

**ADVISORY PANEL  
Motions and Rationale  
February 5-8, 2019 - Portland, OR**

**C5 IFQ Lease Provisions**

**AP Motion**

The AP supports the Council's preliminary preferred alternatives in bold for preliminary final action:

Alternative 1: no action

**Alternative 2: Modify the medical transfer provision**

**Element 1: Define 'Certified Medical Professional'**

**Option 1: Replace the 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 an individual authorized to provide health care services by the State where he or she practices and performs within the scope of their specialty to diagnose and treat medical conditions as defined by applicable 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® and 1861(s).

Suboption: Option 1 and 2 would be limited to U.S. medical professionals.

Option 3: The Council directs staff to review definitions of 'immediate family member' that could be used for the medical transfer provision which are more restrictive than those used for designated beneficiary provision regulations.

**Element 2: Revise federal regulations to allow the medical transfer provision to be used for any medical reason for:**

Option 1: 2 of 5 most recent years

**Option 2: 3 of 7 most recent years**

Note: only transfers after implementation of new rule would count towards the limit

Suboptions to apply to either Option 1 or 2:

Suboption 1: Establish a limit on the number of times (based on two options to define years) the medical transfer provision may be used (range of 5 to 10 times).

Suboption 2: Define most recent year as one year (365 days) from the date the medical transfer applications was approved by NMFS.

Option 3: To allow QS holders to transfer 100% of IFQ associated with QS held under eligible medical transfer to designee for two years; in the third time a medical transfer is used out of 7 years, the QS holder can transfer 80% of IFQ (by area by species) to designee; in the fourth time, the

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QS holder can transfer 60% of IFQ; after the fourth transfer, medical transfers would not be allowed during that 7-year period.

**Alternative 3: Modify the beneficiary transfer provision.**

**Element 1: At 50 CFR 679.41(k) modify all references to surviving spouse and immediate family member by adding 'estate'.**

**Element 2: Define 'immediate family member' in regulations at 50 CFR 679 as follows:**

**Option 1: US Office of Personnel Management definition**

Option 2: Federal Family Medical Leave Act definition

*Motion passed 15-4*

*Rationale:*

- *Alternative 2, element 1, option 1 (PPA) offers NMFS the greatest flexibility and would not require regulatory modifications should the definition of a medical professional change in the future.*
- *Alternative 2, element 2 maintains flexibility within the medical provision while also reducing potential abuse of the provision*
- *There are administrative cost concerns regarding Option 3. The government shutdown has not allowed for an analysis of the costs associated with partial quota issuance. Since we are unable to take final action at this meeting, the AP requests that cost information be provided to the council and additional consideration taken at that time.*
- *Broadening regulations to apply to any medical condition will aid NMFS in implementation, as the agency will no longer be tasked with interpreting what constitutes as a distinct medical issue for the purpose of transfers.*
- *Alternative 3 addresses an existing issue under the beneficiary lease provision; there is a need to define the term 'immediate family member', as this has been an administrative issue for NMFS.*
- *Alternative 3 is intended to offer clarity on the definition of a beneficiary in the context of the IFQ program and to provide a greater level of consistency between the program and traditional estate planning*

*Minority Report*

*A minority of the AP supported those portions of the motion that addressed agency concerns to clarify definitions for medical professionals and designated beneficiaries. We were not supportive of Alternative 2, Element 2 and had concerns that it was a step too far for a problem that likely doesn't warrant such a strong response.*

*Signed by: Jeff Kauffman, John Gruver, John Scoblic, and Anne Vanderhoeven*