



B1 Modify Halibut & Sablefish IFQ Transfer Provisions

May 2020 Special Council Meeting

Action Memo

NMFS Staff: Stephanie Warpinski
Council Staff: Sam Cunningham
Action Required: Determine whether to request that NMFS implement emergency regulations or interim measures in response to an emergency

BACKGROUND

On April 7, 2020 NMFS received a letter from halibut and sablefish IFQ fishery stakeholders requesting emergency action to respond to the challenges posed by the COVID-19 pandemic. That letter is provided as an attachment under this agenda item. The letter included a problem statement and a set of options for rulemaking proposed by the industry signatories. The options are each structured around making modifications to the existing IFQ Program medical transfer provision that could be in effect during the pandemic.

NMFS Alaska Region office coordinated with the Council, offering an opportunity to review the request for emergency rule in a letter dated April 16, 2020. The Council has chosen to review the emergency request and provide recommendations for NMFS and the Secretary of Commerce to consider as they respond, consistent with Section 305(c) of the Magnuson-Stevens Act.

Section 305(c) of the Magnuson-Stevens Act provides authority for rulemaking to address an emergency. Under that section, a Council may request emergency rulemaking if it finds an emergency exists. NMFS's Policy Guidelines for the Use of Emergency Rules provide that **the 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.** Emergency rulemaking is intended for circumstances that are "extremely urgent," where "substantial harm to or disruption of the fishery would be caused in the time it would take to follow standard rulemaking procedures." The guidelines include three criteria that define an emergency:

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.

NMFS AKRO staff have prepared a draft analysis to inform the Council of the likely impacts associated with the proposed emergency modifications. Staff have made every effort to provide the Council with the information required for decision-making. Staff have based this analysis on the stakeholders' letter and proposed options.

If the Council does not recommend emergency action, the current rules for eligibility to use a medical transfer will remain in place. Those rules would include an interim policy – developed by NMFS RAM division as of March 27, 2020 – to use template COVID-19 language for the Medical Declaration portion of the medical transfer application. That template language fulfills the healthcare provider's declaration that the applicant, because of COVID-19 health concerns, cannot participate in the fishery. If no emergency action is taken, IFQ participants who are not eligible to transfer IFQ could not receive any additional flexibility.

If the Council does recommend emergency action, then temporary regulations would increase flexibility to transfer IFQ. The Council will choose the scope of the response and make a recommendation to NMFS. As presented in the industry letter, the three options are:

Option 1 expands NMFS's COVID-19 medical transfer template language to include additional criteria that relate to the health of crew (other than the quota share holder) and communities.

Option 2 facilitates the processing of medical transfer applications by allowing a designated State of Alaska or State of Washington public health official to sign the application in place of a medical healthcare provider. This option would not provide additional flexibility to stakeholders who are not eligible to use the medical transfer provision.

Option 3 allows all QS holders to make temporary IFQ transfers to eligible hired masters during the pandemic. Existing use restrictions related to vessel size classes and limits on at-sea processing would remain in place.