

Tren Wickstrom
Mullavey Prout Grenley & Foe LLP

Comment Regarding Changes to the Survivorship Privilege Regulation(s).

The ability to receive the 3-year lease right pursuant to the Survivorship Privilege Regulation is an invaluable benefit to the heirs of a deceased QS holder. It also benefits the vessels that have historically harvested the annual IFQ. We represent a lot of QS holders and have done many of their Wills. I have communicated regularly with the RAM Division regarding the regulation, and based on those communications have conformed those Wills to comply with to the existing regulation.

I agree that the regulation should be improved, but not as proposed in proposal 4.1 by replacing “surviving spouse” and/or “immediate family member” with “estate representative.” The impact of that action would be a significant problem. As a practical matter, it would make *non-compliant* all existing Wills drafted in compliance with the existing regulation (i.e., giving the QS to the surviving spouse or in the absence of a surviving spouse, an immediate family member designated with RAM), including all the Wills that I have drafted since 1995. All of those Wills would have to be re-done. Even if the identity of those individuals could be ascertained, it is unclear whether they could be contacted, and even if contacted, whether they would want to amend their Wills.

Also, identifying the “estate representative” as the permitted transferee isn’t the best alternative. Rather, the permitted QS transferee should be the “Estate” of the decedent. [The Estate owns the assets of a decedent until they get passed out to beneficiaries or used up for creditors. You might say the Estate holds the assets “in transit” until they get distributed.](#) The Estate has standing, has its own EIN, and is a distinct entity for tax purposes. [While assets are in the Estate, the Personal Representative \(or in the event a QS holder dies intestate, a court-appointed administrator\) controls, safeguards, and manages the Estate assets for the benefit of creditors and the ultimate beneficiaries.](#) Conversely, I am advised by my partners that are expert in estate-planning and probate, that transfer to the “estate representative” could create problems.

Thus, I respectfully propose that the regulation be amended just to add the decedent’s “Estate” as another permissible QS transferee and lessor under the 3-year lease right.

Transfer to the Estate would be simple and frankly a very desirable option! If the Estate is the recipient, the court-appointed “estate representative(s)” would be the person or persons that would sign for the Estate. If a person dies intestate, the court-appointed administrator would sign. RAM is already dealing with Estates as transferors of any of the decedent’s QS, including when it transfers the decedent’s QS to the surviving spouse or immediate family for the purposes of the regulation. If naming the Estate as transferee for the regulation were an option, the need to address surviving spouse and/or immediate family members in a Will would diminish. I would imagine that many Wills we draft would give the QS to the Estate for the purposes of the regulation. However, retaining surviving spouse and immediate family member as permissible QS transferees is important. It would not only preserve the compliance of all the existing Wills drafted in conformance with the regulation, it would also retain for Will drafters the surviving spouse and immediate family members as potential QS recipients in those circumstances when giving the QS to the Estate is not the best alternative. Having the Estate as a permitted QS transferee would be particularly beneficial when the economic benefit of the sale of the

QS and/or lease of the IFQ is to be spread between multiple beneficiaries. In addition, not uncommonly, decedents name more than one-“estate representative.” Using the “Estate” instead of the “estate representative” would avoid the problem of which individual would receive the QS.

Under my proposal to add the Estate as a permitted transferee, I agree with RAM that the term “immediate family member” needs to be defined. Drawing on existing statutes that deal with estate succession is a good approach. The list under Option 2 seems reasonable.

Despite some ambiguity in the current text of the regulation, RAM has accepted that the regulation affords the 3-year lease right to a permitted transferee under a Will. However, should the regulation be amended, the drafters should also make it clear that the 3-year right is available to a permitted QS transferee with or without a Will.

I have a lot of experience with this regulation. I would welcome the opportunity to participate in any discussion regarding its amendment.



Southeast Alaska Fishermen's Alliance

9369 North Douglas Highway

Juneau, AK 99801

Phone: 907-586-6652

Email: seafa@gci.net

Fax: 907-523-1168

Website: <http://www.seafa.org>

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North Pacific Fishery Management Council

Dan Hull, Chair

605 W. 4th Ave, Suite 306

Anchorage, AK 99501

Dear Chairman Hull and Council Members,

RE: C5 IFQ Beneficiary Provision

Southeast Alaska Fishermen's Alliance (SEAFA) read the IFQ Beneficiary Provision discussion paper and supports moving forward and developing a problem statement. We particularly liked the recommendation 4.1 to remove reference to "immediate family member" or "designated beneficiary" and putting the control in the hands of the "estate representative". This allows the executor of the will or a court appointed representative in the case where there is no will use the three-year time frame to lease the IFQ shares to settle the estate, sell the shares or pass it on to a family member as the individual wished.

We believe the three-year leasing by the surviving spouse or designated beneficiary was there partly to allow a family member who was not qualified to receive quota share an opportunity to gain experience towards qualification of holding quota share.

Southeast Alaska Fishermen's Alliance is a multi-gear/multi-species organization representing our members involved in the salmon, crab, and shrimp fisheries of Southeast Alaska and longline fisheries in Southeast and the Gulf of Alaska.

Sincerely,

Kathy Hansen

Executive Director