants can repeatedly use medical transfers to support their holding QS without apparent prospects of or interest in resuming personal fishing activities.

In 2016, after reviewing the Halibut and Sablefish IFQ Program, the Council reinstated the IFQ committee. In February 2017, NMFS provided the committee with background on the medical transfer provision, which dates back to 2007 and applies to 2nd generation QS holders and initial QS recipients who do not own at least a 20 percent stake in a vessel.

NMFS identified two existing issues with the provision: (1) the definition of “certified medical professional” that currently excludes chiropractors and providers outside the U.S. and (2) that NMFS staff often finds itself making judgment calls on whether a medical condition that is documented by a “certified medical professional” is a new condition or a continuation of an existing condition. This judgment affects whether or not a medical release can be granted, because an individual is limited in the number of consecutive years for which he or she can get a release (and thus lease out quota). The committee concurred with NMFS’s recommendation that a discussion paper be scheduled and address the following issues:

- Is a small group of QS holders using the medical transfer provision as a means to circumvent owner-onboard requirements? Is the provision being used for chronic medical conditions, which was not the original intent? Has use of the provision increased in response to new hired master rules that were implemented in 2014?
- Should the definition of “certified medical professional” be broadened to include chiropractors, medical providers outside of the U.S., and other commonly used medical professionals that do not fit the current definition?
- Should policy makers reconsider the prohibition on applying for a medical transfer for the “same medical condition” more than two out of five consecutive years? Alternatives could consider removing the “same medical condition” provision from the medical transfer eligibility criteria and instead establish a limit for “any medical condition.”

This paper provides various options that could broaden the list of medical professionals that could certify a condition that would prevent the QS holder from fishing. The second issue is that NMFS staff are increasingly required to make assessments as to whether an IFQ permit holder is applying for a medical transfer in any two of the previous five years for the same medical condition. NMFS staff required to make these decisions have recommended changing the regulations so that they are not required to make decisions regarding whether specific medical conditions should be considered the same or different.

The Council was also concerned that changes in the hired master provision would result in additional requests for medical transfers. This paper provides data on how the number of approved transfers has changed from 2007 through 2017. Information provided in the paper also shows the number of years that the same individual was granted a medical transfer. The paper does not report changes in the use of hired masters by initial QS recipients or those that purchased QS prior to 2007.

1.2 Description of medical transfer provision

The halibut and sablefish IFQ Program includes a temporary medical transfer provision at 50 CFR 679.42(d)(2) that allows a QS holder not otherwise qualified to hire a master to temporarily lease their annual IFQ to another individual if the QS holder or an immediate family member has

a temporary medical condition that prevents them from fishing. The provision is intended to provide a mechanism for QS holders who are experiencing a temporary medical condition that would prevent them from fishing during a season to lease their annual IFQ to another qualified individual. The temporary medical transfer provision was implemented in 2007 (NMFS 2007).

It is worth noting that the regulations at 50 CFR 679.42(d) defines both emergency waivers and medical transfers. Each provision defines a circumstance⁵ where the person authorized to fish IFQ halibut or sablefish do not have to be aboard the vessel during fishing operations or sign the IFQ landing report. An emergency waiver is defined at 50 CFR 679.42(d)(1) and states that “*in the event of extreme personal emergency **during a fishing trip** involving a person authorized to fish IFQ halibut or sablefish, the requirements or paragraph (c)(1) of this section may be waived. The waiving of these requirements under this provision shall apply to IFQ halibut or IFQ sablefish retained on the **fishing trip** during which the emergency occurred.*”

The medical transfer provision is defined at 50 CFR 679.42(d)(2) and applies to the fishing year and not just the trip where the medical emergency occurred. Those regulations state that:

“In the event of a medical condition affecting a QS holder or an immediate family member of a QS holder that prevents the QS holder from being able to participate in the halibut or sablefish IFQ fisheries, a medical transfer may be approved for the IFQ derived from the QS held by the person affected by the medical condition.

(i) General. A medical transfer will be approved if the QS holder demonstrates that:

(A) He or she is unable to participate in the IFQ fishery for which he or she holds QS because of a medical condition that precludes participation by the QS holder; or

(B) He or she is unable to participate in the IFQ fishery for which he or she holds QS because of a medical condition involving an immediate family member that requires the QS holder's full time attendance.”

An applicant for a temporary medical transfer must document his or her medical condition by submitting an affidavit to NMFS from a licensed medical doctor, an advanced nurse practitioner, or a primary community health aide, that describes the medical condition affecting the applicant (or applicant's family member) that prevents participation in the fishery for this calendar year (See Appendix). In the case of a family member's medical emergency, the affidavit must describe the necessity for the QS holder to care for an immediate family member who suffers from the medical condition.

The Council and NMFS limited the length of time that QS holders may use the medical transfer provision for the same medical condition. NMFS will not approve a medical condition transfer if the QS holder has been granted a medical transfer in any two of the previous five years for the **same medical condition**.

Medical transfers were not included in the original design of the IFQ Program because the Council prioritized its policy of maintaining a fishing fleet of owner-operators in the IFQ fisheries by restricting leasing provisions. The Council rejected initial proposals for a medical transfer provision based on the potential for abuse and the lack of technical expertise at NMFS to

⁵ In addition to the QS and IFQ transfer provisions at 50 CFR 679.41.

determine the medical condition of an applicant. Following a few reported instances of injured or ill IFQ holders being transported on and off fishing vessels to meet owner-onboard requirements, the Council recommended, and NMFS approved, the temporary medical transfer provision. In recommending the medical transfer provision, the Council balanced its objective to limit long-term leasing of QS to promote an owner-onboard fishery with its recognition that a medical transfer provision would provide a mechanism for QS holders to retain their QS during bona fide medical hardships.⁶

Most individual initial QS recipients can hire a master. The classes of QS holders that cannot are holders of Area 2C halibut QS, holders of Southeast sablefish QS, QS holders that do not own a minimum of 20 percent interest in a harvesting vessel, and initial recipients of QS that received QS by transfer on or after July 28, 2014. Because the hired master management action created another class of persons that are “not otherwise eligible to hire a master,” the medical transfer provision is another way in which these initial recipients who are not eligible to hire a master can temporarily continue to receive financial benefits from the fisheries if they are temporarily unable to be on board the vessel on which the IFQ they hold is fished.

Because the Council prioritized its long-term objective to promote an owner-onboard IFQ fishery, the medical transfer is intended to be a temporary provision for QS holders that have a temporary medical condition that prevents a QS holder from participating in the halibut or sablefish fishery. It is not intended to be a mechanism for persons unable or unwilling to participate in the fishery, as an owner onboard in the long-term can continue to receive economic benefits from their QS holdings. QS holders are allowed to sell their QS holdings for a lump sum rather than indefinitely leasing the IFQ derived from those quota shares.

To limit potential abuse of the medical transfer provision and encourage an owner-operator fishery, the provision is limited (a) to individuals who are not eligible to use hired masters; (b) to catcher vessel IFQ derived from QS held by the applicant; (c) to include a requirement for certification by specific types of medical professionals who must describe the condition (and care required if for a family member), and to certify the inability of the QS holder to participate in IFQ fisheries. Further, NMFS may not approve a medical transfer if the applicant has received a medical transfer in any two of the previous five years for the same medical condition.

2 Background and Management Authority

The International Pacific Halibut Commission (IPHC) and NMFS manage fishing for Pacific halibut through regulations established under authority of the Northern Pacific Halibut Act of 1982 (Halibut Act). The IPHC promulgates regulations governing the Pacific halibut fishery under the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the North Pacific Ocean and Bering Sea (Convention) (signed on March 2, 1953) as amended by a Protocol Amending the Convention (signed on March 29, 1979). Regulations developed by the IPHC are subject to approval by the Secretary of State with concurrence from the Secretary of Commerce (Secretary). After approval by the Secretary of State and the Secretary, the IPHC regulations are published in the *Federal Register* as annual management measures. The Halibut Act also provides the Council with authority to develop regulations,

⁶ <https://www.federalregister.gov/documents/2007/08/09/E7-15341/fisheries-of-the-exclusive-economic-zone-off-alaska-individual-fishing-quota-program-community>

including limited access regulations that are in addition to, and not in conflict with, approved IPHC regulations. Such Council–developed regulations may be implemented by NMFS only after approval by the Secretary.

In Federal waters, the Alaska sablefish fishery is managed through the Council's Gulf of Alaska and Bering Sea and Aleutian Islands Groundfish Fishery Management Plans (FMPs), subject to Magnuson-Stevens Fishery Conservation and Management Act and corresponding Federal regulations. The Council may amend the sablefish IFQ Program through amendments to the Gulf of Alaska and Bering Sea and Aleutian Islands Groundfish FMPs, as well as connected or independent Federal regulations. Such amendments must be approved by the Secretary before they can be implemented by NMFS.

3 Medical Lease Provision Issues

Section 3.1 describes medical transfers that have been reported since 2007. These data were requested by the Council and the IFQ Committee.

Section 3.2 addresses the definition of a certified medical professional that is currently in regulation. Modifications could be made to broaden that definition if the medical lease provision is retained.

Section 3.3 provides a discussion of issues associated with determining medical conditions that meet the requirements for IFQ medical transfer approval. That section also notes that NMFS recommends that the Council considers allowing leases for either any medical reason or any reason over a subset of a period of years. Selecting the first option would eliminate the need for NMFS to determine if it is the same condition or a different condition. Selecting the second option would eliminate the need to define a medical professional and eliminate the need for NMFS to collect confidential health information and make medical decisions regarding whether applications for transfer should be approved. Transfers would be approved if they had not exceeded the limit of twice every five years.

3.1 Medical transfer data

Data collected by NMFS indicates that there are a few QS holders who have utilized the medical transfer provision for the majority or all of the years during which medical leasing has been allowed. The repetitive use of the provision may indicate that a select group of shareholders is utilizing it as a means of circumventing the owner-on-board provision. Furthermore, some QS holders may be using the medical transfer provision for chronic conditions, from which recovery is unlikely. The provision was intended to provide relief from fishing for IFQ participants in hardship, temporary situations and not to allow indefinite transfers by persons that never intend to fish their own IFQ. Persons with chronic conditions that prohibit them from fishing have the opportunity to sell their QS. The program allows the sale of QS so that QS holders have the opportunity to receive the market value of the QS and exit the fishery.

When this discussion paper was requested, it was noted that medical leasing may increase in the IFQ fisheries in response to the new hired master rule implemented in 2014. Table 1 shows the number of medical lease transactions, number of buyers of the leased IFQ, number of sellers of the leased IFQ, IFQ pounds leased, and the underlying QS units associated with the lease. **The information presented in the table does indicate an increase in the number and amount of**

quota leased since 2014. Data available does not allow the analysts to determine if there is a direct linkage between the two changes, but it is assumed that part of the increase in medical transfers is a direct result of the more stringent hired master regulations. As stated in the 2016 IFQ Program review, this could be an indication that QS holders are using the transfer provision to lease in place of the hired master provision.

Also recall that the medical transfer provision was not implemented until mid-September 2007. Implementing the regulation late in the 2007 fishing year partially explains why the number and amount of medical transfers are considerably lower in 2007 relative to the other years.

Table 1 Medical lease transactions by year, 2007-2017

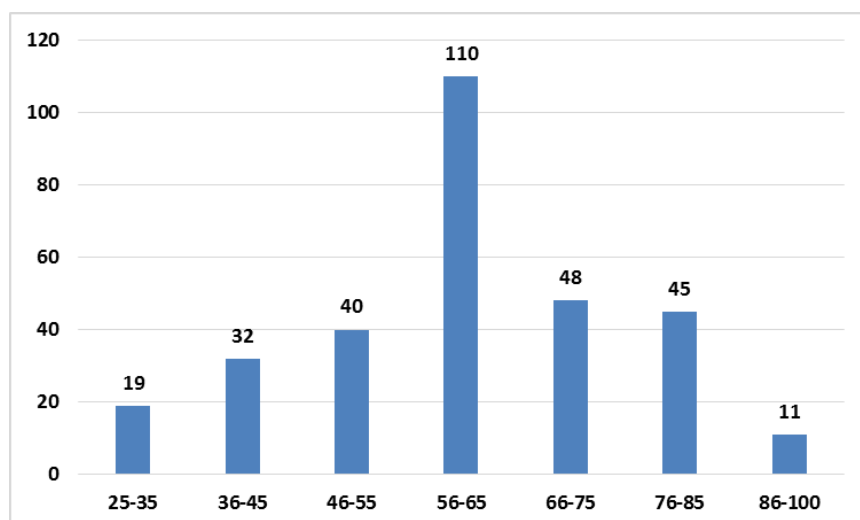
Year	Number of Medical Transfers	Buyers	Sellers	IFQ Lbs Leased	QS Units
2007	19	15	15	319,120	1,497,150
2008	72	53	54	1,337,000	5,353,014
2009	109	67	73	1,570,344	7,925,353
2010	99	58	66	1,203,565	7,093,967
2011	105	65	70	1,301,948	8,944,855
2012	93	60	63	921,267	6,869,574
2013	112	62	70	1,292,934	8,620,939
2014	131	67	86	1,283,101	11,317,331
2015	179	92	110	1,497,799	14,449,186
2016	252	110	145	2,151,895	21,438,163
2017	305	123	158	2,037,444	27,364,162
Average	134	70	83	1,356,038	10,988,518

Source: NMFS RAM transfer data.

In 2017, the average age of those who transferred their IFQ for medical reasons was 61. The maximum age in the group of transfers was 92 and the minimum age was 26. Figure 1 shows the breakdown of ages of QS holders that used the medical lease transfer to transfer their IFQ. The largest age group (ages 56-65) made 110 medical transfers in 2017, or 36% of the medical transfers. 70% of medical transfers made in 2017 were held by QS holders older than age 56.⁷

⁷ It is worth noting that the ages of all QS holders in comparison to the ages of QS holders who use a medical lease transfer was beyond the scope of this discussion paper but a potential item for the analysis.

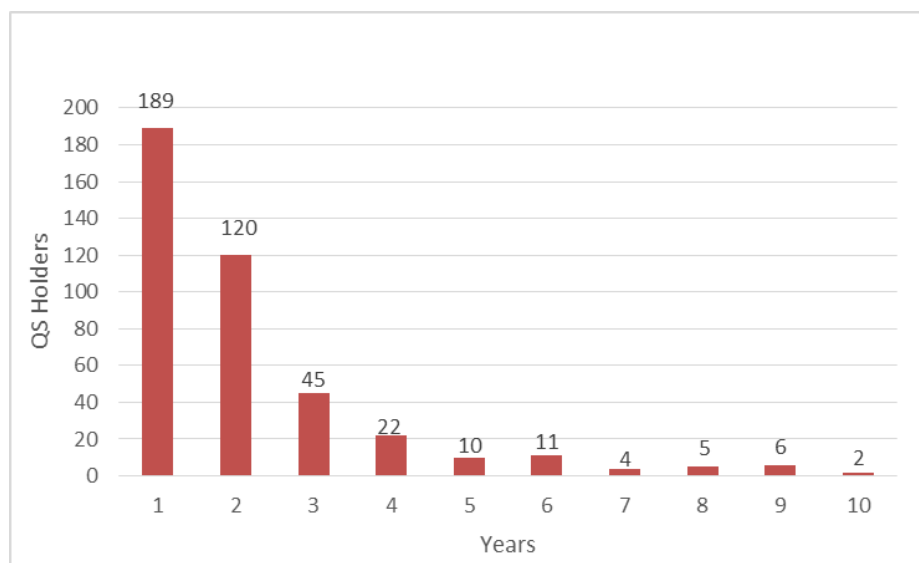
Figure 1 Number of QS holders by age group that used a medical transfer in 2017



Source: NMFS RAM.

Figure 2 provides a summary of the years that individual QS holders used the medical transfer provision for any portion of their IFQ during the 11 years (2007-2017). Data in the table represents the 414 QS holders that were granted a medical transfer by RAM during the 11 years and not all QS holders issued QS over the period. About 75 percent of the QS holders used the provision less than three times over the 11 years. The remaining 25 percent used it three or more times and two QS holders used it 10 years. Because the provision was implemented late in the 2007 fishing year, these two QS holders used the provision every full year it has been implemented. Sixty QS holders have used the provision four or more years from 2007-2017.

Figure 2 Number of years QS holders used the emergency medical lease provision, 2007-2017

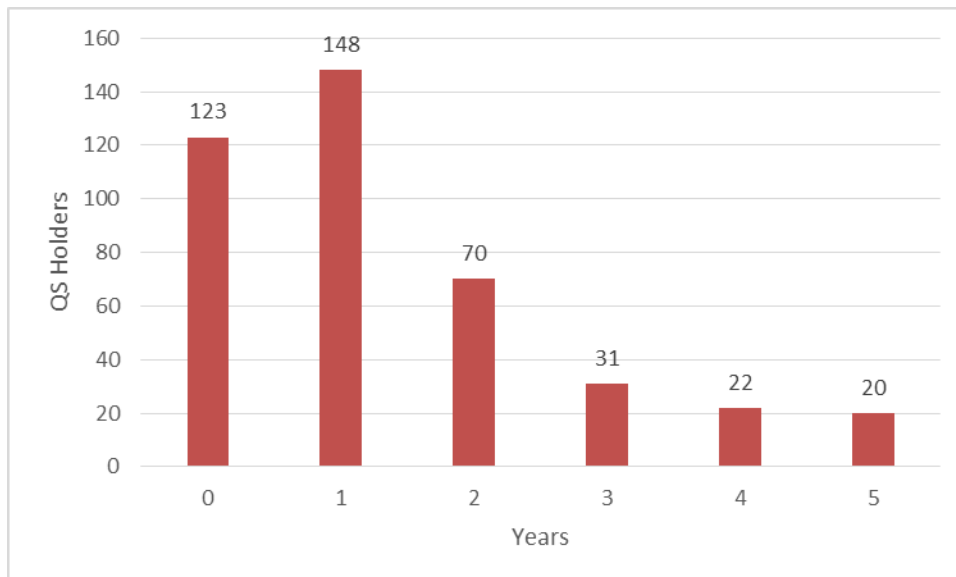


Source: NMFS RAM transfer data.

Figure 3 provides information on the most recent five years of medical transfer data from NMFS RAM for the 414 QS holders that have used the medical transfer provision at least once since its implementation in 2007.

The data indicate that 123 QS holders used the provision once from 2007 through 2012 and have not used the medical transfer since. A total of 218 QS holders have used the provision either once or twice from 2013-2017. These QS holders would not be impacted by a regulatory amendment that limited the number of medical leases a person may use to two of every five years. The remaining 73 QS holders have used the provision three or more times and **20 QS holders have used the provision every year since 2013**. These 73 QS holders would be limited by a regulatory change that allowed a QS holder to lease their IFQ in two of five years for either any reason or any medical reason.

Figure 3 Number of years QS holders used the emergency medical lease provision, 2013-2017



Note: The 123 QS holders that have used the Medical Lease provision 0 times in this Figure have used the provision prior to 2013 at least once.

Source: NMFS RAM transfer data.

Regulations state that QS holder may not use the same medical condition to qualify for the medical transfer provision for more than two out of the previous five years. Since regulations do not limit the total number of years the medical transfer provision may be used, QS holders may utilize the medical lease provision if they apply and qualify under a different medical condition. Determining whether the conditions are different puts NMFS staff in the position of making that judgment in order to meet the letter and intent of the regulation.

3.2 Defining “certified medical professional”

In 2007, NMFS published a final rule to allow medical transfers ([72 FR 44795](#)). The Council began discussing this issue earlier in 2004 and emphasized in their discussion papers and

motions that this was a temporary transfer in times of hardship.⁸ Chronic or irreversible conditions may not justify a medical transfer for more than one year. NMFS implemented the medical transfer provision to provide an opportunity for QS holders in times of hardship, including medical emergencies, pregnancy, and caring for a loved one. At this time a written declaration from a licensed medical doctor, advanced nurse practitioner, or primary community health aide as those persons are defined in §679.2 is required as part of the application for an medical transfer. The declaration must include:

- (1) The identity of the licensed medical doctor, advanced nurse practitioner, or primary community health aide including his or her full name, business telephone, permanent business mailing address (number and street, city and state, zip code), and whether the individual is a licensed medical doctor, advanced nurse practitioner, or primary community health aide;
- (2) A concise description of the medical condition affecting the applicant or applicant's family member including verification that the applicant is unable to participate in the IFQ fishery for which he or she holds IFQ permits during the IFQ season because of the medical condition and, for an affected family member, a description of the care required; and
- (3) The dated signature of the licensed medical doctor, advanced nurse practitioner, or primary community health aide who conducted the medical examination;

Since 2007, NMFS approves transfers and has encountered difficulties administering the medical provision based on the current definition of “certified medical professional.” There are many individuals who go to chiropractors, psychiatrists, or other medical practitioners that do not fit into these definitions. Alternatively, the individual could be outside the U.S. when they need treatment; our definition of licensed medical doctor refers to Federal, state and local laws and regulations of the state in which the person resides. If you happen to get sick overseas, NMFS regulations preclude the QS holder from having a doctor licensed outside of the U.S. from signing the medical transfer.

Currently in 50 CFR 679.2, advanced nurse practitioner, licensed medical doctor, and primary community health aide are defined as:

1. *Advanced nurse practitioner* means a registered nurse authorized to practice in any state who, because of specialized education and experience, is certified to perform acts of medical diagnosis and the prescription and dispensing of medical, therapeutic, or corrective measures under regulations adopted by the state Board of Nursing.
2. *Licensed medical doctor* means a person who is licensed, certified, and/or registered in accordance with applicable Federal, state, or local laws and regulations, and is authorized to conduct the practice of medicine as defined by the state in which the person resides.
3. *Primary community health aide* means a person who has completed the first of three levels of community health aide training offered by the Norton Sound Health Corporation at the Nome Hospital, the Kuskokwim Community College in Bethel, the Alaska Area Native Health Service in Anchorage, or another accredited training center.

⁸ Discussion papers and motions related to the IFQ Medical Lease Provision can be found here: <https://www.npfmc.org/halibutsablefish-ifq-program/#IFQComm>

For all of these options, **NMFS could require that the Application for Medical Transfer form also require the medical professional's certification or the equivalent as proof as an attachment to the Application.** Medical professionals practicing medicine must be certified and requesting certification is not a substantial burden. An alternative option would be to grant NMFS the discretion to request certification at a later time if questions or concerns arise regarding the health care provider that signed the transfer application.

NMFS does not suggest continuing to mirror State of Alaska language for certified medical professionals or health care provider (see definition for primary community health aide). The current regulations focus on common State of Alaska terms that represent health providers commonly found throughout Alaska, without other options that might be more common outside Alaska or outside of the country. When considering broadening the current definition, NMFS staff reviewed what other agencies (Social Security Administration and Federal Aviation Administration) use to define health care providers or medical examiners that are certified by their standards and for their purposes. The Federal Aviation Administration utilizes medical examiners to certify pilots. An Aviation Medical Examiner (AME) may be any domestic physician (military or non-military) or an international physician certified as an AME. Because the AMEs are limited to physicians, the definition would be too narrow for IFQ medical transfer certification.

The Social Security Administration uses a broader definition when defining health insurance provisions for the aged and disabled. Title 18, Section 1861(r) of the Social Security Act (SSA) defines the term “physician” as:⁹

1. a doctor of medicine or osteopathy legally authorized to practice medicine and surgery by the State in which he performs such function or action,
2. a doctor of dental surgery or of dental medicine who is legally authorized to practice dentistry by the State in which he performs such function and who is acting within the scope of his license when he performs such functions,
3. a doctor of podiatric medicine...but only with respect to functions which he is legally authorized to perform as such by the State in which he performs them,
4. a doctor of optometry, but only for purposes...which he is legally authorized to perform as a doctor of optometry by the State in which he performs them,
5. a chiropractor who is licensed as such by the State (or in a State which does not license chiropractors as such, is legally authorized to perform the services of a chiropractor in the jurisdiction in which he performs such services)...only with respect to treatment by means of manual manipulation of the spine (to correct a subluxation) which he is legally authorized to perform by the State or jurisdiction in which such treatment is provided, or
6. a doctor of one of the arts, specified in 1 through 5, legally authorized to practice such art in the country in which the...services...are furnished.

⁹ https://www.ssa.gov/OP_Home/ssact/ssact-toc.htm

Section 1861(s) further defines “medical and other health services” to mean (1) physicians’ services, (2) certified nurse-midwife services, (3) qualified psychologist services¹⁰, and (4) clinical social worker services.¹¹

These health care providers (or a sub-set as determined to be appropriate) could also be included in the list of individuals that could document and sign a medical transfer. The licensed medical doctor language could be replaced by the definitions in 1861(r) and 1861(s) of SSA. The list could also include the advanced nurse practitioners and primary community health aides that are already defined in regulation and broadened to include certified physicians, nurse-midwives, qualified psychologists, and clinical social workers, as determined to be appropriate. **NMFS suggests broadening the medical professional definition.**

3.3 Determining status of a medical condition

In order to maintain a small boat owner-on-board fleet, chronic conditions were not eligible for medical transfers. Long-term medical conditions that cause the QS holder to transfer their annual IFQ indefinitely was not the intent of the IFQ Program. As QS holders age, more individuals use the medical transfer provision. Several people have used the medical provision since its inception. Anecdotally, NMFS has heard of those purchasing additional quota while using the medical lease transfer. The IFQ Program does not impede any individual’s access to the IFQ Program and all QS holders may sell their quota to entrants that are eligible to buy.

Federal regulations at 50 CFR 679.42(d)(2)(iv)(C) state “NMFS will not approve a medical transfer if the applicant has received a medical transfer in any 2 of the previous 5 years for the same medical condition.” These regulations were intended to reduce the number of transfers associated with chronic conditions, but NMFS is aware that a select few QS holders may be using variations of the same condition to mask continuation of an existing condition.

When processing medical transfers, NMFS must make a determination of whether the medical condition is a new condition or a continuation of an existing condition. NMFS has to determine if a condition, or multiple conditions, would prohibit the individual from ever returning to the fishery and continue to lease their IFQ indefinitely. If the terminology is not exactly the same year-to-year it is difficult to make the determination that the “same” condition was used before.

To do away with NMFS collecting highly confidential medical information and making determinations on medical conditions, **NMFS recommends an option that would allow individuals to lease IFQ for any medical reason for 2 of the previous 5 years, or any set of years selected by the Council.** This would simplify the leasing process for NMFS staff and for the IFQ program participants. It would remove the responsibility of interpreting and making judgment calls on medical conditions from NMFS staff. It would also eliminate the need to

¹⁰ The term “qualified psychologist services” means such services...furnished by a clinical psychologist which the psychologist is legally authorized to perform under State law (or the State regulatory mechanism provided by State law) as would otherwise be covered if furnished by a physician or as an incident to a physician’s service.

¹¹ The term “clinical social worker services” means services performed by a clinical social worker (as defined in paragraph (1)) for the diagnosis and treatment of mental illnesses (other than services furnished to an inpatient of a hospital and other than services furnished to an inpatient of a skilled nursing facility which the facility is required to provide as a requirement for participation) which the clinical social worker is legally authorized to perform under State law (or the State regulatory mechanism provided by State law) of the State in which such services are performed as would otherwise be covered if furnished by a physician or as an incident to a physician’s professional service.

define which medical professionals are eligible to certify a condition listed on the transfer application.

Selecting this option would still require NMFS to collect medical information and define medical professional. Table 2 provides an example in how a medical transfer would be handled by NMFS.

Table 2 Examples of Limiting Use of Medical Transfer in Set of Years

	QS Holder (Recurring user of Medical Transfer)
Year 1	Any medical condition approved for medical transfer
Year 2	Any medical condition approved for medical transfer
Year 3	Denied: QS Holder must fish or sell
Year 4	Denied: QS Holder must fish or sell
Year 5	Denied: QS Holder must fish or sell
Year 6	5 year cycle renewed: Any medical condition approved for medical transfer

4 Consideration and Discussion of Other Options

The numbers of medical transfers and percentage of all transfer transactions requested are small and likely to remain so. However, if the Council believes that inappropriate use of the provision contravenes its intention for an owner-operator fishery, or that the provision as structured imposes unreasonable impediments to additional QS holders with bona fide medical needs, and that effective remedial steps are possible, it might wish to consider future action. Such action might include imposing an absolute limit on the number of times an applicant may use the medical provision.

The Council might wish to consider other options, such as requiring a statement from the applicant that they intend to fish in the future, or from the medical professional that there exists a reasonable expectation that the applicant could resume fishing in the future. These additional requirements would reflect how the Commercial Fisheries Entry Commission's process to approve or deny permit transfers.¹² However, without means to deny a transfer based on such questions will likely not be effective in avoiding misuse of the transfers. Additionally, the final rule implemented in December 2007 discusses why the Council previously rejected a

¹² The Commercial Fisheries Entry Commission has a permit transfer request form that includes a detailed questionnaire about the permit holder's intentions to fish, other fishing activity, and medical condition and treatment. In addition, all transfers are \$50 to process. For more information: https://www.cfec.state.ak.us/forms/Request_for_Emergency_Transfer_of_Entry_Permit.pdf

requirement for the medical professional to attest to the applicant's ability to resume fishing when it said:¹³

The final rule eliminates the requirement proposed at § 679.42(d)(2)(iv)(B) that NMFS disapprove an application for a second medical transfer unless a health professional attested to a reasonable likelihood of recovery of the applicant. This requirement is eliminated from the final rule because the Council motion adopting this action did not have that requirement. Further, this requirement would put an applicant's doctor or other health professional and the applicant in a difficult situation if the doctor could not attest that the applicant had a reasonable likelihood of recovery. Additionally it might be hard for a health professional to assess whether the applicant/patient has a reasonable likelihood of recovery if the patient is in the early stages of diagnosis and treatment of a disease or condition.

NMFS recommends that the certified medical professional definition is broadened and reflects the SSA's definition for physician and that use of the medical transfer provision for any medical condition for a limited time period such as 2 out of 5 years.

4.1 Draft Alternatives for Council Consideration

Alternative 1: No Action

Alternative 2: Define "Certified Medical Professional"

Option 1: Replace current definition with a single, broader definition of certified medical professional, such as "Health care provider." Health care provider could be defined as:

An eligible health care provider is authorized to practice by the State, and performs within the scope of their practice to diagnose and treat as defined by applicable Federal, state, or local laws and regulations. A health care provider is authorized to practice medicine by Federal, state, or local laws and regulations. A health care provider outside the U.S. and its territories licensed to practice medicine is included in this definition.

Option 2: Define a Certified Medical Professional as all or a sub-set of those individuals defined in the Social Security Act Sections 1861(r) and 1861(s).

Alternative 3: Modify the medical transfer provision to limit the number of years the transfer provision may be used for:

Option 1: Any medical condition

Option 2: Any reason

Alternative 4: Establish a limit on number of years IFQ may be leased

Option 1: Allow leasing for 2 of 5 years.

¹³ <https://www.federalregister.gov/documents/2007/08/09/E7-15341/fisheries-of-the-exclusive-economic-zone-off-alaska-individual-fishing-quota-program-community>

Option 2: Allow leasing for 2 of 10 years.

Option 3: Any other set of years selected by the Council.

Suboptions apply to Alternatives 2, 3, and 4

A) Transfers from previous years would count towards the limit

B) Only transfers after implementation of new rule would count

**Alternative 5: Strengthen language in medical professions' affidavit on
Application for Medical Transfer Form**

Option 1: Adjust language on Medical Transfer Form in Block F, which is the medical declaration. Add language in a statement:

“To the best of my knowledge, I certify the patient will recover from this condition and be able to participate in the IFQ fishery by next year.”

5 References

Fairweather Fish and Captain Ray Welsh v. Penny Pritzker, C14-5685 (United State District Court Western District of Washington at Tacoma November 16, 2016).

NMFS. (December 2016). *Twenty-Year Review of the Pacific Halibut and Sablefish Individual Fishing Quota Management Program*. Retrieved from https://www.npfmc.org/wp-content/PDFdocuments/halibut/IFQProgramReview_417.pdf

NOAA NMFS. (2009). *Status of use of the IFQ Emergency Medical Transfer Provision*. RAM. Retrieved from <https://www.npfmc.org/wp-content/PDFdocuments/halibut/MedicalTransfers909.pdf>

NPFMC. (February 2017). *C4 IFQ Committee Report Draft Motion*. Retrieved from <https://www.npfmc.org/halibutsablefish-ifq-program/#IFQComm>

Persons Consulted

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6 Appendix: Application for Medical Transfer of IFQ

	<h2 style="margin: 0;">Application for Medical Transfer of IFQ</h2>	<div style="display: flex; justify-content: space-between;"> <div style="width: 70%;"> <p>U.S. Dept. of Commerce/NOAA National Marine Fisheries Service Restricted Access Management P.O. Box 21668 Juneau, AK 99802-1668 800-304-4846 toll free 907-586-7202 in Juneau 907 586-7354 fax</p> </div> <div style="width: 25%; text-align: center;">  </div> </div>
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A medical transfer remains in effect only for the calendar year of the transfer.

NOTES:

- ◆ NMFS will not approve a medical transfer of Individual Fishing Quota (IFQ) if the applicant has received a medical transfer in any 2 of the previous 5 years for the same medical condition.
- ◆ Block F must be completed and signed by a Licensed Medical Doctor, Advanced Nurse Practitioner, or Primary Community Health Aide. Regulations do not authorize acceptance of a medical declaration from any other medical providers.
- ◆ Attach a copy of the Transferors IFQ permit(s).
- ◆ A separate complete application must be submitted for each medical transfer. Incomplete applications will not be processed.
- ◆ Use this list as a guide to make sure you have included all the necessary items in the mailing of your application. This will ensure timely processing of your transfer application.

Is the Transferor (medical condition) an initial recipient of Pacific halibut or sablefish quota share who qualifies for a hired master exception under 50 CFR 679.42(i)(1)?

YES ☐ NO ☐

If YES, STOP. The Transferor is not eligible for a medical transfer.

Does the Transferee (no medical condition) hold a Transfer Eligibility Certificate (TEC)?

YES ☐ NO ☐

If NO, STOP. The Transferee is not eligible to receive IFQ by transfer.

BLOCK A – TRANSFEROR INFORMATION (MEDICAL CONDITION)

1. Name:	2. NMFS Person ID:	3. Date of Birth:
4. Business Mailing Address: Indicate whether <input type="checkbox"/> Permanent <input type="checkbox"/> Temporary		
5. Business Telephone No.:	6. Business Fax No.:	7. e-mail Address:

BLOCK B – TRANSFEREE (NO MEDICAL CONDITION)

1. Name:		2. NMFS Person ID:	3. Date of Birth:
4. Business Mailing Address: Indicate whether <input type="checkbox"/> Permanent <input type="checkbox"/> Temporary			
5. Business Telephone No.:		6. Business Fax No.:	7. E-mail Address:

BLOCK C – IDENTIFICATION OF IFQ TO BE TRANSFERRED

Use a separate line for each Species, IFQ Area and/or IFQ Permit

1. Halibut <input type="checkbox"/> Sablefish <input type="checkbox"/>	2. Fishing Year	3. Transferor IFQ Permit Number	4. IFQ Area	5. IFQ Pounds Transferring
1. Halibut <input type="checkbox"/> Sablefish <input type="checkbox"/>	2. Fishing Year	3. Transferor IFQ Permit Number	4. IFQ Area	5. IFQ Pounds Transferring
1. Halibut <input type="checkbox"/> Sablefish <input type="checkbox"/>	2. Fishing Year	3. Transferor IFQ Permit Number	4. IFQ Area	5. IFQ Pounds Transferring
1. Halibut <input type="checkbox"/> Sablefish <input type="checkbox"/>	2. Fishing Year	3. Transferor IFQ Permit Number	4. IFQ Area	5. IFQ Pounds Transferring

REQUIRED SUPPLEMENTAL INFORMATION

Your Application Will Not Be Processed Unless You Provide The Following Information

BLOCK D – TRANSFEROR SUPPLEMENTAL INFORMATION

1. Give the price per pound (including leases) \$ _____/pound of IFQ (price divided by IFQ pounds including fees)
2. What is the total amount being paid for the IFQ in this transaction, including all fees? _____

BLOCK E – TRANSFEEE SUPPLEMENTAL INFORMATION

1. What is the primary source of financing for this transfer (*check one*)?

- | | | |
|--|--|---|
| <input type="checkbox"/> Personal resources (cash) | <input type="checkbox"/> AK Com. Fish & Ag. Bank | <input type="checkbox"/> Received as a gift |
| <input type="checkbox"/> Private bank/credit union | <input type="checkbox"/> Transferor/seller | <input type="checkbox"/> NMFS loan program |
| <input type="checkbox"/> Alaska Dept. Of Commerce | <input type="checkbox"/> Processor/fishing company | <input type="checkbox"/> Other (<i>explain</i>) |

2. How was the IFQ located (*check all that apply*)?

- | | | |
|--|--|---|
| <input type="checkbox"/> Relative | <input type="checkbox"/> Advertisement/Public Notice | <input type="checkbox"/> Broker |
| <input type="checkbox"/> Personal Friend | <input type="checkbox"/> Casual Acquaintance | <input type="checkbox"/> Other (<i>explain</i>) |

3. What is the Transferee's relationship to the IFQ Holder (*check all that apply*)?

- | | | |
|--|--|---|
| <input type="checkbox"/> No Relationship | <input type="checkbox"/> Relative | <input type="checkbox"/> Business Partner |
| <input type="checkbox"/> Friend | <input type="checkbox"/> Family Member | <input type="checkbox"/> Other (<i>explain</i>) |

BLOCK F – MEDICAL DECLARATION

(may be completed only by a licensed medical doctor, advanced nurse practitioner, or primary community health aide)

1. Name of Treating Medical Professional:	2. Business Telephone Number:
3. Permanent Business Mailing Address:	4. Type of Medical Professional: <input type="checkbox"/> Licensed Medical Doctor <input type="checkbox"/> Advanced Nurse Practitioner <input type="checkbox"/> Primary Community Health Aide
5. Description of the primary medical condition affecting the applicant or applicant's family member that prevents participation in the fishery for this calendar year. Please do not list multiple conditions. <i>(Attach documentation of the medical condition and a description of the care required).</i>	
<i>I acknowledge the requirements for receiving a medical transfer and certify that, to the best of my knowledge and belief, the information presented here is true, correct, and complete. The medical condition described above would prevent the applicant from participating in the IFQ fishery or, in the case of a family member, require continuous care that would preclude the applicant's participation in the IFQ fishery.</i>	
6. Signature of Treating Medical Professional:	7. Date:

**NOTE: This application for transfer must be completed and signed by both parties.
Failure to have signatures will result in delays in the processing of this application.**

BLOCK G –CERTIFICATION OF TRANSFEROR (SELLER)

Under penalties of perjury, I declare that I have examined this application, and to the best of my knowledge and belief, the information presented here is true, correct, and complete.

1. Signature of Transferor or Authorized Representative:	2. Date:
3. Printed Name of Transferor or Authorized Representative <i>(If Representative, attach authorization:</i>	

BLOCK H – CERTIFICATION OF TRANSFEREE (BUYER)

Under penalties of perjury, I declare that I have examined this application, and to the best of my knowledge and belief, the information presented here is true, correct, and complete.

1. Signature of Transferee or Authorized Representative:

2. Date:

3. Printed Name of Transferee or Authorized Representative (If Representative, **attach** authorization:

REPORTING BURDEN STATEMENT

Public reporting for this collection of information is estimated to average 2 hours per response, including the time for reviewing the instructions, searching the existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Assistant Regional Administrator, Sustainable Fisheries Division, NOAA National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802-1668.

ADDITIONAL INFORMATION

Before completing this form please note the following: 1) Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information, subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number; 2) This information is mandatory and is required to manage commercial fishing efforts under 50 CFR part 679 and under section 402(a) of the Magnuson-Stevens Act (16 U.S.C. 1801, *et seq.*); 3) Responses to this information request are confidential under section 402(b) of the Magnuson-Stevens Act). They are also confidential under NOAA Administrative Order 216-100, which sets forth procedures to protect confidentiality of fishery statistics.

<p style="text-align: center;">INSTRUCTIONS: Application for Medical Transfer of IFQ</p>
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Medical Transfers Remain In Effect only for the Calendar Year of the Transfer

The requirement of 50 CFR part 679.41(c) for an individual fishing quota (IFQ) permit holder to be aboard the vessel during fishing operations and to sign the IFQ landing report *may be waived* as described at 50 CFR part 679.41(d). A medical transfer may be approved if the applicant demonstrates that he or she is unable to participate in the IFQ fishery for which he or she holds IFQ:

- ◆ Because of a medical condition that precludes participation; or
- ◆ Because of a medical condition involving an immediate family member that requires the quota share (QS) holder's full time attendance.

Eligibility: To be eligible to receive a medical transfer, an individual halibut or sablefish QS holder:

- ◆ Must possess one or more catcher vessel IFQ permits.
- ◆ Must not be an initial issue of Pacific halibut or sablefish quota share that qualifies to hire a master under 50 CFR 679.42(l)(1)

NMFS will not approve a medical transfer if the applicant has received a medical transfer in any 2 of the previous 5 years for the same medical condition.

A separate complete application must be submitted for each medical transfer of IFQ.

Please allow at least ten working days for your application to be processed. Items will be sent by first class mail, unless you provide alternate instructions *and* include a prepaid mailer with appropriate postage or corporate account number for express delivery.

If you need assistance in completing this application or need additional information, call Restricted Access Management (RAM) at

(800) 304-4846 (#2) or (907) 586-7202 (#2).

When complete, submit the application:

- ◆ By mail to **NMFS Alaska Region
Restricted Access Management (RAM)
P.O. Box 21668
Juneau, AK 99802-1668**
- ◆ By delivery to **709 West 9th Street, Room 713 Juneau, AK 99801**

Note: It is important that all blocks are completed and all necessary documents are attached. Failure to answer any of the questions **or** provide attachments could result in delays in the processing of your application.

COMPLETING THE APPLICATION

Indicate if the Transferor (medical condition) is an initial recipient of Pacific Halibut or sablefish quota share who qualifies for a hired master exception under 50 CFR 679.42(i)(1).

If YES, STOP. The Transferor is not eligible for a medical transfer.

50 CFR §679.42(i) provides that individuals initially issued QS may hire a master to harvest their annual IFQ on a vessel that the QS holder has at least a 20 percent ownership interest in (see regulations for exceptions). Indicate whether the transferor is a person who may hire a master to harvest their annual IFQ.

If YES, the submitted medical transfer application will be denied.

Indicate whether the Transferee (no medical condition) holds a Transfer Eligibility Certificate (TEC).

IF NO, STOP. The Transferee is not eligible to receive IFQ by transfer. Only a person that received QS as an Initial Issuee or that holds a TEC is eligible to receive QS/IFQ by transfer.

IF NO, the transferee must contact RAM for instructions on eligibility procedures and a TEC application.

BLOCK A – TRANSFEROR (MEDICAL CONDITION)

1. Name: Full name as it appears on QS Holder Summary Report and/or TEC.
2. NMFS Person ID: As found on QS Holder Summary Report or TEC.
3. Date of Birth: Birth date of the person.
4. Business Mailing Address: Include street or P.O. Box number, city, state, and zip code.
Indicate whether permanent or temporary
If temporary, this is the address the transfer documentation will be sent if other than to the permanent address
- 5-7. Business Telephone and Fax Numbers (Include the area codes), and E-mail Address

BLOCK B -- TRANSFEE (NO MEDICAL CONDITION)

1. Name: Full name as it appears on QS Holder Summary Report and/or Transfer Eligibility Certificate (TEC).
2. NMFS Person ID: As found on QS Holder Summary Report e or TEC.
3. Date of Birth: Birth date of the person.
4. Business Mailing Address: Include street or P.O. Box number, city, state, and zip code.
Indicate whether permanent or temporary
If temporary, this is the address the transfer documentation will be sent if other than to the permanent address
- 5-7. Business Telephone and Fax Numbers (Include the area codes), and E-mail Address

BLOCK C – IDENTIFICATION OF IFQ TO BE TRANSFERRED

Note: A separate line must be completed for each Species, IFQ Area and/or IFQ Permit from which you are transferring IFQ.

1. Indicate whether halibut or Sablefish IFQ.
2. Fishing Year (must be current year).
3. IFQ Permit Number of Transferor. Must be current year IFQ Permit.
4. IFQ Regulatory Area.
5. Actual number of IFQ Pounds to be transferred from the permit listed in #3.

BLOCK D – TRANSFEROR SUPPLEMENTAL INFORMATION

1. The price per pound of IFQ must be entered for IFQs that are being transferred under a medical transfer. (To derive the number of dollars per unit of QS or pound of IFQ, divide the total amount paid, including fees, by the number of QS units or the number of IFQ pounds being transferred.)
2. The total amount being paid should include **any and all** monies collected on behalf of the seller for the shares involved, including any fees that will be paid out to other parties for the expenses of brokering or assisting in the sale of these shares.

BLOCK E – TRANSFEREE SUPPLEMENTAL INFORMATION

1. Indicate the primary source of financing for this transfer (check one).
2. Indicate how the IFQ was located (check all that apply).
3. Indicate Buyer's relationship to the IFQ Holder (check all that apply).

BLOCK F -- MEDICAL DECLARATION

Federal regulation require that this medical declaration be completed by **a licensed medical doctor, advanced nurse practitioner, or primary community health aide**. The term “medical professional” for purposes of the medical transfer application refers only to licensed medical doctor, advanced nurse practitioner, or primary community health aide. Certifications from other medical professionals will not be accepted.

- 1-3. The medical professional who conducted the medical examination must print or type their name, business telephone number, and permanent business mailing address.
4. The medical professional who conducted the medical examination must check the box indicating the medical category they fall within.
5. The medical professional conducting the medical examination must provide a concise description of the medical condition affecting the applicant or the applicant’s family member including verification that the applicant is unable to participate in the IFQ fishery for which he or she holds IFQ permits during the IFQ season because of the medical condition and, for an affected family member, a description of the care required. The medical professional may attach the original medical report or additional information if necessary.
6. The medical professional who conducted the medical examination must sign and date the declaration.

BLOCK G - CERTIFICATION OF TRANSFEROR

The transferor must sign and print his or her name and date the application. If completed by a representative, **attach** authorization. If signing on behalf of an individual, a valid power of attorney for that individual must be provided.

BLOCK H - CERTIFICATION OF TRANSFEREE

The transferee must sign and print his or her name and date the application. If completed by a representative, **attach** authorization. If signing on behalf of an individual, a valid power of attorney for that individual must be provided.