



C5 IFQ Medical Lease and Beneficiary Designation Provisions

February 2019 Council Meeting

Action Memo

Staff: Sam Cunningham (NPFMC), Stephanie Warpinski (NMFS)
Other Presenters: Darrell Brannan (Brannan & Associates)
Action Required: 1. Public Review Draft – review
2. Recommend a 'preliminary final determination' regarding the proposed action

BACKGROUND

The Council is scheduled to take final action on the public review draft of an analysis to modify the medical and beneficiary transfer provisions in the Pacific Halibut and Sablefish Individual Fishing Quota (IFQ) Program. Alternatives developed by the Council at its February 2018 meeting and additional options developed at the October 2018 meeting have been analyzed.

Due to the partial government shutdown, the Council meeting agenda was not published in the Federal Register in advance of the meeting. According to NMFS requirements, the Council may not take final action on any agenda items unless the meeting has been announced in the Federal Register at least 14 days before the Council takes a final action. As a result, the Council may instead make a 'preliminary final determination' on this agenda item during the February 2019 meeting. Final action will be scheduled for a subsequent Council meeting, once the Federal Register notice requirements have been met.

Medical Transfer:

Temporary medical transfers were not included in the original halibut and sablefish program because the Council's intent was to have an owner-onboard fishery in the catcher vessel sectors, as well as concerns that they would be difficult to regulate. However, after reports 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 late in the 2007 fishing year. In recommending the medical transfer provision the Council attempted to balance its objective to limit long-term leasing of quota share (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 temporary hardships. Because of concerns that a small group of catcher vessel QS holders are using the medical transfer provision to circumvent the owner-onboard requirements, the Council proposed modifications to the program. The first modification would more tightly limit the number of years a QS holder could use the temporary medical transfer by changing the language from "for the same medical condition" to "for any medical condition". This change would prevent persons from applying for a temporary medical transfer in more than 2 of 5 years by slightly altering the description of the condition that prevents him/her from fishing that year. A second proposed modification would change the number of years the medical transfer provision could be used from 2 of the 5 most recent years to either 3 of the 7

most recent years or 4 of the 7 most recent years (with limits on the amount of IFQ that could be transferred the 3rd and 4th transfer years. A third modification would impose a lifetime limit on the number of years a QS holder could use the temporary medical transfer provision. A range of 5 to 10 years is considered for the lifetime limit. After a QS holder reaches the limit, their application would be denied by NMFS, but he/she would still have the opportunity to appeal the decision through the normal appeals process. A fourth proposed modification would change the definition of the time period (year) that a medical transfer would be in effect from a calendar year to 365-days. NMFS does not support changing the definition of year to 365-days because IFQ is issued for the calendar year and using a 365-day period would require substantial changes to tracking and management of IFQ that is leased. Finally, the Council is considering broadening the definition of a “certified medical professional” that may attest to medical conditions on the medical transfer form. The proposed changes would allow commonly used medical professionals (e.g. chiropractors) that are currently excluded to attest to medical conditions. The definitions under consideration would broaden the current definition and may or may not include medical professionals that are licensed and practicing outside the U.S.

The Council also requested that staff consider different definitions of an immediate family member for the medical transfer provision and the beneficiary transfer provision. NMFS recommends using only one definition for both to reduce confusion and because the limit on the number of years is expected to be more effective than a stricter definition of immediate family members.

The analysis also provides additional information on a QS holder’s ability to repay outstanding QS loans. Information on this issue was requested by the Council at its October 2018 meeting.

Beneficiary Transfer:

Beneficiary transfers were established to allow the quota shares held by a person who had recently died to be leased for up to three years while the estate is being settled. The IFQ program includes provisions that allow for temporary leasing of catcher vessel IFQ under a survivorship transfer privilege that is limited to the surviving spouse or designated “immediate family member”. Because the transfer privilege is limited, stakeholders and NMFS would benefit from clarifying who has the authority to lease IFQ derived from the decedent’s QS. The Council proposed adding “estate” to the list of persons that can hold QS and would provide the representative of the estate the authority to lease the IFQ derived from those QS for up to three years. The action alternatives would also define “immediate family member” in regulation using a definition currently used by other Federal agencies. Defining “immediate family member” in regulation with a broad definition would allow NMFS to approve transfers by persons who may fall outside of the traditional definition of an “immediate family member”. NMFS would prefer to rely on a clear definition instead of the Agency’s own interpretation of Council intent regarding who should be considered an “immediate family member”.