

FINAL

Regulatory Impact Review
for a Temporary Rule (Emergency Action)

to Allow Flexibility for Halibut and Sablefish IFQ
Transfers in 2020

May 2020

For further information contact: Stephanie Warpinski, NOAA Fisheries Alaska Region
P.O. Box 21668, Juneau, AK 99802
(907) 586-7228

Abstract: This Regulatory Impact Review (RIR) evaluates the costs and benefits of an emergency rule to modify the halibut and sablefish Individual Fishing Quota (IFQ) Program that would provide flexibility for quota share (QS) holders to temporarily transfer their IFQ to an eligible individual to harvest their IFQ. This emergency rule would apply only to catcher vessel QS that is held by individuals. Any individual who holds B, C, or D vessel class QS would be able to temporarily transfer their IFQ during the remaining 2020 IFQ fishing season. This action would not modify any additional restrictions on IFQ transfers.

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1. Introduction

On April 7, 2020, National Marine Fisheries Service (NMFS) received a letter from sablefish and halibut Individual Fishing Quota Program (IFQ Program) participants and representatives requesting emergency action to request an emergency rule that adds COVID-19 to the limited exceptions for temporary transfer of Individual Fishing Quota (IFQ). In a letter, dated April 16, 2020, NMFS Alaska Region requested input on this request from the North Pacific Fishery Management Council (Council). The Council then scheduled a special meeting to review this emergency action request and others on May 15, 2020.¹

A number of public health concerns relating to the evolving pandemic of COVID-19 were expressed in the industry letter dated April 7, 2020. These concerns include potential for crew exposure to COVID-19 in transit to board vessels or in port between deliveries, limited lodging in remote communities to fulfill quarantine requirements upon arrival, and limited medical resources onboard vessels as well as in remote ports to care for and isolate the sick. The industry letter forms the basis for this analysis and is referred to as the “industry letter” throughout this document. The IFQ fishing season opened on March 14, 2020, around the time that the COVID-19 pandemic began unfolding in much of the United States (U.S.). The fishing season is approximately 9 months long and at the time this emergency action request will be reviewed by the Council, the fleet will be nearly two months into the season (May 2020).

The State of Alaska, similar to other states, responded to the crisis by issuing health mandates for quarantine, social distancing, and other behaviors for people traveling into and around the State.² In addition, various local municipalities implemented ordinances instructing residents to “hunker-down” and practice social distancing to reduce disease transmissions.

Industry participants have been contacting NMFS offices with requests for changes to policies and regulatory requirements under the IFQ Program. IFQ derived from catcher vessel (CV) Quota Share (QS) is not transferrable and must be fished with the QS owner onboard the vessel except in limited circumstances, including when the use of a medical transfers or a hired master is allowed. The specifics circumstances when the use of a medical transfer and hired master are approved are further discussed in Section 3.2. The industry letter requests additional flexibility to harvest CV QS and offers three potential options for solutions with the goal of meeting the following objectives:

1. Fast-track implementation.
2. Allow all QS holders temporary transfer of IFQ for the 2020 season while preserving the vessel class and other provisions associated with CV QS.
3. Reduce travel to and from Alaska communities and preserve social distance within Alaskan communities to the greatest extent possible.
4. Provide fishing operations harvest flexibility.
5. Reduce costs and time burden of mandatory quarantines for individuals traveling to harvest their QS. Note: Current Quarantine Protocol (as of April 7, 2020) could result in a time requirement of 30-40 days in order to harvest QS of any amount (15-day pre-travel quarantine, 15-day quarantine upon arrival to port of harvest, fishing time 0-10 days).

On March 27, 2020, NMFS developed an interim policy to allow IFQ permit holders who wish to apply for a medical transfer to use template language for the medical declaration portion of the application.³ The template language will fulfill the health care provider's declaration that the applicant cannot participate in the fishery. This template language was developed to improve efficiency of requesting and processing

¹ Meeting documents, including the industry letter, are available at: <https://meetings.npfmc.org/Meeting/Details/1463>.

² State of Alaska health mandates are available at: <https://covid19.alaska.gov/health-mandates/>.

³ More information about the NMFS RAM interim policy is available at: <https://www.fisheries.noaa.gov/permit/alaska-ifq-halibut-sablefish-and-cdq-halibut-program-fishery-applications-and-reporting>.

medical transfers submitted under existing medical transfer regulations. More about the medical transfer provision can be found in Section 3.2.

Since the industry letter was received, conditions in the fishery have changed and people engaged in the essential work of fish harvesting are required to quarantine for 14 days. However, if it is necessary for a crewmember to board the vessel before their 14-day quarantine ends (to work or because the vessel must get underway), the time on the vessel may count toward the 14 days.⁴

This analysis provides background of the conditions in the fishery and a draft evaluation of the impacts of the requested emergency actions to temporarily provide increased flexibility to transfer IFQ. The Council will need to determine if an emergency exists and if so, make a recommendation for emergency action to the Secretary of Commerce.

⁴ <https://gov.alaska.gov/wp-content/uploads/sites/2/COVID-MANDATE-017-Appendix-01-Protective-Plan-for-Independent-Commercial-Fish.pdf>

2. Regulatory Impact Review

This Regulatory Impact Review (RIR)⁵ examines the benefits and costs of a proposed regulatory amendment to modify the IFQ Program transfer provisions to allow for increased flexibility to transfer IFQ in 2020.

The preparation of an RIR is required under Presidential Executive Order (E.O.) 12866 (58 FR 51735, October 4, 1993). The requirements for all regulatory actions specified in E.O. 12866 are summarized in the following statement from the E.O.:

In deciding whether and how to regulate, agencies should assess all costs and benefits of available regulatory alternatives, including the alternative of not regulating. Costs and benefits shall be understood to include both quantifiable measures (to the fullest extent that these can be usefully estimated) and qualitative measures of costs and benefits that are difficult to quantify, but nevertheless essential to consider. Further, in choosing among alternative regulatory approaches agencies should select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity), unless a statute requires another regulatory approach.

E.O. 12866 requires that the Office of Management and Budget review proposed regulatory programs that are considered to be “significant.” A “significant regulatory action” is one that is likely to:

- Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities;
- Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in E.O. 12866.

2.1. Statutory Authority

Under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) (16 U.S.C. 1801, *et seq.*), the United States has exclusive fishery management authority over all marine fishery resources found within the exclusive economic zone (EEZ). The management of these marine resources is vested in the Secretary of Commerce (Secretary) and in the regional fishery management councils. In the Alaska Region, the North Pacific Fishery Management Council (NPFMC) has the responsibility for preparing fishery management plans (FMPs) and FMP amendments for the marine fisheries that require conservation and management, and for submitting its recommendations to the Secretary of Commerce (Secretary). Upon approval by the Secretary, NMFS is charged with carrying out the Federal mandates of the Department of Commerce with regard to marine and anadromous fish.

NMFS manages the groundfish fisheries in the EEZ 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

⁵ Analysts have preliminarily determined that none of the alternatives have the potential to have an effect individually or cumulatively on the human environment. This determination is subject to further review and public comment. If this determination is confirmed when a rule is prepared, the proposed action will be categorically excluded from the need to prepare an Environmental Assessment.

and Aleutian Islands Management Area (BSAI). The Council prepared the FMPs under the authority of the 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 Halibut Act. The IPHC develops 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. The IPHC's regulations are subject to approval by the Secretary of State with the concurrence of the Secretary. NMFS promulgates the IPHC's regulations as annual management measures pursuant to 50 CFR 300.62. The final rule implementing the 2020 annual management measures published March 13, 2020 ([85 FR 14586](#)).

The Halibut Act, 16 U.S.C. 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, 16 U.S.C. 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 the IFQ Program for the commercial halibut and sablefish fisheries, codified at 50 CFR part 679, under the authority of section 5 of the Halibut Act (16 U.S.C. 773c (c)) and section 303(b) of the Magnuson-Stevens Act (16 U.S.C. 1853(b)).

The proposed action under consideration would temporarily amend Federal regulations implementing the IFQ program at 50 CFR 679. Actions taken to amend FMPs or implement regulations governing these fisheries must meet the requirements of applicable Federal laws, regulations, and Executive Orders. Because halibut and sablefish are managed under the authority of Halibut act, and Magnuson-Stevens Act, respectively, any regulations applicable to the management of both must be consistent with provisions of both laws.

2.2. Emergency Rule Authority

Section 305(c) of the Magnuson-Stevens Act provides authority for rulemaking to address an emergency. Under that section, a Council may recommend emergency rulemaking if it finds an emergency exists. NMFS's Policy Guidelines for the Use of Emergency Rules provide that the only legal prerequisite for such rulemaking is that an emergency must exist, and that NMFS must have an administrative record justifying emergency regulatory action and demonstrating compliance with the Magnuson-Stevens Act and the National Standards (see NMFS Instruction 01-101-07 (renewed October 3, 2018) and 62 FR 44421, August 21, 1997). Emergency rulemaking is intended for circumstances that are “extremely urgent, special circumstances” where “substantial harm to or disruption of the resource, fishery, or community would be caused in the time it would take to follow standard rulemaking procedures.”

To further clarify the scope of emergencies to which this authority applies, the guidance defines an emergency as “a situation that:

1. results from recent, unforeseen events or recently discovered circumstances;
2. presents serious conservation or management problems in the fishery; and

3. can be addressed through emergency regulations for which the immediate benefits outweigh the value of advance notice, public comment, and deliberative consideration of the impacts on participants to the same extent as would be expected under the normal rule making process.”

2.3. Emergency Rule Policy and Criteria

Under NMFS’ Policy Guidelines for the Use of Emergency Rules, the phrase “an emergency exists involving any fishery” is defined as a situation that meets the following three criteria:

1. Results from recent, unforeseen events or recently discovered circumstances;
2. Presents serious conservation or management problems in the fishery; and
3. Can be addressed through emergency regulations for which the immediate benefits outweigh the value of advance notice, public comment, and deliberative consideration of the impacts on participants to the same extent as would be expected under the normal rule making process.

The following section provides a discussion of how the known conditions in the fishery relate to the criteria for use of emergency rules.

(1) Results from recent, unforeseen events or recently discovered circumstances

Government health mandates and travel restrictions during the IFQ season (March 14, 2020 – November 15, 2020) may limit the ability of some fishery participants to travel to various ports in Alaska, and may constrain fishing operations while these provisions are in place. Fishery participants have stated that the implementation of these health mandates and travel restrictions have increased costs to QS holders who live outside of Alaska due to the current health mandates and travel restrictions protocols that could result in up to 30-40 days of additional time to meet these requirements in order to harvest of any amount QS. In addition to increased costs, reports of ex-vessel prices for halibut and sablefish have decreased substantially in many Alaskan ports due to recent and unforeseen market conditions (see Section 3 of the Analysis). State health mandates and travel restrictions have limited the ability to access fishing ports in a timely and cost-efficient manner and these restrictions were recent, unforeseen, and recently discovered during the IFQ season.

Currently, it is not known if health mandates and travel restrictions currently in place by the State of Alaska, municipalities, other states, or the Federal government will remain in effect throughout the duration of the IFQ fishery. Even if these health mandates and travel restrictions are relieved, fishery participants may not be able to conduct fishing operations due to limited air travel to many Alaskan ports. Alternatively, health mandates and travel restrictions could be strengthened during the 2020 IFQ season.

As noted earlier, existing hired master and medical transfer provisions are only available under specific conditions (i.e., an individual may not be able to receive a medical transfer unless a health care provider attests that their medical condition precludes their participating in IFQ fisheries). Due to these limitations, and the recent, unforeseen, and recently discovered limitations on the IFQ fishery, an emergency action is required to provide all IFQ holders with the ability to transfer IFQ. Sections 3.2 and 3.3 of the Analysis provides additional detail on the hired master and medical transfer provisions.

(2) Presents serious conservation or management problems in the fishery

Ongoing health mandates and travel restrictions present serious management problems in the IFQ fisheries. If there is not additional flexibility to transfer IFQ some fishery participants may forego harvesting catch due to the additional costs and logistical challenges to comply with existing health mandates and travel restrictions.

If harvesters forego catch, this could result in the under-harvest of IFQ accounts. Under existing IFQ regulations, harvesters may “roll over” up to 10 percent of an IFQ permit’s remaining balance to the

following year. However, anyone unable to harvest at least 90 percent of their allocation of IFQ would be at risk of foregoing harvests. Based on the harvest information in Section 3 of the Analysis, it is clear that halibut and sablefish are being harvested at substantially lower rates than in previous years. For example, during the first two months of the IFQ season (March 14 – May 7), 54 percent less halibut was harvested, and 11 percent less sablefish was harvested than over the same period in 2019.

Given current harvest rates, ongoing health mandates, travel restrictions and other logistical challenges facing the IFQ fishery, additional flexibility in IFQ transfer provisions would increase the ability for harvesters to harvest, and processors to process a larger proportion of the overall TACs. This would directly address a serious management concern, the under harvest of allocations due to recent, unforeseen, and recently discovered events.

NMFS notes that this emergency action would not lead to a conservation concern by increasing the risk of overharvest of IFQ. The requested emergency action would not increase the halibut catch limits or the sablefish TACs. The total amount of IFQ issued would not increase. This emergency rule would not modify existing requirements on the types of vessels and gear that could be used, monitoring requirements, record keeping regulations, or other aspects of the IFQ Program.

(3) Can be addressed through emergency regulations for which the immediate benefits outweigh the value of advance notice, public comment, and deliberative consideration of the impacts on participants to the same extent as would be expected under the normal rule making process

NMFS and the Council have determined that the emergency situation created by ongoing health mandates, travel restrictions, and other logistical challenges faced by the IFQ fishery can be addressed by emergency regulations. As explained earlier, not all QS holders are able to use existing regulatory provisions to transfer IFQ. Providing for a temporary transfer of IFQ for all CV SQ holders would not create conservation and management concerns and is consistent with the overall goals of the IFQ Program to provide for the complete and efficient harvest of the halibut and sablefish resource (see Section 5 of the RIR for additional detail).

To address the emergency, NMFS must implement an emergency rule that waives the notice-and-comment rulemaking period. The benefits of waiving notice-and-comment rulemaking will serve the industry and public by allowing for additional harvest of halibut and sablefish by IFQ participants. Any delay that results in implementing rulemaking will reduce opportunities to harvest halibut and sablefish. Section 4.2 of the RIR describes the potential additional harvest opportunities for the IFQ participants in greater detail.

Without the waiver of notice-and-comment rulemaking, the IFQ participants will not have sufficient time and ability to prosecute these fisheries as intended. The halibut and sablefish IFQ fisheries are harvested from numerous ports from hundreds of vessels that must be coordinated with other harvesting and processing activities. Increasing the flexibility for harvesters to transfer IFQ will provide additional opportunity for halibut and sablefish to be harvested. These are high volume fisheries that require extended fishing time. Fishing time for some harvesters would be extremely limited, or unavailable, with notice-and-comment rulemaking. For example, harvesters with IFQ may not be able to travel to fishing ports under current or future health mandates, travel restrictions, or limited air travel in time to coordinate with other harvesters and processors. Vessel owners need time to secure crew, which may have shifted into other groundfish fisheries, non-groundfish fisheries or other activities if they are unable to secure adequate IFQ to support their fishing operations. In addition, vessel owners need sufficient lead time to revise fishing plans, restock vessels, change gear, and have the vessel travel to and from the fishing grounds to prosecute the IFQ fisheries.

This emergency action would not impose additional restrictions on the fishery, but would alleviate limitations on the fishery. This emergency rule would not increase the amount of available harvests, increase the risks of overharvest, or otherwise modify conservation measures. This emergency rule is

needed to allow for the complete and efficient harvest of the IFQ fishery and to temporarily alleviate unforeseen economic and social consequences due to the recent and unforeseen limitations on the IFQ fishery.

Increased IFQ transfer flexibility could allow some IFQ that would otherwise go unharvested to be utilized. The amount would be dependent on the impact of travel restrictions, health mandates, the timely implementation of this temporary provision to allow temporary IFQ transfers and the amount of IFQ transferred. Market forces may also play a role in the amount of IFQ that's harvested. At this time, NMFS does not have information available to determine if ex-vessel prices and market availability would limit harvests if there are no changes to IFQ provisions.

The Council could not recommend and NMFS could not implement increased transfer flexibility through the conventional notice-and-comment rulemaking process before the end of the 2020 IFQ season. Typically, the process of Council analysis and rule making takes at least one-year to implement. In this case, NMFS received the request for regulatory change on April 7, 2020, and the next regularly scheduled Council meeting is June 2020. Given the ending date of the IFQ season (November 15, 2020), and the time required for Council action and notice-and-comment rulemaking, this process could not be accomplished during the 2020 IFQ season.

Use of the transfer flexibility would be entirely voluntary. Temporary increases in transfer flexibility may allow some economically marginal operators to obtain revenue that would otherwise be forgone and maintain their investment in the IFQ fisheries, rather than selling QS to obtain needed funds.

2.4. Purpose and Need for Action

The industry letter developed a problem statement that accompanied their requests for emergency action:

The Alaska halibut and sablefish IFQ CV fleet largely consists of smaller vessels with limited medical kits and medical training aboard and no practical way to isolate sick crewmembers or QS holders apart from the rest of the crew. Crews may range from 1-6 people. Access to medical care may be complicated by the highly remote locations of these fisheries, prolonged USCG response time, and limited shore-based medical facilities. Local communities have varied options for housing and medical care, ranging from remote villages that may have a Community Health Aide, to larger towns with clinics and hospitals. Lodging options for quarantine are highly variable and likely limited in all Alaska fishing communities. During the COVID-19 pandemic, "it is recommended that fishing vessels minimize crew changes and discontinue the practice of moving between vessels during the course of work." Dr. Jarris, MD, Discovery Health.

While NMFS criteria are helpful, they consider only the IFQ holder and do not more broadly include the health of the vessel crew or the communities they fish from as considerations for a medical transfer during this pandemic. They also do not consider the increased risk of creating new vectors for the spread of COVID-19 due to inter and intra state travel that may be necessary for QS holders to harvest their IFQ, nor the economic cost of the newly imposed travel restrictions and quarantine mandates issued by the State of Alaska. Finally, NMFS current interpretation that Medical Transfers "apply only to individuals who are not otherwise eligible to use hired masters" is based on CFR 50 679.41(d)(2)(ii)(B) which states that individuals requesting a MT "not qualify for a hired master exception under paragraph (i)(1) of this section." CFR 50 Sec. 679.41(i)(1)(iii) allows a QS holder to NOT be onboard a vessel when his or her IFQ is fished if that individual "is represented by a hired master employed by that individual and permitted in accordance with Sec 679.4(d)(2)."

Many QS holders may be eligible for hired master exceptions but have not utilized them in the past and are not able to rapidly switch their business model to incorporate a hired master during a

medical emergency, thus are not able to comply with this requirement. NMFS current interpretation of this section is overly restrictive in assuming that all QS holders eligible to use a hired master can utilize one. This significantly limits the utility of the MT provision for some QS holders, and thus may impact public health during this pandemic.

The Council believes that an emergency exists involving the halibut and sablefish IFQ fishery and recommends emergency rulemaking to address economic, social, and public health situations present in the halibut and sablefish IFQ fishery. The Council requested the Secretary promulgate emergency regulations under the authority of Section 305(c) of the Magnuson-Stevens Act to allow the temporary transfer of halibut and sablefish IFQ for all QS holders for the remainder of the 2020 fishing season. This action does not modify other aspects of the IFQ Program.

2.5. Alternatives

The industry letter submitted to NMFS and reviewed by the Council proposed several different options for emergency action. This section describes those options as well as a discussion of implementation issues. The inclusion of the three industry options under the action alternative does not preclude the Council from developing other options or alternatives. This section provides background information and context regarding the options included in the letter submitted to NMFS.

2.5.1. Alternative 1: No Action (Status quo)

If the Council chooses not to recommend emergency action, QS holders eligible to use a medical transfer could continue to transfer their IFQ, which is described below.

As of March 27, 2020, NMFS Restricted Access Management Program (RAM) has developed an interim policy to use template COVID-19 language for the Medical Declaration portion of the application. The template language will fulfill the healthcare provider's declaration that the applicant cannot participate in the fishery due to COVID-19 health concerns. This interim policy does not change how NMFS RAM approves or denies an application for medical transfer.

Licensed health care providers can fill out the required information from Block F of the medical transfer application and fax the signed Medical Declaration page, along with a cover sheet clearly identifying the patient to NMFS.

IFQ Program participants who are not eligible to transfer IFQ would not receive any additional flexibility.

2.5.2. Alternative 2: Emergency Action to Increase Flexibility to Transfer IFQ

The Council recommended emergency action to temporarily allow transfers of IFQ under the existing medical transfer provision.

The options proposed in the industry letter and considered by the Council on May 15, 2020 would not modify vessel or ownership caps,⁶ vessel size class restrictions, or other restrictions that limit the use of IFQ. The industry letter proposed three options that are described in more detail below for the Council's consideration of emergency action. These options are separate solutions, not complementary.

2.5.2.1. Option 1

Option 1, as presented in the industry letter states:

⁶ Use caps, or limits on QS holdings, are limits placed on QS holders. For the IFQ Program, they are between .5-1.5% of the total QS pool depending on Area.

“NMFS could expand their medical transfer template language to include additional criteria that address the health of crew and communities as related to COVID-19, and revise their policy on denying medical transfer to individuals who otherwise qualify for hired masters.”

The proposal requests the following policy requirements that are more flexible:

1. The IFQ holder has certified that the vessel on which s/he fishes employs crew who indicate they have one or more of the identified risk factors;
2. The IFQ holder has certified that the vessel’s COVID-19 control policy is predicated on minimizing crew turnover and outside contact during the fishing season;
3. The IFQ holder has certified that the vessel operates out of a community with limited health resources;
4. The IFQ holder has certified that under existing regulations they cannot harvest their IFQ utilizing a hired master during this medical emergency.

This option proposes temporary modifications to two existing provisions in the IFQ Program. Expansion of the application criteria for a medical transfer to consider the health and safety of other individuals employed on the vessel rather than only the medical condition of the QS holder would require substantially more information to be submitted to NMFS than is currently required under the medical transfer provision. NMFS removed the notary stamp requirement on the medical transfer form to make it easier for permit holders to submit their applications. The way this option is presented, the IFQ holder will need to have a notary stamp and signature to meet each individual certification listed above. This would be more time consuming for IFQ permit holders than utilizing the existing medical transfer application due to having to locate and schedule an appointment with a notary public. Information about the crewmembers associated with a QS holder’s application for transfer would need to be submitted in addition to the current information that is submitted on the medical transfer form.⁷ NMFS does not track crew mobility from boat to boat and often vessel operators, who may or may not be the QS holder, may hire different crew members throughout the season. Given the request for an emergency response, it is not possible to verify or track crew mobility. This would be very complicated to implement and would be difficult to enforce or track.

Another consideration for this Option is that even if the Council chose to expand the medical transfer provisions to include initial recipients, they would still be expected to get a health care provider’s signature, as required in regulation. If this flexibility is expanded to all QS holders, it seems unnecessary to include a health care provider’s signature. Option 3 achieves the same result, but without a health care provider’s involvement.

2.5.2.2. Option 2

Option 2, as presented in the industry letter states:

“If NMFS is unwilling to change their policy due to a perceived lack of expertise on what public health considerations should factor into a medical transfer, the State of Alaska or the State of Washington could identify the appropriate risk criteria to write in Block F to protect public health interests, and identify a State designee from the Department of Health to sign the document as the health care provider of record. Under this option, NMFS would still need to temporarily revise their hired master exclusion so all B, C and D Class IFQ QS holders are eligible for medical transfers.”

⁷ <https://www.fisheries.noaa.gov/permit/alaska-ifq-halibut-sablefish-and-cdq-halibut-program-fishery-applications-and-reporting>

As of March 16, 2020, (85 FR 8477) a medical transfer may be approved for any medical condition as determined appropriate by a licensed medical professional. NMFS has developed an interim policy to allow IFQ permit holders who wish to apply for a medical IFQ transfer to use template COVID-19 language for the medical declaration portion of the application. This step facilitates the processing of medical transfer applications for IFQ permit holders that are already eligible to use this provision. The State of Alaska could assist QS holders by designating a licensed medical professional to provide sign block F of the medical transfer application form for QS holder. This could improve access to medical professional for some QS holders and could be done under the existing regulations and would not require emergency rulemaking or Council action.

This option is asking NMFS RAM to continue to allow the use of the medical transfer provision while modifying the intent of the medical declaration page to reflect a non-medical condition as the basis for the transfer. The ability to transfer IFQ or QS is closely regulated and those requirements are reflected in the application forms and instructions. Although the request to have Alaska and Washington state identify the appropriate risk criteria to protect public health interests and designate a person to sign as the Health Care provider for all applications sounds simple and straightforward, the PRA requirements for the application would entail a significant change to the regulations because that is not the intent of the new medical transfer provisions and the application form reflects the information that is required.

2.5.2.3. Option 3

Option 3, as presented in the industry letter states:

“Request an Emergency Rule that adds COVID-19 to the limited exceptions for temporary transfer of IFQ which currently include Category A IFQ, qualified military service, surviving beneficiaries, and IFQ transfer to CDQ groups during years of low abundance. This will allow all QS holders use of the Temporary Transfer of IFQ during the COVID-19 crisis. Under this option, vessel size classes, limits on at-sea processing and restrictions on corporate leasing would all remain in place.”

Administratively, this option would be the most straightforward and would allow anyone with IFQ regardless of eligibility to hire a master, to temporarily transfer their IFQ to an eligible fishery participant. This option could be implemented the fastest through simple modifications to existing administrative processes and would allow the broad flexibility to the fleet. A temporary rule may be effective for up to 180 days, and could be extended for up to 186 more if the conditions of the emergency continue to persist. The travel restrictions and local requirements have been rapidly evolving and it is unpredictable when they may be lifted.

NMFS considers this option (Option 3) to be the least administratively burdensome option proposed in the industry letter and would provide the most flexible method for temporarily transferring IFQ.

2.6. Council Action

The Council selected Option 3 as a recommendation for an emergency action to allow the temporary transfer of IFQ for all QS holders for the remainder of the 2020 fishing season.

The Council recognized that travel restrictions, health mandates, and other logistical and operational challenges posed by the ongoing public health emergency present management problems for the IFQ fisheries. The Council concluded that increased flexibility to temporarily transfer IFQ pounds would reduce the amount of anticipated forgone harvest and would accommodate the wide variety of operational plans that QS owners and vessel operators use to harvest halibut and sablefish. The Council further noted that existing hired master provisions and medical transfer provisions leave out a portion of QS holders who might be affected by the challenges of actively prosecuting the 2020 fishery. The Council’s recommendation also considers potential risks to individuals who are involved in the fishery but are not

QS holders. As a result, the Council chose the broadest temporary transfer provision in order to mitigate economic, social, and public health concerns. The broad temporary transfer option was also the least administratively burdensome for NMFS to implement as an emergency rule.

Without the increased flexibility to temporarily transfer IFQ quota, it is likely that a significant portion of the harvest will be foregone. The existing IFQ hired master and medical transfer provisions do not provide flexibility to a portion of IFQ holders to transfer IFQ to other harvesters who may not be limited by a health or other economic factors. As described in the analysis, many IFQ holders cannot use either the existing hired master or medical transfer provisions. In addition, the existing medical transfer provisions do not specifically contemplate transfers by otherwise healthy individuals to minimize their potential health risks, or risks to their families, crew, and communities where they harvest. Therefore, a broader IFQ transfer provision is needed to mitigate these economic, social, and public health concerns.

Travel restrictions and health mandates have severely impacted IFQ fishing operations and resulted in substantial logistical challenges and costs for fishery participants and coastal communities. Allowing all IFQ holders to transfer IFQ will provide much-needed flexibility to respond to uncertainty surrounding the duration and extent of the pandemic, and the travel restrictions and health mandates in response to that pandemic, and maximize opportunities to get IFQ harvested efficiently while minimizing health and safety risks to fishery participants and communities. In these unforeseen circumstances, it makes sense to provide this level of flexibility to every IFQ holder to minimize their personal risk.

3. Description of Fisheries

The fixed gear halibut and sablefish fisheries off Alaska are managed under the IFQ program. The 20-year review of the IFQ program was published in 2016 and provides a detailed description of the fisheries, their history, and management.⁸ The reader is referred to the 20-year review for additional background information, however a concise overview is provided here. The information presented in this document is what the analysts considered most critical and relevant to the Council's consideration of the request for emergency action.

The Council and NMFS developed the IFQ Program to resolve the conservation and management challenges commonly associated with open access fisheries. The Council recommended a limited access privilege program (LAPP) for the fixed gear halibut and sablefish fisheries off Alaska in 1992. NMFS approved the halibut IFQ and sablefish IFQ Programs in 1993 and implemented them on November 9, 1993 (58 FR 59375). Fishing under the IFQ Program began on March 15, 1995. The preamble to the proposed rule, published on December 3, 1992 (57 FR 57130), describes the issues leading to the Council's recommendation for the IFQ Program to the Secretary. The Council and NMFS designed the IFQ Program to provide economic stability to the commercial halibut and sablefish fixed gear fisheries and intended the IFQ Program to improve the long-term productivity of the halibut and sablefish fisheries by promoting the conservation and management objectives of the MSA and the Halibut Act; while retaining the character and distribution of the fishing fleets as much as possible. Sablefish and halibut IFQ seasons are typically set simultaneously to reduce waste and discards. The season dates have varied by several weeks since 1995, but the annual pattern for both fisheries has been from March to November.

The IFQ Program is a catch share program where participants are given a proportional annual allocation based on the amount of QS they hold and the catch limit set by the IPHC for halibut or by the Secretary for sablefish. There are eight halibut IFQ regulatory areas (Figure 1) in Alaska, inclusive of Areas 2C through 4E. For the sablefish IFQ fishery, there are two FMP areas (Figure 2): BSAI and GOA. Management areas are further broken out into the Bering Sea, Aleutian Islands, Western GOA, Central GOA, West Yakutat, and Southeast. Only sablefish harvested in the EEZ are managed under the IFQ Program. State water sablefish fisheries are managed by the State of Alaska. QS was originally issued to participants based on participation in the fisheries during historical qualifying periods in each of these areas and is generally restricted to use on the size class of vessel it was originally earned on.

⁸ https://www.npfmc.org/wp-content/PDFdocuments/halibut/IFQProgramReview_417.pdf

Figure 1. Halibut IFQ Regulatory Areas

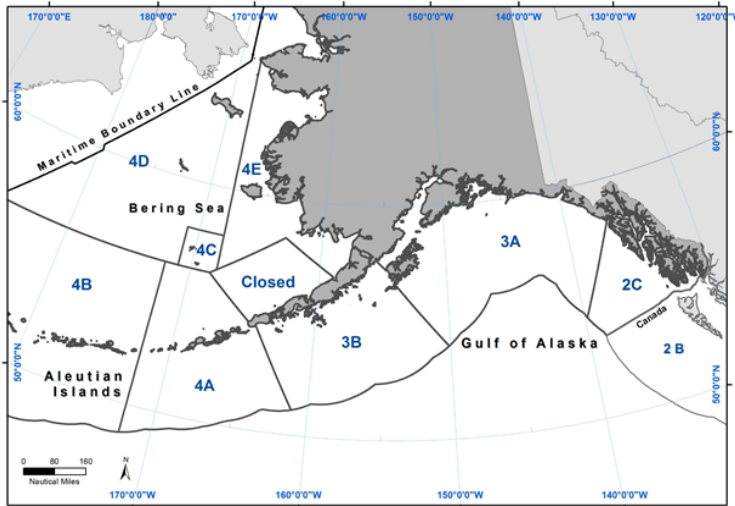


Figure 15 to Part 679. Regulatory Areas for Pacific Halibut Fishery
a. Map

Figure 2. Sablefish IFQ Regulatory Areas

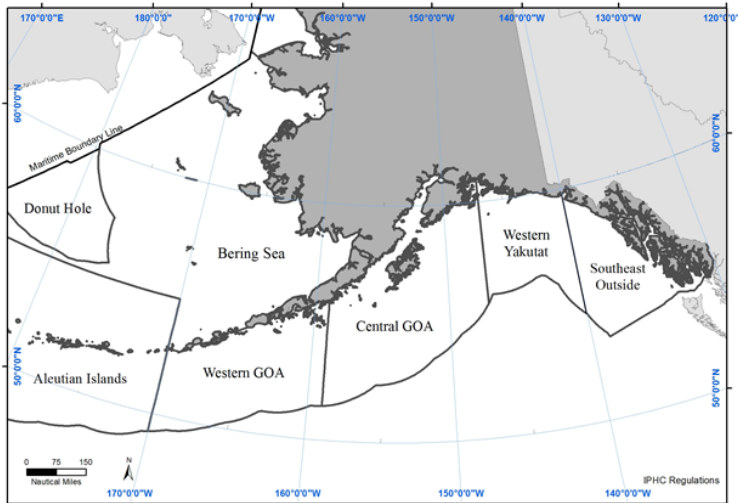


Figure 14 to Part 679. Sablefish Regulatory Areas and Districts

All halibut and sablefish QS have regulatory area designations that specify the vessel size class and area in which the IFQ derived from those shares may be harvested. QS is the allocation privilege to the individual and the IFQ is the annual poundage derived from the QS, issued by NMFS. Transferring the IFQ to a different person does not change the vessel category or regulatory area designation assigned to the IFQ. There are four vessel classes in the halibut IFQ fishery (A through D) and three in the sablefish IFQ fishery (A through C). After several amendments to the original QS categories, the current vessel lengths and operational modes associated with each QS class categories are depicted in Table 1.

Table 1. Vessel length associations by QS class category

IFQ Species	QS Class	Vessel Length Designation
Halibut	A	Any length (also allows for onboard processing)
	B	Catcher vessel any length
	C	Catcher vessel ≤ 60 feet
	D	Catcher vessel ≤ 35 feet (except in halibut Areas 3B, 4B, and 4C where Class D IFQ may be harvested on a vessel ≤ 60 feet)
Sablefish	A	Any length (also allows for onboard processing)
	B	Catcher vessel any length
	C	Catcher vessel ≤ 60 feet

Class A shares in both fisheries are designated for vessels of any size and provide the opportunity to process at sea on catcher-processors (i.e., freezer longline vessels). Class A shares are not subject to the owner-on-board provisions since those shares were traditionally fished by vessels owned by a corporation that utilized hired masters. The IFQ derived from Class A QS can be freely transferred to eligible IFQ participants but it is still subject to IFQ use caps. For both halibut and sablefish, Class B shares are also able to be fished on any size vessel. Class C QS is designated to be harvested on CVs less than or equal to 60 feet LOA. In the halibut fishery, Class D QS is designated to be harvested on CVs less than or equal to 35 feet LOA (with some exceptions). These vessel class designations were intended to maintain the diversity of the IFQ fleets. The Council intended for the Class D QS to be the most likely entry-level opportunity.

Shown in Table 2, the average nominal ex-vessel revenue for the IFQ fisheries was approximately \$81.2 million for halibut and \$51.1 million for sablefish in 2019. Total halibut landings and ex-vessel revenues have been trending downwards.⁹

Table 2. Prices, Landings, and Estimated Ex-vessel Revenues for the IFQ Fisheries, 2015-2019

	Halibut			Sablefish		
	Average Price	Total Landings (in millions of lbs.)	Est. Ex-Vessel Revenue (in millions of \$)	Average Price	Total Landings (in millions of lbs.)	Est. Ex-Vessel Revenue (in millions of \$)
2015	\$6.57	16.7	\$109.7	\$3.88	20.2	\$78.5
2016	\$6.80	16.8	\$113.9	\$4.10	17.9	\$73.3
2017	\$6.29	17.6	\$110.9	\$4.51	19.9	\$89.9
2018	\$5.01	15.9	\$79.6	\$3.13	20.8	\$65.1
2019	\$4.93	16.5	\$81.2	\$2.37	21.6	\$51.1

Source: AKFIN and NMFS AKRO: <https://www.fisheries.noaa.gov/sites/default/files/akro/19ifqland.htm>.

Notes: Prices are nominal and based on an average of reported statewide prices across all areas reported on fish tickets.

The IFQ Program provides significant flexibility to participants by allowing them to harvest their IFQ allocations at any point during the nine month IFQ season. Despite this flexibility, landings over time in the IFQ fisheries generally follow consistent seasonal patterns resulting from opportunities to participate in other fisheries, market conditions, vessel availability, seasonal employment, and other factors. Landings of IFQ halibut during the 2020 season to date, shown in IFQ participants must weigh costs (typical expected costs as well as additional expenses associated with quarantining when entering the State of Alaska) against the benefits of fishing their IFQ. Demand and ex-vessel prices for IFQ halibut are

⁹ <http://www.alaskafishradio.com/farmed-halibut-from-norway-appears-in-us-halibut-imports-from-canada-surge-as-ak-sales-prices-plummet/>

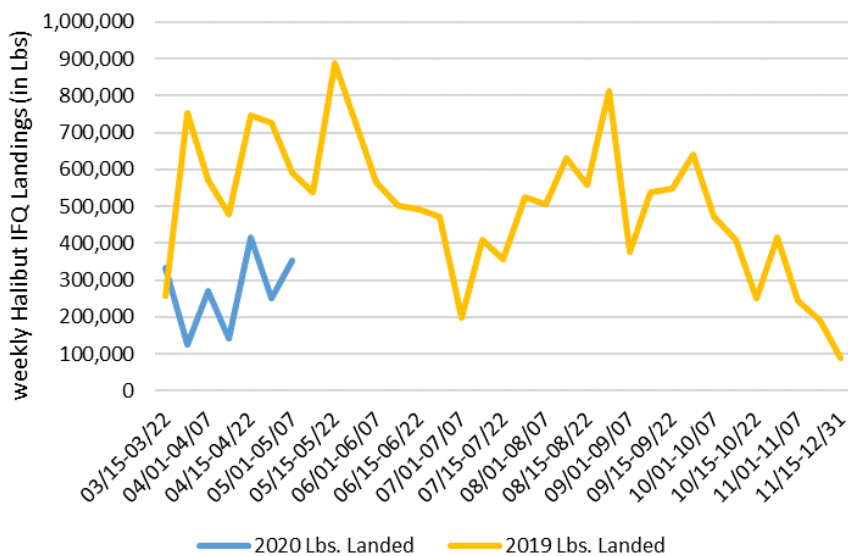
considerably lower than in 2019 due to lack of markets and restaurant closures. Low prices may discourage IFQ participants from traveling to fish their IFQ, or consider fishing later in the nine month season if they have the flexibility and expect prices to increase. For some operators, the current cost of traveling to Alaska and meeting existing requirements under State of Alaska health mandates (i.e., quarantining for a 14-day period in a hotel or other lodging) may exceed the revenue obtained from the IFQ issued.

Figure 3, have been significantly lower than in 2019 with the exception of the opening week. This analysis compares catch to 2019 because the fishery start dates between these two years are similar and the fleet composition and TACs are similar.¹⁰

Cumulatively, halibut landings from the season opening through May 7 were 1.89 million pounds in 2020 compared to 4.12 million pounds in 2019, or 54% lower. The 2020 annual halibut IFQ allocation is approximately 9% lower than it was in 2019. Sablefish weekly landings in 2020, shown in Figure 4 have not seen major reductions over the season to date, relative to 2019. Sablefish landings from the season opening through May 7 were 5.08 million pounds in 2020 compared to 5.74 million pounds in 2019, or 11% lower. The 2020 sablefish IFQ allocation is approximately 22% higher than it was in 2019.

IFQ participants must weigh costs (typical expected costs as well as additional expenses associated with quarantining when entering the State of Alaska) against the benefits of fishing their IFQ. Demand and ex-vessel prices for IFQ halibut are considerably lower than in 2019 due to lack of markets and restaurant closures. Low prices may discourage IFQ participants from traveling to fish their IFQ, or consider fishing later in the nine month season if they have the flexibility and expect prices to increase. For some operators, the current cost of traveling to Alaska and meeting existing requirements under State of Alaska health mandates (i.e., quarantining for a 14-day period in a hotel or other lodging) may exceed the revenue obtained from the IFQ issued.

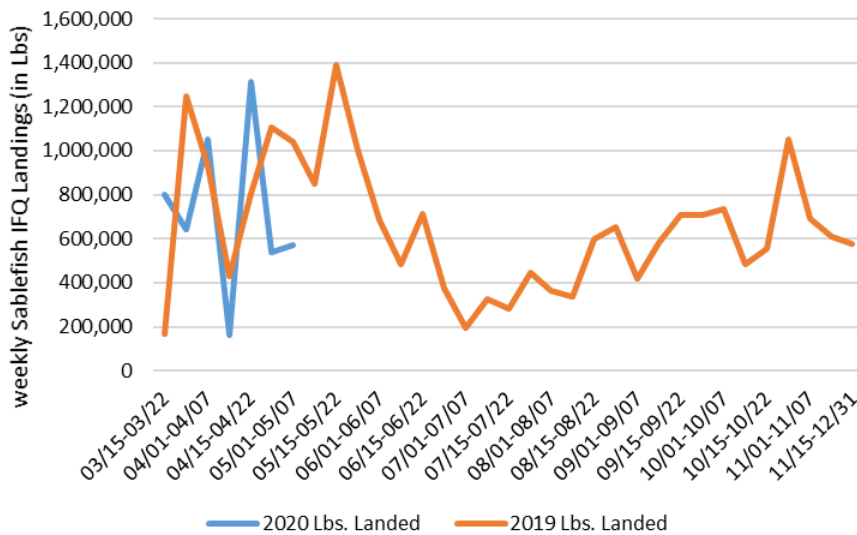
Figure 3. Weekly Halibut IFQ Landings, 2019 and 2020



Source: <https://www.fisheries.noaa.gov/alaska/commercial-fishing/fisheries-catch-and-landings-reports>

¹⁰ March 14 for 2020 vs. March 15 for 2019.

Figure 4. Weekly Sablefish IFQ Landings, 2019 and 2020



Source: <https://www.fisheries.noaa.gov/alaska/commercial-fishing/fisheries-catch-and-landings-reports>

Table 3 shows the total number of vessels that harvested IFQ species in the BSAI and the GOA in 2019 by vessel category. In 2019, 843 vessels harvested IFQ species and 615 of those vessels were 30-60 feet LOA harvesting IFQ in the GOA.

Table 3. Vessels that harvested IFQ species by BSAI and GOA, 2019

	BSAI	GOA	Total
<30 ft.	12	88	100
30-60 ft.	57	615	672
>60 ft.	20	51	71
Total	89	754	843

Source: AKFIN

Note: BSAI and GOA do not exactly align with IFQ management areas; for instance, 4A is in both the BSAI and GOA.

3.1. Transfers of Catcher Vessel IFQ

The Council developed transfer restrictions to retain the owner-operator nature of the CV fisheries and limit consolidation of QS. Only persons who were originally issued CV QS (B and C for sablefish; B, C, and D for halibut) or who qualified as IFQ crew members are allowed to hold or purchase CV QS.¹¹ Only individuals and initial recipients are eligible to hold CV QS and they are required to be on the vessel when the QS is being fished (with a few exceptions). Since 1998, transfers, or leasing, of CV IFQ has generally been prohibited except under a few specific conditions. Temporary transfers of CV IFQ is allowed under six special circumstances:

1. Medical transfers
2. Beneficiary (survivorship) transfer privileges
3. Military transfers

¹¹ Note: In order to receive IFQ temporarily or QS permanently, individuals must obtain a Transfer Eligibility Certificate (TEC). Persons must have 150 or more days of experience working as a part of a harvesting crew in any U.S. commercial fishery.

4. Transfers through Community Quota Entities
5. IFQ to guided angler fish transfers
6. IFQ transferred to Community Development Quota groups in years of low halibut abundance in Areas 4BCD.

IFQ permits, and any associated transfers, are valid for a calendar fishing year. If the QS holder wished to transfer their shares the following year, they would need to abide by the transfer requirements, submit the appropriate applications, and receive approval by the Regional Administrator through NMFS RAM.

The Council noted that maintaining diversity in the halibut and sablefish fleets and minimizing adverse impacts to coastal communities were particularly important considerations when developing transfer provisions and restrictions. Prior to the IFQ Program, these fisheries had typically been characterized by small vessel participation involving thousands of fishermen. One feature of the program designed to maintain a predominantly owner-operated fishery requires most IFQ permit holders to be onboard the vessel. This requirement is intended to ensure that CV IFQ continues to be held by professional, active fishermen.

In 2010, the Council initiated a regulatory action that restricted the ability of initial CV QS recipients to use a hired master to harvest IFQs acquired after a specified date. The action was implemented in 2014 and prohibited the use of hired masters to harvest halibut B, C, and D class IFQ derived from QS purchased after July 28, 2014 or sablefish B and C class QS purchased after February 12, 2010. Prior to the implementation of more stringent hired master provisions, medical transfers accounted for 14.6% of transfers from 2007-2014. After the change in the hired master provision, medical transfers have increased and account for an average of 31.3% of all transfers annually (from 2014 until 2018).

3.2. Medical Transfers

The IFQ Program includes a temporary medical transfer provision at 50 CFR 679.42(d)(2) that allows a quota holder not otherwise qualified to hire a master to temporarily transfer their annual IFQ to another individual if the quota holder or their immediate family member have 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 transfer their annual IFQ to another individual. The provision was not intended to create an avenue for those chronically unable to participate in the fishery to maintain the benefits of IFQ harvests or otherwise facilitate non-medical transfers of IFQ. The temporary medical transfer provision was implemented in 2007.

An applicant for a temporary medical transfer must document his or her medical condition by submitting an affidavit to NMFS from a healthcare provider that describes the medical condition affecting the applicant and attests to the inability of the applicant to participate in the IFQ fishery for which she or he holds quota share. In the case of a family member's medical emergency, the affidavit must describe the necessity for the quota holder to tend to an immediate family member who suffers from the medical condition. The Council and NMFS limited the number of instances that QS holders may use the provision for any medical condition. NMFS will not approve a medical transfer if the QS holder has been granted a medical transfer in any three of the previous seven years for a medical condition (starting in 2020).

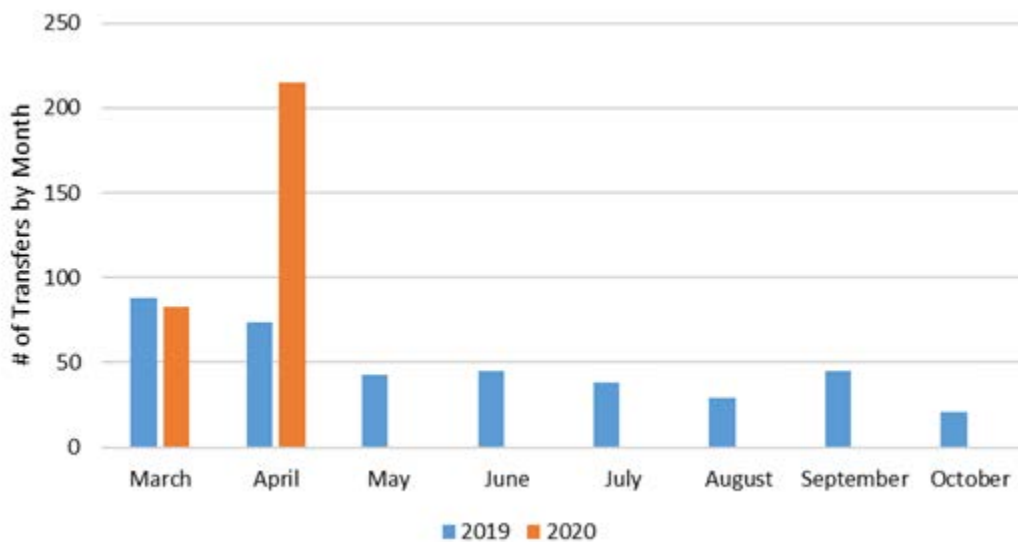
Medical transfers were not included in the original design of the IFQ Program because the Council prioritized its policy objective to maintain a fishing fleet primarily consisting of owner-operators by narrowly restricting transfer provisions. The Council rejected initial proposals for a medical transfer provision based on the potential for abuse and the lack of technical expertise at NMFS to determine disability. 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 quota with its recognition that a medical transfer provision would provide a mechanism for quota holders to retain their quota during bona fide medical hardships.

Generally speaking, most individual (in contrast to corporations that hold QS) initial QS recipients can hire a master; however, they cannot do so in the halibut Area 2C management area (2C) or the Southeast sablefish IFQ management area (SE). An individual must own a minimum of 20 percent interest in a harvesting vessel for 12 months immediately preceding the date of application to hire a master. Individual initial recipients who hold quota in the 2C or SE management areas or who do not own a vessel have been approved for temporary medical transfers.

Figure 5 shows the amount of medical transfers by month in 2020 compared to 2019. In the month of April alone, NMFS RAM received 215 applications. NMFS approved 383 medical transfers in 2019 was 383, thus far NMFS has approved 298 medical transfers in 2020.

Figure 5. Medical Transfers by Month, 2019-2020



Source: NMFS RAM

3.3. Hired Master Transfers

Initial recipients (excluding areas 2C for halibut or SE for sablefish) of CV QS may be absent from the vessel conducting IFQ fishing of his or her QS, provided the QS holder can demonstrate ownership of the vessel that harvests the IFQ halibut or sablefish (20% ownership) and representation of the QS holder on the vessel by a hired master. This exception allows fishermen who traditionally operated their fishing businesses using hired masters prior to the IFQ Program implementation to continue to hire a master. By limiting the hired master provision to initial recipients, the use of this owner-on-board exception will decline and eventually cease with the transfer of all QS from initial recipients to new entrants (“second generation”). The use of a hired master is not classified as a transfer of IFQ since the QS holder does not submit a transfer application and is responsible for the hired master staying within the harvest limits. While not technically a transfer, use of a hired master provides the flexibility of a transfer in that it allows an individual’s IFQ to be harvested by another person without requiring the QS holder to directly participate in the fishery.

In halibut Area 2C and the sablefish Area SE, the Council prohibited hired master use by any individuals, including initial recipients. In these areas the use of hired masters was restricted to non-individual entities only. The intent of this additional restriction on hired master use in Areas 2C and SE was to maintain what had historically been an owner-operated fleet in these areas.

The hired master provision has been amended on several occasions since the implementation of the IFQ Program to address Council objectives and the emergence of de facto leasing relationships between some initial recipients and their hired masters.

Table 4. Hired master use privilege by QS area and QS holder

Area	Initial Recipients	2nd Generation
Halibut Areas (Except 2C)	Yes	No
Halibut Area 2C	No	No
Sablefish Areas (Except Southeast Outside District)	Yes	No
Sablefish Area Southeast Outside District	No	No

In consideration of this action, those who can hire a master to fish their IFQ are not eligible to use the medical transfer provision. **Those who can typically hire a master include initial recipients in all areas except for Southeast Alaska. Both initial recipients of Southeast Alaska halibut and sablefish QS and second generation QS holders are eligible to use the medical transfer provision.** QS holders who own QS in multiple areas would make landings in different parts of the State to fish their QS. Many QS holders live outside of Alaska and travel into the State of Alaska to fish their QS.

3.4. IFQ Participants

The IFQ fleet is a diverse group of participants. Overall, there are 2,303 participants that hold CV QS in 2020.¹² There are discrepancies in the totals because some initial issuees own QS that they cannot hire a master to harvest (For example, they may own 3A QS in addition to 2C QS that they cannot hire a master) in addition to the QS that they are able to hire a master to harvest.

Of 2,303 total QS participants, 1,248 second generation QS holders must comply with restrictions on IFQ transfers and may use medical transfers.¹³ They may not use hired master provisions to fish their IFQ.

In addition, there are 1,055 initial recipients. Of 1,055, there are 657 initial recipients who may be eligible to use a hired master. The rules to hire a skipper are 1) the individual must be an initial issuee and 2) the individual must own at least 20% of a vessel for 12 months preceding the application submission date.¹⁴ If an initial issuee does not own a vessel, they are eligible to use a medical transfer.

Of the 657 initial recipients holding QS, 418 also hold at least a 20% interest in a vessel and are eligible to use a hired master under existing regulations. The remaining 239 initial recipients holding QS do not appear to have a 20% interest in a vessel, and would not be eligible to use a hired master. These 239 QS holders would also not currently be eligible to use the medical transfer provisions for QS held (except for QS held in Area 2C or SE).

¹² <https://www.fisheries.noaa.gov/alaska/commercial-fishing/permits-and-licenses-issued-alaska>

¹³ Note: 1,309 second generation include initial recipients who purchased quota in addition to what they were allocated at the implementation of the IFQ Program.

¹⁴ If they do not own a vessel, they do not qualify to hire a master. Third party confirmation is required if the QS holder recently sold a vessel, the vessel is not operational, the vessel they own does not have halibut gear or equipment on it (trawler) etc. If the boat is not usable, they do not qualify to hire a master.

Table 5. All non-CDQ halibut and sablefish catcher vessel QS holders, 2020

Class/Area	Halibut QS		Sablefish QS	
	Units	Holders	Units	Holders
B	122,621,704	482	133,428,017	325
2C	2,667,993	62		
3A	68,569,538	278		
3B	29,989,850	175		
4A	8,547,977	99		
4B	7,114,526	52		
4C	1,620,909	20		
4D	4,100,095	35		
4E	10,816	1		
AI			11,319,633	42
BS			7,754,799	42
CG			53,057,658	155
SE			13,436,073	85
WG			15,597,495	76
WY			32,262,359	99
C	173,464,848	1,382	117,175,321	531
2C	46,635,876	593		
3A	98,852,256	723		
3B	20,908,792	265		
4A	4,371,083	83		
4B	1,347,763	27		
4C	867,827	12		
4D	444,219	10		
4E	37,032	7		
AI			2,643,346	27
BS			3,534,089	33
CG			41,070,992	211
SE			46,550,424	283
WG			6,752,807	60
WY			16,623,663	122
D	25,998,886	791		
2C	8,770,567	312		
3A	12,664,491	321		
3B	1,652,238	59		
4A	1,046,093	48		
4B	265,882	10		
4C	1,508,740	29		
4E	90,875	86		
Total	322,085,438	2,255	250,603,338	736

Source: NMFS RAM.

Note: Data does not include corporations. Data may double-count if a QS holder holds QS in different areas or for different species.

4. Analysis of Impacts

This section analyzes two alternatives: (1) no action, and (2) increased flexibility to transfer IFQ during 2020 through an emergency rule. The Council would first need to provide rationale on why this is an emergency before selecting an option.

4.1. Alternative 1: No Action

If the Council does not recommend emergency action; then the existing halibut and sablefish IFQ Program would not be modified. IFQ participants who are eligible to use a hired master or use medical transfers could continue to do so.

The most recent modifications to the medical transfer provision would continue to allow eligible QS holders to transfer their IFQ in the event that they have *any* medical condition that keeps them from fishing their IFQ themselves.¹⁵ The number of medical transfers processed by NMFS RAM staff would likely continue to increase, as evidenced in Figure 5. All those seeking a medical transfer would need to comply with existing regulations, including obtaining a healthcare provider's signature. All IFQ participants who have used the medical transfer provision prior to the 2020 fishing season would be able to use all 3 of the 7 most recent years, regardless of how many years they have used it prior to rule implementation.

IFQ participants who are not eligible to use a hired master or medical transfer would need to fish their IFQ to gain the economic benefits of the program or the fish would be unharvested. Any travel would need to comply with local restrictions such as a two week quarantine upon entering Alaska for the duration of State and local health mandates. IFQ holders not living in Alaska would continue to fly into communities to board vessels, some of which are remote communities with limited medical facilities and possibly increasing health risks for these communities.

4.2. Alternative 2: Option 3 (preferred alternative)

This emergency action does not contemplate providing additional flexibility for Class A shares due to the existing lack of restrictions on transferring class A IFQ.

Option 3 is administratively the most straightforward to implement. It provides widespread flexibility to all CV IFQ participants. If implemented, an emergency action may be effective for up to 180 days, and would allow IFQ participants to temporarily transfer their IFQ to anyone with a valid TEC. This temporary transfer would allow the person receiving the transfer to harvest the IFQ at any time in the remainder for the rest of the 2020 season. The 180 day period granted under the emergency rule would expire unless the conditions of the emergency persist warranting extension for another 186 days.

Under this option, all participants would have access to transfer provisions that would allow someone else to fish their IFQ for the 2020 IFQ fishing season (temporary medical transfer or hired master provision). Vessel ownership and QS area limitations would not be a consideration in whether or not a temporary transfer may be granted. An individual seeking to utilize the temporary transfer would not be required to own a 20% stake in a vessel, and individuals fishing IFQ in the SE management area would be able to utilize the temporary transfer. All second generation IFQ holders would be eligible to utilize the temporary transfer provision. This flexibility could reduce travel in and out of Alaska, and could reduce travel around the state to remote fishing communities with limited healthcare capacity.

¹⁵ 85 FR 8477, February 14, 2020

The industry letter emphasizes that they want to harvest more fish than they otherwise could under existing circumstances. The revenue associated with the harvest would flow downstream to QS holders, crew members, and communities where they work and reside

This action would not likely to affect markets, prices, or processor capacity for halibut or sablefish. This action would not modify any vessel size classes, limits on at-sea processing, or restrictions on corporate leasing. This action would not modify the existing provision that allows rollovers of unharvested IFQ to the 2021 fishing year.

Any action to modify the IFQ Program recommended by the Council would be subject to cost recovery under the MSA. The IFQ Program cost recovery was at 3% in 2019 which is the statutory cap. With the anticipated drop in value of the fishery without an expected drop in management costs in 2020, NMFS expects the incremental management costs for the IFQ Program in 2020 to exceed the amount recoverable under a 3% fee. Under the provisions of the Magnuson-Stevens Act, the fee percentage cannot exceed 3% of ex-vessel value regardless of total incremental costs.

4.2.1. IFQ Participants

If the Council recommends emergency action to implement this option it would ease restrictions for 418 initial issuees (18.2% of QS holders) that own 20% or more of a vessel who are currently not eligible to use the existing medical transfer provision. In addition, it would provide a venue for the 239 QS holders who may not be eligible to use the medical transfer to transfer their IFQ, and it would also allow those who may not meet the medical transfer requirements (i.e., they do not have a medical condition) to transfer their IFQ.

It is unclear how many IFQ participants that hold CV IFQ would use this new temporary transfer flexibility. Some participants may not need to travel to fish their IFQ and receive all revenues associated with the IFQ instead of a percentage- which is common in temporary transfer agreements. Not all IFQ participants have associations or business relationships that would be necessary to use this temporary transfer opportunity. This option would add a new temporary transfer opportunity that could be used by IFQ Participants in addition to existing transfer provisions (including hired masters, and medical transfer provisions).

For the IFQ participants who choose to hire a master under this option, they would not need to travel. There could be fewer individuals on a vessel during a fishing trip. If a vessel owner who owns QS must travel to his or her vessel location, the vessel owner could hire a master to avoid the trip. If it is a case of traveling to their vessel, some vessels owners may simply hire a master this year rather than operating a vessel.

If all IFQ participants are able to hire masters to harvest their IFQ, hired masters in Alaska (by residence listed on their TEC) could see an increase in lease agreements with QS holders and hired masters. There are approximately 6,139 individuals who completed their TEC and are eligible to receive IFQ as hired masters in Alaska.¹⁶ This data does not indicate whether they own a vessel or have access to vessels equipped to harvest halibut or sablefish. Many of these individuals are in larger communities, such as Sitka or Homer. Smaller communities, such as St. Paul Island or Cold Bay, may have relatively limited access to a pool of hired masters.

4.2.2. Management Considerations

In order to implement this option, there are a few administrative considerations for NMFS RAM. RAM would use a process similar to the administrative process for the other temporary transfer provisions for

¹⁶ <https://www.fisheries.noaa.gov/alaska/commercial-fishing/permits-and-licenses-issued-alaska>

IFQ. The existing form used to process transfers of IFQ could be used to implement this option and any QS holder could submit the application to RAM.¹⁷ RAM would clarify that they are eligible to receive IFQ by transfer and approve the application. The person receiving IFQ by temporary transfer would need to be in NMFS's database as well. If they are not eligible to receive IFQ by temporary transfer (i.e., they do not hold a TEC), RAM would deny the application. Medical transfers require the actual IFQ pounds to be transferred to someone else's account which requires more staff time.

In terms of flexibility to the fleet, this option would be the most flexible of the options proposed in the industry letter and would provide the greatest flexibility to the most IFQ participants.

RAM accepts voluntary assertions of interest against limited access permits. Upon receipt of a transfer application for a permit that has such an assertion, RAM will notify the person that asserted the interest. RAM also notifies the applicant that there will be a 10 day delay in processing their application and issuing the permit(s). The notification provided to the lienholder allows them to provide RAM with a Court Order or other legal instrument that provides authority for RAM to disapprove the transfer. This would cause a 10 day delay in issuing any permits that have lien assertions.

¹⁷ <https://www.fisheries.noaa.gov/webdam/download/85041367>

5. National Standards

Below are the 10 National Standards as contained in the Magnuson-Stevens Act, and a brief discussion of how each alternative is consistent with the National Standards, where applicable. In recommending a preferred alternative, the Council must consider how to balance the national standards. These national standards are applicable for the management of sablefish, but not for halibut. Halibut is managed under the Halibut Act and therefore these national standards are not applicable.

National Standard 1 — Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry.

This action would remove limitations on the transfer of CV IFQ derived from vessel class B, C, and D class QS. This action would not modify the management measures in place to prevent over fishing or affect the status of the halibut or sablefish stock in the BSAI or GOA. This action is administrative in nature; however with increased flexibility, optimum yield may be achieved when under existing status quo transfer restrictions it may not.

National Standard 2 — Conservation and management measures shall be based upon the best scientific information available.

In recommending this action, the Council considered a draft of this analysis, written public comment, and the information in this analysis represents the most current, comprehensive information available.

National Standard 3 — To the extent practicable, an individual stock of fish shall be managed as a unit throughout its range, and interrelated stocks of fish shall be managed as a unit or in close coordination.

The proposed action is consistent with the management of individual stocks as a unit or interrelated stocks as a unit or in close coordination. This action is administrative and does not modify the management of the Pacific halibut and sablefish stocks throughout its range.

National Standard 4 — Conservation and management measures shall not discriminate between residents of different states. If it becomes necessary to allocate or assign fishing privileges among various United States fishermen, such allocation shall be; (A) fair and equitable to all such fishermen, (B) reasonably calculated to promote conservation, and (C) carried out in such a manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges.

This action is consistent with National Standard 4 because it would allow all eligible fishery participants to transfer IFQ in 2020, regardless of their residence. This action would promote conservation by improving operational efficiency of the IFQ program while maintaining existing provisions that limit any entity from acquiring an excessive share of harvest privileges.

National Standard 5 — Conservation and management measures shall, where practicable, consider efficiency in the utilization of fishery resources, except that no such measure shall have economic allocation as its sole purpose.

This action would improve the efficient use of the resource consistent with National Standard 5, but is not solely an economic allocation. Providing flexibility for IFQ transfers would reduce the likelihood of substantial amounts of forgone harvest and promote optimum yield. The proposed action would improve efficiency by allowing temporary transfer of IFQ in 2020 potentially reducing travel costs and potentially forgone harvest of the halibut and sablefish fisheries.

National Standard 6 — Conservation and management measures shall take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches.

The purpose of this action to allow for contingencies in the halibut and sablefish IFQ program fisheries for the duration of the 2020 fishing year. This emergency action is in response to the COVID-19 pandemic to allow QS holders additional flexibilities to safely achieve optimum yield.

National Standard 7 — Conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication.

This action seeks to minimize costs to IFQ holders consistent with National Standard 7. The proposed action does not duplicate any other management action. This action modifies the process for QS holders to transfer IFQ under existing provisions. This action does not increase administrative burden or complicate the annual specifications publication and implementation process compared to the status quo. Therefore, the proposed measure would minimize cost.

National Standard 8 — Conservation and management measures shall, consistent with the conservation requirements of this Act (including the prevention of overfishing and rebuilding of overfished stocks), take into account the importance of fishery resources to fishing communities by utilizing economic and social data that meet the requirements of National Standard 2, in order to (A) provide for the sustained participation of such communities, and (B) to the extent practicable, minimize adverse economic impacts on such communities.

This action is consistent with National Standard 8 by providing for the sustained participation of communities throughout Alaska and the Pacific Northwest who rely on halibut and sablefish for harvesting and processing in their communities. Providing flexibility for IFQ transfers would reduce the likelihood of substantial amounts of forgone harvest and promote optimum yield. This action is not expected to have adverse impacts on communities or affect community sustainability. This action modifies the process to temporarily transfer IFQ, minimizing adverse economic impacts on fishing communities.

National Standard 9 — Conservation and management measures shall, to the extent practicable, (A) minimize bycatch, and (B) to the extent bycatch cannot be avoided, minimize the mortality of such bycatch.

This action continues to promote the conservation of fishery resources because it maintains existing limits on bycatch and other conservation measures consistent with National Standard 9.

National Standard 10 — Conservation and management measures shall, to the extent practicable, promote the safety of human life at sea.

This action promotes the safety of life at sea by reducing risks to fishing crews, their families, and their communities consistent with National Standard 10. This action would not modify existing safety regulations, authorized gear, the size or type of vessels that may be used in the fishery, or otherwise affect the amount of species that could be harvested.

6. North Pacific Halibut Act Considerations

The fisheries for Pacific halibut are governed under the authority of the Northern Pacific Halibut Act of 1982 (Halibut Act, 16 U.S.C. 773-773k). For the United States, the Halibut Act gives effect to the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the North Pacific Ocean and Bering Sea. The Halibut Act also provides authority to the Regional Fishery Management Councils, as described in § 773c:

(c) Regional Fishery Management Council involvement

The Regional Fishery Management Council having authority for the geographic area concerned may develop regulations governing the United States portion of Convention waters, including limited access regulations, applicable to nationals or vessels of the United States, or both, which are in addition to, and not in conflict with regulations adopted by the International Pacific Halibut Commission (IPHC). Such regulations shall only be implemented with the approval of the Secretary, shall not discriminate between residents of different States, and shall be consistent with the limited entry criteria set forth in section 1853(b)(6) of this title. If it becomes necessary to allocate or assign halibut fishing privileges among various United States fishermen, such allocation shall be fair and equitable to all such fishermen, based upon the rights and obligations in existing Federal law, reasonably calculated to promote conservation, and carried out in such manner that no particular individual, corporation, or other entity acquires an excessive share of the halibut fishing privileges.

The Halibut Act provides that the Council may develop regulations, including limited access regulations, to govern the fishery, provided that the Council's actions are in addition to, and not in conflict with, regulations adopted by the International Pacific Halibut Commission (IPHC). Implementation of the Council's recommendation would not require changes to IPHC regulations.

As stated above, the Halibut Act states that regulations shall not discriminate between residents of different States. The Council's recommendation would seek to benefit residents of Alaska and other communities at times of health mandates and travel restrictions by providing additional flexibility in access to halibut IFQ. This action would not create a new limited access program, but would temporarily amend the current IFQ Program. QS use caps and vessel IFQ caps in place in the IFQ Program would still apply to those holdings (QS use caps) or using IFQ (vessel IFQ caps) under the Council's recommendation, continuing to ensure no particular individual, corporation, or other entity acquires an excessive share of harvesting privileges.

7. Preparers and Persons Consulted

Preparers

Stephanie Warpinski, NMFS SF Lead

Alicia Miller, NMFS SF

Doug Duncan, NMFS SF

Sam Cunningham, NPFMC Staff

Contributors

Glenn Merrill, NMFS SF

Suja Hall, NMFS RAM

Allen Butner, NMFS RAM

Brian Brown, NMFS RAM

Tom Meyer, NOAA GCAK

8. References

- NMFS. (2018, September 10). Analysis of the Final Rule to Prohibit the Use of Hired Masters for Sablefish Catcher Vessel Quota Shares. Retrieved from <https://www.fisheries.noaa.gov/resource/document/analysis-final-rule-prohibit-use-hired-masters-sablefish-catcher-vessel-quota-0>
- NMFS. (2020, March 27). Emergency Measures To Address Fishery Observer Coverage During the COVID-19 Coronavirus Pandemic. *Emergency Rule*. Retrieved from <https://www.federalregister.gov/documents/2020/03/27/2020-06426/emergency-measures-to-address-fishery-observer-coverage-during-the-covid-19-coronavirus-pandemic>
- NMFS. (2020, February 14). Modify Medical and Beneficiary Transfer Provisions. Retrieved from <https://www.federalregister.gov/documents/2020/02/14/2020-02878/fisheries-of-the-exclusive-economic-zone-off-alaska-ifq-program-modify-medical-and-beneficiary>
- NMFS. (February 2018). *IFQ Beneficiary Lease Provision Discussion Paper*. NPFMC. Retrieved from <http://npfmc.legistar.com/gateway.aspx?M=F&ID=69afc1f4-cb10-4518-91ec-e31bb2ce2322.pdf>
- NPMFC. (December 2016). *Twenty-Year Review of the Pacific Halibut and Sablefish Individual Fishing Quota Management Program*. Anchorage, AK: NPMFC. Retrieved from https://www.npfmc.org/wp-content/PDFdocuments/halibut/IFQProgramReview_417.pdf