

### *Government-to-Government Relationship With Tribes*

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. We have determined that there are lands of 20 different tribes within the range of the listed Interior least tern that may be affected by this proposal. We intend to contact each of these Tribes during the open comment period for this proposed rule so they may fully evaluate any potential impact of this proposed rule and the draft PDM plan.

### References Cited

A complete list of references cited is available on <http://www.regulations.gov> under Docket Number FWS-R4-ES-2018-0082, or upon request from the Field Supervisor, Mississippi Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

### Author

The primary author of this document is Paul Hartfield of the Mississippi Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

### List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

### Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

### PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361–1407; 1531–1544; 4201–4245, unless otherwise noted.

#### § 17.11 [Amended]

■ 2. Amend § 17.11(h) by removing the entry for "Tern, least [Interior DPS]" under "BIRDS" from the List of Endangered and Threatened Wildlife.

Dated: August 8, 2019.

**Margaret E. Everson,**

*Principal Deputy Director, U.S. Fish and Wildlife Service, Exercising the Authority of the Director for the U.S. Fish and Wildlife Service.*

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### DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No.: 191016–0065]

RIN 0648–BJ07

### Fisheries of the Exclusive Economic Zone off Alaska; IFQ Program; Modify Medical and Beneficiary Transfer Provisions

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes regulations to modify the medical and beneficiary transfer provisions of the Individual Fishing Quota (IFQ) Program for the fixed-gear commercial Pacific halibut and sablefish fisheries. This proposed rule is intended to simplify administration of the medical and beneficiary transfer provisions while promoting the long-standing objective of maintaining an owner-operated IFQ fishery. This proposed rule would also make minor technical corrections to regulations for improved accuracy and clarity. This proposed rule is intended to promote the goals and objectives of the IFQ Program, the Magnuson-Stevens Fishery Conservation and Management Act, the Northern Pacific Halibut Act of 1982, and other applicable laws.

**DATES:** Submit comments on or before November 25, 2019.

**ADDRESSES:** You may submit comments, identified by docket number NOAA–NMFS–2019–0069, either of the following methods:

- **Electronic Submission:** Submit all electronic public comments via the Federal eRulemaking Portal. Go to [www.regulations.gov](http://www.regulations.gov) / #!docketDetail;D=NOAA-NMFS-2019-0069, click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.

- **Mail:** Submit written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries

Division, Alaska Region NMFS, Attn: Records Office. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.

**Instructions:** Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (e.g., name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

Electronic copies of the Regulatory Impact Review (referred to as the "Analysis") and the Categorical Exclusion prepared for this proposed rule are available from <http://www.regulations.gov>.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted by mail to NMFS at the above address; by email to [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov); or by fax to (202) 395–5806.

**FOR FURTHER INFORMATION CONTACT:** Stephanie Warpinski, 907–586–7228.

### SUPPLEMENTARY INFORMATION:

#### Authority for Action

NMFS manages the groundfish fisheries in the exclusive economic zone off Alaska under the Fishery Management Plan (FMP) for Groundfish of the Gulf of Alaska (GOA) and under the FMP for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI). The North Pacific Fishery Management Council (Council) prepared the FMPs under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.* Regulations governing U.S. fisheries and implementing the FMPs appear at 50 CFR parts 600 and 679.

The International Pacific Halibut Commission (IPHC) and NMFS manage fishing for Pacific halibut through regulations established under the authority of the Northern Pacific Halibut Act of 1982 (Halibut Act). The IPHC promulgates regulations governing the halibut fishery under the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea (Convention). The IPHC's regulations are subject to

approval by the Secretary of State with concurrence of the Secretary of Commerce (Secretary). NMFS publishes the IPHC's regulations as annual management measures pursuant to 50 CFR 300.62.

The Halibut Act, at sections 773c(a) and (b), provides the Secretary with general responsibility to carry out the Convention and the Halibut Act. In adopting regulations that may be necessary to carry out the purposes and objectives of the Convention and the Halibut Act, the Secretary is directed to consult with the Secretary of the department in which the U.S. Coast Guard is operating, currently the Department of Homeland Security.

The Halibut Act, at section 773c(c), also provides the Council with authority to develop regulations, including limited access regulations, that are in addition to, and not in conflict with, approved IPHC regulations. Regulations developed by the Council may be implemented by NMFS only after approval by the Secretary. The Council has exercised this authority in the development of subsistence halibut fishery management measures, codified at 50 CFR 300.65, and the limited access program for charter operators in the charter fishery, codified at 50 CFR 300.67. The Council also developed the IFQ Program for the commercial halibut and sablefish fisheries, codified at 50 CFR part 679, under the authority of section 773c of the Halibut Act and section 303(b) of the Magnuson-Stevens Act (16 U.S.C. 1801 *et seq.*).

### Background

The following background sections describe (1) the IFQ Program, (2) the IFQ medical transfer provision, (3) the IFQ beneficiary transfer provision, and (4) the appeals process.

#### *The IFQ Program*

The commercial halibut and sablefish fisheries in the GOA and the BSAI management areas are managed under the IFQ Program that was implemented in 1995 (58 FR 59375, November 9, 1993). The Council and NMFS developed the IFQ Program to resolve the conservation and management problems commonly associated with open access fisheries. The preamble to the proposed rule published on December 3, 1992 (57 FR 57130), describes the background issues leading to the Council's initial action recommending the adoption of the IFQ Program.

The IFQ Program limits access to the halibut and sablefish fisheries to those persons holding quota share (QS) in specific management areas. The IFQ

Program allocates QS annually, and each year that QS yields an exclusive harvest privilege, an annual IFQ permit, among participants in the fixed gear commercial fishery. An IFQ permit is expressed in pounds and is based on the amount of QS held in relation to the total QS pool. Each year, NMFS issues IFQ to each QS holder to harvest a specific percentage of either the total allowable catch (TAC) in the sablefish fishery or the annual commercial catch limit in the halibut fishery. In addition to being specific to sablefish or halibut, QS and IFQ are designated for specific geographic areas of harvest (commonly known as regulatory areas), a specific vessel operation type (catcher vessel or catcher/processor), and for a specific range of vessel sizes that may be used to harvest the sablefish or halibut (vessel category). Section 2.2 of the Analysis (see **ADDRESSES**) provides additional information on the sablefish and halibut IFQ Program.

The Council and NMFS designed the IFQ Program to provide economic stability to the commercial halibut and sablefish fisheries and retain the character and distribution of the fishing fleets as much as possible. The IFQ Program includes several provisions, such as ownership caps and vessel use caps, to protect rural coastal community participants, part-time participants, and entry-level participants that could be adversely affected by excessive consolidation. The IFQ Program also includes other restrictions intended to slow consolidation of QS and prevent the fishery from being dominated by large vessels or by any particular vessel class.

The Council and NMFS created the provisions of the IFQ Program to support the conservation and management objectives of the Magnuson-Stevens Act and the Halibut Act while retaining the "owner-operator" character of the fishing fleets as much as possible. The three main exceptions to the owner-operator requirement are for initial issues of QS to be able to use hired masters to fish the IFQ resulting from their QS; a medical transfer provision that allows QS holders with approved medical conditions to use hired masters for the IFQ derived from their QS if they are not able to harvest their own IFQ; and a beneficiary transfer provision that provides for temporary annual transfers of IFQ to a hired master for up to three years after a QS holder's death. Since implementation of the IFQ Program, the Council has recommended and NMFS has implemented many amendments to revise the IFQ Program to maintain the owner-operator character of the IFQ

fishery. This proposed rule would not modify existing regulations that apply to initial issuances of QS, but would modify the medical and beneficiary transfer provisions.

#### *Medical Transfer Provision*

The IFQ Program currently includes a medical transfer provision that allows QS holders of catcher vessel QS (referred to as class B, C, and D QS shares) who are not otherwise eligible to use a hired master (*i.e.*, persons who are not initial issues of QS) to temporarily transfer (lease) their annual IFQ to another individual if the QS holder or an immediate family member has a temporary medical condition that precludes the QS holder from fishing (72 FR 44795, August 9, 2007). This provision was intended to provide a mechanism for QS holders with a temporary medical condition, or caring for an immediate family member with a medical condition, that would preclude the QS holder from fishing during a season to transfer their annual IFQ to another qualified individual. In recommending this medical transfer provision, the Council and NMFS balanced the 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.

Prior to implementation of this provision in 2007, a QS holder with a medical condition was required to divest of his or her QS or allow his or her IFQ to go unfished during years he or she could not be on board the vessel. Medical transfers were not intended to be a mechanism for persons unable or unwilling to participate in the fishery as an owner onboard to continue to receive economic benefits from their QS holdings, but were intended to address legitimate medical conditions that precluded participation (72 FR 44795, August 9, 2007).

To limit potential for repeated, long-term, or illegitimate use of the medical transfer provision, the current provision's application is limited (1) to individuals who are not otherwise eligible to use hired masters; (2) to IFQ derived from catcher vessel QS held by the applicant; (3) to include a requirement for certification by specific types of medical providers who must describe the condition (and the care required if caring for an immediate family member); (4) to require verification of the inability of the QS holder to participate in IFQ fisheries; and (5) a use cap of 2 years in a 5-year period.

An applicant for a temporary medical transfer must document the QS holder's, or immediate family member's, 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 immediate family member) that prevents participation in the fishery for the calendar year. In the case of an immediate 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 QS holder must resubmit the application on an annual basis if his or her medical condition, or that of an immediate family member, continues.

#### *Beneficiary Transfer Provision*

The beneficiary transfer provision allows for temporary annual transfers of catcher vessel IFQ to be approved for up to three years after the QS holder's death. In 1996, NMFS amended the IFQ Program regulations to allow for a temporary transfer of QS to surviving spouses of deceased QS holders (61 FR 41523, August 9, 1996). In 2000, a final rule (65 FR 78126, December 14, 2000) expanded the existing survivorship transfer provisions in 50 CFR 679.41(k) to include an immediate family member designated as beneficiary to whom the survivorship transfer privileges would extend in the absence of a surviving spouse. This transfer is intended to benefit the surviving spouse, or an immediate family member designated by the QS holder, for a limited period of time.

To transfer QS under this beneficiary provision, the surviving spouse, or the designated beneficiary named on the QS/IFQ Beneficiary Designation Form by the QS holder, submits an Application for Transfer of QS/IFQ. These forms are processed by NMFS Restricted Access Management (RAM) Program.

NMFS may approve an application to transfer QS to the surviving spouse or designated beneficiary, unless a contrary intent is expressed by the decedent in a will and if sufficient evidence has been provided to verify the death of the individual. Typically, NMFS requires a copy of the death certificate and the decedent's will to accompany a QS transfer. Legally, for purposes of transferring QS, a beneficiary identified in a will overrides any beneficiary designated on the form submitted to NMFS. NMFS allows the transfer of IFQ resulting from the QS transferred to the beneficiary by right of

survivorship for a period of three years following the death of the QS holder. After the 3-year period expires, the spouse or designated beneficiary must either qualify to hold the QS or transfer the QS. Currently, the program allows the QS holder to designate a beneficiary that can either be the surviving spouse, or in the absence of a surviving spouse, an immediate family member.

#### *Appeals Process*

If NMFS denies a transfer under the existing medical and beneficiary transfer provisions, a QS holder may appeal this denial through the National Appeals Office (NAO). If a claim is submitted that is inconsistent with the information required in regulations or if the transfer requested is beyond the number of years allowed, the QS holder would have the burden of proving that the submitted claim is correct. NMFS would not accept claims that are inconsistent with the official record, unless they are supported by clear, written documentation.

NMFS issues an initial administrative determination (IAD) on behalf of the Regional Administrator to deny a medical or beneficiary transfer. If this happens, a QS holder may file an appeal. Prior to 2014, the procedure for appealing an IAD was to submit the appeal directly to the NMFS's Alaska Office of Administrative Appeals and was described at § 679.43. However, NMFS centralized the appeals process to be located in the National Appeals Office (NAO), which operates out of NMFS's headquarters in Silver Spring, Maryland as described at 15 CFR part 906 (79 FR 7056, February 6, 2014).

#### *Need for This Proposed Rule*

As part of the 20-year review of the IFQ Program conducted in 2016, NMFS identified several problems administering the medical and beneficiary transfer provisions discussed in Section 1.3 of the Analysis. Challenges with administering the medical transfer provision include: (1) The current definition of a "certified medical professional" does not include commonly used medical care providers such as chiropractors or providers located outside of the United States, and (2) difficulties enforcing the limitation on the use of the medical transfer provisions to two years of the previous five years for the same medical condition.

Section 2.4.1 of the Analysis indicates that NMFS regularly receives medical transfer applications that include attestations from health care providers such as chiropractors or from health care providers located outside of the

United States. Because these persons may not meet the current definition of a "certified medical professional" as defined in regulation, NMFS has to review these claims and make evaluations of the credentials of the professional qualifications. This review increases administrative costs and uncertainty for medical transfer applicants.

As noted earlier in this preamble, the medical transfer provisions were intended for limited medical conditions and not to address long-term chronic conditions. Section 2.4.1 of the Analysis indicates that some QS holders have used 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 using it as a means of bypassing the owner-on-board provision altogether. Furthermore, some QS holders may be using the medical lease provision for chronic conditions, from which recovery is unlikely, although the provision was intended to provide relief from fishing for IFQ participants in emergency hardship situations. Challenges with the beneficiary transfer provision include the lack of a regulatory definition of an "immediate family member" and the fact that an estate is not listed in regulations as a representative that is eligible to receive IFQ held by the decedent.

Section 2.5.1 of the Analysis states that NMFS has received beneficiary transfer applications from persons who do not meet a commonly used definition of an immediate family member, which generally includes a person's parents, spouse, siblings, and children. This traditional definition for making determinations regarding transfer eligibility under the designated beneficiary transfer provision is narrower than many State and Federal beneficiary definitions currently applied in a variety of government programs. Since the current surviving heir regulations were implemented, the definition of immediate family has changed in many State and Federal jurisdictions, and now includes other persons connected to a QS holder by birth, adoption, marriage, civil partnership, or cohabitation. NMFS and IFQ Program participants would benefit from clarification for this provision's administration. NMFS has received requests from QS holders and their beneficiaries to clearly define immediate family member.

Section 2.5.1 of the Analysis states that NMFS regularly receives QS transfer requests from a decedent's

estate representative. However, regulations do not currently authorize a QS holder's estate to apply to transfer the associated IFQ resulting from a decedent's QS. This can create additional challenges when attempting to resolve the distribution of assets and can limit an heir's ability to receive the benefits from a decedent's QS.

This proposed rule would clarify the administration of the medical transfer and beneficiary transfer provisions. The proposed changes would benefit both IFQ Program participants, their beneficiaries, and NMFS by providing clear standards, reducing potential inconsistencies with other definitions used for other state or Federal programs, and reducing administrative costs and burdens associated with existing regulatory provisions.

#### Proposed Rule

This section describes this proposed rule, its anticipated effects on fishery participants and the environment, and the proposed changes to current regulations at 50 CFR part 679. The Council recommended and NMFS proposes the following changes to the medical and beneficiary transfer provisions of the IFQ Program.

##### *Medical Transfer Provision*

This proposed rule would make several changes to the medical transfer provision that include changes to: (1) Remove the definitions for "Advanced nurse practitioner," "Licensed medical doctor," and "Primary community health aide;" and add the definition for "Health care provider," and (2) modify § 679.42(d)(2) to allow medical transfers for any medical condition and to allow the transfers to be used for 3 of 7 most recent years.

The first proposed change would broaden the definition of who may attest to a medical condition of the QS holder, or his or her immediate family member, that precludes a QS holder from participating in the IFQ fisheries to include a broad range of health care providers. This would increase flexibility for a QS holder when selecting a health care provider for treatment and verifying the condition on the medical transfer application. Defining a certified medical professional is important because it sets the boundaries for who is allowed to attest that a QS holder is not physically able to fish his or her IFQ. This proposed rule would broaden the current definition while limiting the persons to those who are licensed or certified by the state or country in which they practice. The current definition prohibits commonly used licensed

medical providers, such as chiropractors, from attesting to medical conditions they treat. This creates an additional administrative burden for NMFS and the person seeking the medical transfer as credentials have to be evaluated and reviewed. This proposed rule also would allow health care providers outside the United States to sign the medical transfer form. NMFS expects that any expansion of the definition over the status quo would be beneficial to QS holders, or their immediate family member, who need medical care and would lead to less rejections of applications based solely on the specialty of the health care provider.

The second proposed change would remove the administrative step for NMFS staff to differentiate medical conditions and reduce the information required to be submitted to process a medical transfer application. This provision would apply the medical transfer limits such that a QS holder could only use the medical transfer provision during 3 of the 7 most recent years. This provision would not require NMFS staff to verify the nature of a specific medical condition and whether it is materially different from other medical claims, but only to verify that a medical condition exists and to apply the transfer provisions for a specific period of time. NMFS would apply this provision to applications of medical transfers that are received after the effective date of this rule, if approved.

The Council recommended, and NMFS proposes, extending the number of years a medical transfer could be used from 2 of the 5 most recent years to 3 of the 7 most recent years, which would increase flexibility for those who need it. A year is defined as a calendar year, which is how IFQ permits are currently issued. Under the proposed revision, NMFS would begin to measure a 7-year period that would begin during the first calendar year that a medical transfer of IFQ is approved. After the third year a medical transfer is approved under the medical transfer provision, QS holders would not be able to transfer their IFQ for any medical condition for the remainder of the 7-year period that began the first calendar year the medical transfer of IFQ was approved. Section 2.4.4 of the Analysis provides additional detail on the range of years during which a medical transfer could apply and additional rationale for the provisions selected in this proposed rule.

Any time the medical transfer is used by a QS holder during a year it counts as one year of usage, regardless of the portion of the QS holdings the person

transferred. NMFS would implement this provision in this manner because the intent of the medical transfer provision is to provide a benefit for a person based on that person's medical condition and is not intended to apply to specific QS units. In most cases, NMFS anticipates that a person seeking a medical transfer will seek to transfer all of the QS that they hold after a medical condition requires transfer. However, if a person does not transfer all of his or her QS during a year, NMFS would still count the first year that any medical transfer of any QS occurs as the first year of the transfer. For example, if a QS holder held QS in two regulatory areas (e.g., halibut regulatory Area 2C and Area 3A) and only used the medical lease provision for the QS in one regulatory area (e.g., Area 2C) it would count as one year the medical transfer was used for all QS holdings. Only medical transfers that occur after the effective date of the final rule would count towards the limit. All IFQ participants currently using the medical transfer provision would be able to use all 3 of the 7 most recent years after this final rule's effective date, if approved, regardless of how many years they have used it prior to rule implementation.

This proposed rule would remove the current regulatory requirements at § 679.42(d)(2)(iii)(F) that require that the application describe the medical condition affecting the applicant or applicant's immediate family member. This proposed change would reduce the requirement that medical information would need to be reviewed by NMFS staff because it would no longer be required to review a medical transfer. Instead, the applicant would be only required to submit a statement of the condition affecting the applicant or the applicant's immediate family member. NMFS staff would still review all applications to ensure they are filled out entirely with the correct documentation.

This proposed rule would also remove requirements at § 679.42(d)(2)(iii) that an applicant provide his or her social security number because such information is no longer required to process transfer applications.

This proposed rule would also update associated cross references at § 679.42 to "Advanced nurse practitioner," "Licensed medical doctor," and "Primary community health aide;" to "Health care provider."

When considering this issue, the Council recommended, and NMFS proposes, that it would be appropriate to only count transfers that are approved after the effective date of these proposed regulations. This would treat all QS

holders the same should the new regulations be implemented. Counting medical transfers that have already been approved could eliminate the ability of some QS holders to be eligible to use the provision in the near future.

#### *Beneficiary Transfer Provision*

This proposed rule would make two changes to the beneficiary transfer provision to: (1) Define “immediate family member” at § 679.2; and (2) modify § 679.41 to add estate representative to the list of people to receive IFQ held by the decedent for up to three years. These changes would improve and simplify the process of approving beneficiary transfers without causing undue negative impacts on a QS holder’s estate planning.

This proposed rule would define “immediate family member” using a current definition established by the U.S. Office of Personnel Management (OPM) that includes a more current definition of the range of relationship that comprise an immediate family member and provides greater flexibility to QS holders and their beneficiaries. The OPM definition is commonly used in Federal programs that provide benefits to immediate family members and would include persons connected to the QS holder by birth, adoption, marriage, civil partnership, or cohabitation, such as grandparents, great-grandparents, grandchildren, great-grandchildren, aunts, uncles, siblings-in-law, half-siblings, cousins, adopted children, step-parents/step-children, and cohabiting partners. Section 2.5.4 of the Analysis describes the range of definitions considered by the Council and NMFS and additional information on the rationale for the specific definition proposed in this rule.

This proposed rule would also modify all references to surviving spouse and immediate family member in regulation by adding the term “estate.” Without this change, the QS holder’s estate would not be eligible to hold QS under the beneficiary transfer provision.

This proposed rule would clarify that an estate could receive QS, and the court-appointed estate representative for the QS holder’s estate would be authorized to use (if they are eligible to hold QS) or transfer the IFQ derived from the estate’s QS for the benefit of the estate for a period of three years following the QS holder’s death. NMFS would allow the estate representative to manage the use of the decedent’s QS holdings by allowing the representative to transfer IFQ annually on behalf of the estate. If after three years the estate is not settled, the estate representative could determine whether the QS held

by the estate should be sold and the proceeds retained by the estate, or the estate should continue to hold the QS; however, the estate would no longer be eligible to use the beneficiary transfer provisions to lease the annual IFQ. Including the estate representative in the list of successive beneficiaries (spouse, immediate family member) would not impact the existing order of priority. In the instance where the decedent has not explicitly appointed an estate representative in his or her will, for example, most states have an order of priority for appointment of the representative of the estate. An estate representative would be required to submit court-issued documents to demonstrate his or her eligibility to NMFS that they are legally representing the estate before they could use, permanently transfer, or temporarily transfer (lease) the IFQ. This addition would provide clear and consistent eligibility criteria for NMFS to determine if a person is eligible to transfer QS held by the estate of the deceased QS holder as well as use or lease the IFQ derived from those QS holdings. Allowing the estate to receive the QS for the purpose of this regulation supersedes the requirement that a QS holder must have designated an immediate family member with NMFS.

Adding the QS holder’s estate representative to the list of current beneficiaries eligible to receive IFQ after a QS holder’s death would have minimal impact on existing wills and would have a positive impact on future beneficiary transfers of IFQ and QS. The 3-year transfer period of IFQ would extend to the estate representative.

As part of this proposed rule, the Council and NMFS conducted an analysis that assessed the potential impacts on persons currently using, and who could potentially use, medical and beneficiary transfer provisions (see **ADDRESSES**). Overall, the impact on persons using existing medical transfer provisions would be limited since this proposed rule would not apply to medical transfer provisions that have been approved. This proposed rule could reduce the overall use of medical transfers in the limited cases when a person has consistently applied for and received consecutive medical transfer provisions (Section 2.4.1 of the Analysis). As noted in this preamble and in the preamble to the final rule that implemented the medical transfer provision (72 FR 44795, August 9, 2007), the medical transfer provisions were not intended to provide continuous opportunities to transfer QS. The impacts of this proposed action on communities and processors were

evaluated in Sections 2.4.3.1 and 2.5.3 of Analysis and found to be negligible.

This proposed rule is unlikely to negatively impact existing or future QS holders and their beneficiaries. QS holders and their future beneficiaries could benefit from improved clarity of the regulations implementing this administrative provision. Upon implementation, NMFS would conduct outreach to QS holders to increase awareness of the beneficiary process (Section 2.5.4 of the Analysis).

#### *Additional Regulatory Changes*

In addition to modifications to the medical and beneficiary transfer provisions, this proposed rule would make several minor regulatory clarifications. First, this proposed rule would modify regulations at § 679.42 to update the NOAA website URL and make minor technical corrections to remove unnecessary information collected such as Social Security numbers, number of IFQ units, and notary requirements. This proposed rule would add an additional way to describe “other methods of compensation” to provide flexibility to industry who may use a percentage of the total revenue as compensation instead of price per pound when they transfer under this provision.

Second, this proposed rule would update regulations at § 679.43 to correctly cite the current process required to submit an appeal. This would accurately reflect the current process for submission of appeals to the National Appeals Office. The previous regulatory procedure for appealing an IAD to the NMFS’s Alaska Office of Administrative Appeals was described at § 679.43. Since 2014, all appeals are processed in the National Appeals Office, which operates out of NMFS’s headquarters in Silver Spring, MD and is described at 15 CFR part 906 (79 FR 7056, February 6, 2014). This proposed revision would not materially change the process that is currently used to submit appeals.

#### **Classification**

Pursuant to section 304(b)(1)(A) and 305(d) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the BSAI and GOA FMPs, other provisions of the Magnuson-Stevens Act, the Halibut Act, and other applicable law, subject to further consideration after public comment.

Regulations governing the U.S. fisheries for Pacific halibut are developed by the IPHC, the Pacific Fishery Management Council, the North

Pacific Fishery Management Council (Council), and the Secretary of Commerce. Section 5 of the Northern Pacific Halibut Act of 1982 (Halibut Act, 16 U.S.C. 773c) allows the Regional Council having authority for a particular geographical area to develop regulations governing the allocation and catch of halibut in U.S. Convention waters which are in addition to, and not in conflict with, IPHC regulations.

The Halibut Act, at sections 773c(a) and (b), provides the Secretary of Commerce with the general responsibility to carry out the Convention with the authority to, in consultation with the Secretary of the department in which the U.S. Coast Guard is operating, adopt such regulations as may be necessary to carry out the purposes and objectives of the Convention and the Halibut Act. This proposed rule has been determined to be not significant for the purposes of Executive Order 12866.

An RIR was prepared to assess costs and benefits of available regulatory alternatives. A copy of this analysis is available from NMFS (see **ADDRESSES**). The Council recommended and NMFS proposes these regulations based on those measures that maximize net benefits to the Nation. Specific aspects of the economic analysis are discussed below in the Initial Regulatory Flexibility Analysis section.

#### *Initial Regulatory Flexibility Analysis*

This Initial Regulatory Flexibility Analysis (IRFA) was prepared for this action, as required by Section 603 of the Regulatory Flexibility Act (RFA) to describe the economic impact this proposed rule, if adopted, would have on small entities. The IRFA describes the action; the reasons why this action is proposed; the objectives and legal basis for this proposed rule; the number and description of directly regulated small entities to which this proposed rule would apply; the recordkeeping, reporting, and other compliance requirements of this proposed rule; and the relevant Federal rules that may duplicate, overlap, or conflict with this proposed rule. The IRFA also describes significant alternatives to this proposed rule that would accomplish the stated objectives of the Magnuson-Stevens Act, and any other applicable statutes, and that would minimize any significant economic impact of this proposed rule on small entities. The description of the proposed action, its purpose, and the legal basis are explained in the preamble and are not repeated here.

For RFA purposes only, NMFS has established a small business size standard for businesses, including their

affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (NAICS code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$11 million for all its affiliated operations worldwide.

#### *Number and Description of Small Entities Regulated by This Proposed Rule*

QS holders that fish catcher vessel QS (B, C, and D class QS) are assumed to be directly regulated by this action. Section 2.9 of the Analysis assumes that all halibut and sablefish QS operations are small for RFA purposes. The number of entities that held B, C, or D class QS in 2018 are all assumed to be small entities because this action impacts all QS holders, regardless of whether they own a vessel or not. There were 2,418 QS holders that held class B, C, or D QS in the halibut and sablefish IFQ fisheries who could be impacted by this action. All of those QS holders are considered to be small entities using the SBA small entity criteria for harvest on catcher vessels, regardless of whether they have a vessel or actively fish their QS.

#### *Description of Significant Alternatives That Minimize Adverse Impacts on Small Entities*

Sections 2.4 and 2.5 of the Analysis describe the estimated impacts on these entities. The medical transfer provisions would in general benefit the majority of QS holders as would the proposed changes to the designated beneficiary provision. The proposed change that NMFS anticipates to have the greatest, potential negative impact on certain QS holders is the limit on the number of medical transfers. Section 2.4.1 of the Analysis notes that only a small number of QS holders have consistently used the medical transfer provisions and NMFS expects only a limited number of persons to be impacted by this proposed rule. This proposed rule would provide additional flexibility for the majority of small entities directly regulated by this proposed rule by increasing the number of years that the medical transfer can be used from 2 of 5 years to 3 of 7 years, and broadening the scope of health care professionals that can attest to a medical condition. In addition, NMFS would apply this provision only to medical transfer applications that are received after the effective date of this proposed rule. Therefore, this proposed rule would not be expected to impact those

QS holders that are currently using medical transfer provisions, and would be expected to increase the number of years that a medical transfer provision may be used for all QS holders after the effective date of this rule. The proposed revisions to the beneficiary transfer provision would improve the process to transfer IFQ to beneficiaries, which should have a benefit for small entities.

There are no significant alternatives to this proposed rule that would accomplish the objectives to modify the medical and beneficiary transfers and minimize adverse economic impacts on small entities. The Council considered several alternatives not recommended for the medical and beneficiary provisions of the IFQ Program. These additional alternatives are not included in this proposed rule because they did not meet the Council's objectives and were not recommended (See sections 2.4.2.2 and 2.5.2.2 in the Analysis for more detail).

#### *Duplicate, Overlapping, or Conflicting Federal Rules*

NMFS has not identified any duplication, overlap, or conflict between this proposed action and existing Federal rules.

#### *Recordkeeping, Reporting, and Other Compliance Requirements*

This proposed rule modifies the recordkeeping, reporting, and other compliance requirements for QS holders who use the medical transfer provision and beneficiary designation form. NMFS does not anticipate that these requirements would increase.

Currently, a QS holder who submits an application for a temporary medical transfer must submit 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 the applicant's immediate family member that prevents the QS holder's participation in the fishery for the calendar year. This proposed rule would not require QS holders to disclose their confidential medical condition and would improve administration of the form by eliminating some information required on the previous form.

Currently, NMFS provides QS holders an optional Beneficiary Designation form to designate a beneficiary to transfer IFQ under this provision. NMFS may approve an application to transfer QS to the surviving spouse or designated beneficiary, unless a contrary intent is expressed by the decedent in a will and if sufficient evidence has been provided to verify the

death of the individual. Typically, NMFS requires the death certificate and the will to accompany a QS transfer to a beneficiary.

#### Collection-of-Information Requirements

This proposed rule contains collection-of-information requirements subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). NMFS has submitted these requirements to OMB for approval under Control Number 0648–0272.

The public reporting burden per response is estimated to average 1.5 hours for the Application for Medical Transfer of IFQ and 30 minutes for the QS/IFQ Beneficiary Designation Form. The response time includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Public comment is sought regarding whether these proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collections of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collections of information to NMFS (see ADDRESSES), and by email to *OIRA\_Submission@omb.eop.gov* or fax to 202–395–5806.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to penalty for failure to comply with, a collection of information subject to the requirement of the PRA, unless that collection of information displays a currently valid OMB control number. All currently approved NOAA collections of information may be viewed at: [http://www.cio.noaa.gov/services\\_programs/prasubs.html](http://www.cio.noaa.gov/services_programs/prasubs.html).

#### List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: October 17, 2019.

**Samuel D. Rauch III,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 679 is proposed to be amended as follows:

### PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 1. The authority citation for 50 CFR part 679 continues to read as follows:

**Authority:** 16 U.S.C. 773 *et seq.*; 1801 *et seq.*; 3631 *et seq.*; Pub. L. 108–447; Pub. L. 111–281.

■ 2. Amend § 679.2 by:

- a. Removing the definitions for “Advanced nurse practitioner,” “Licensed medical doctor,” and “Primary community health aide;” and
- b. Adding the definitions in alphabetical order for “Health care provider” and “Immediate family member”.

The additions read as follows:

#### § 679.2 Definitions.

\* \* \* \* \*

*Health care provider* means an individual licensed to provide health care services by the state where he or she practices and performs within the scope of his or her specialty to diagnose and treat medical conditions as defined by applicable Federal, state, or local laws and regulations. A health care provider located outside of the United States and its territories who is licensed to practice medicine by the applicable medical authorities is included in this definition.

\* \* \* \* \*

*Immediate family member* includes an individual with any of the following relationships to the QS holder:

- (1) Spouse, and parents thereof;
- (2) Sons and daughters, and spouses thereof;
- (3) Parents, and spouses thereof;
- (4) Brothers and sisters, and spouses thereof;
- (5) Grandparents and grandchildren, and spouses thereof;
- (6) Domestic partner and parents thereof, including domestic partners of any individual in 1 through 5 of this definition; and
- (7) Any individual related by blood or affinity whose close association with the QS holder is the equivalent of a family relationship.

\* \* \* \* \*

■ 3. In § 679.41, revise paragraphs (k)(1), and (3) to read as follows:

#### § 679.41 Transfer of quota shares and IFQ.

\* \* \* \* \*

(k) \* \* \*

(1) On the death of an individual who holds QS or IFQ, the surviving spouse or, in the absence of a surviving spouse, a beneficiary designated pursuant to paragraph (k)(2) of this section or the estate representative, receives all QS

and IFQ held by the decedent by right of survivorship, unless a contrary intent was expressed by the decedent in a will. The Regional Administrator will approve an Application for Transfer to the surviving spouse, designated beneficiary, or estate representative when sufficient evidence has been provided to verify the death of the individual.

(2) \* \* \*

(3) The Regional Administrator will approve an Application for Transfer of IFQ for a period of 3 calendar years following the date of death of an individual to a designated beneficiary. NMFS will allow the transfer of IFQ only resulting from the QS transferred to the surviving spouse or, in the absence of a surviving spouse, from a beneficiary from the QS holder's immediate family designated pursuant to paragraph (k)(2) of this section or from an estate representative to a person eligible to receive IFQ under the provisions of this section, notwithstanding the limitations on transfers of IFQ in paragraph (h)(2) of this section.

\* \* \* \* \*

■ 4. Amend § 679.42 by:

- a. Removing in paragraph (d)(2)(iii) introductory text, the website <http://alaskafisheries.noaa.gov> and adding in its place <https://alaskafisheries.noaa.gov/region/alaska>;
- b. Revising paragraphs (d)(2)(iii)(A) through (D);
- c. Revising paragraphs (d)(2)(iii)(F) and (G);
- d. Removing paragraph (d)(2)(iii)(H); and
- e. Revising paragraph (d)(2)(iv)(C).

The revisions read as follows:

#### § 679.42 Limitations on use of QS and IFQ.

\* \* \* \* \*

(d) \* \* \*

(2) \* \* \*

(iii) \* \* \*

(A) The applicant's (transferor's) identity including his or her full name, NMFS person ID, date of birth, permanent business mailing address, business telephone and fax numbers, and email address (if any). A temporary mailing address may be provided, if appropriate;

(B) The recipient's (transferee's) identity including his or her full name, NMFS person ID, date of birth, permanent business mailing address, business telephone and fax numbers, and email address (if any). A temporary mailing address may be provided, if appropriate;

(C) The identification characteristics of the IFQ including whether the transfer is for halibut or sablefish IFQ, IFQ regulatory area, actual number of

IFQ pounds, transferor (seller) IFQ permit number, and fishing year;

(D) The price per pound (including leases), or other method of compensation, and total amount paid for the IFQ in the requested transaction, including all fees;

(E) \* \* \*

(F) A written declaration from a health care provider as defined in § 679.2. The declaration must include:

(1) The identity of the health care provider including his or her full name, business telephone, and permanent business mailing address (number and street, city and state, zip code);

(2) A statement of the condition affecting the applicant or the applicant's immediate family member, that the applicant is unable to participate; and

(3) The dated signature of the health care provider who conducted the medical examination;

(G) The signatures and printed names of the transferor and transferee, and date.

(iv) \* \* \*

(C) NMFS will not approve a medical transfer if the applicant has received a medical transfer in any 3 of the previous

7 calendar years for any medical condition.

\* \* \* \* \*

■ 4. In § 679.43, revise paragraph (c) to read as follows:

**§ 679.43 Determinations and appeals.**

\* \* \* \* \*

(c) *Submission of Appeals.* An appeal to an initial administrative determination must be submitted under the appeals procedure set out at 15 CFR part 906.

\* \* \* \* \*

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