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The Regional Administrator will evaluate an application for a temporary military transfer submitted in accordance with paragraphs (c)(1) through (c)(9) of this section. An applicant who fails to submit the information specified in the application for a temporary military transfer will be provided a reasonable opportunity to submit the specified information or submit a revised application.

(ii) Initial administrative determination (IAD). The Regional Administrator will prepare and send an IAD to the applicant if the Regional Administrator determines that the application provided by the applicant is deficient or if the applicant fails to submit the specified information or a revised application. The IAD will indicate the deficiencies in the application, including any deficiencies with the information on the revised application. An applicant who receives an IAD may appeal under the appeals procedures set out at §679.43.

[61 FR 31230, June 19, 1996]

EDITORIAL NOTE: For Federal Register citations affecting §679.41, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

EFFECTIVE DATE NOTE: At 79 FR 43692, July 28, 2014, §679.41 was amended by adding paragraph (c)(11), effective Dec. 1, 2014. For the convenience of the user, the added text is set forth as follows:

§679.41 Transfer of quota shares and IFQ.

* * * * *

(c) * * *

(i1) The person applying to receive QS assigned to vessel category B, C, or D is not a corporation, partnership, association, or other non-individual entity, except as specified in paragraph (g)(3) of this section.

* * * * *

§679.42 Limitations on use of QS and IFQ.

(a) IFQ regulatory area and vessel category. (1) The QS or IFQ specified for one IFQ regulatory area must not be used in a different IFQ regulatory area, except all or part of the QS and IFQ specified for regulatory area 4C may be harvested in either Area 4C or Area 4D.

(i) Notwithstanding §679.4(d)(1), §679.7(g)(4) and (f)(11), §679.40(b)(1), (c)(3), and (e), from July 22, 2005 to November 15, 2005, all or part of the QS and IFQ specified for regulatory area 4C may be harvested in either Area 4C or Area 4D.

(ii) For the year 2006 and subsequent annual IFQ fishing seasons, all or part of the QS and IFQ specified for regulatory area 4C may be harvested in either Area 4C or Area 4D.

(2) The QS or IFQ assigned to one vessel category must not be used to harvest IFQ species on a vessel of a different vessel category, except:

(i) As provided in paragraph (k) of this section (processing fish other than IFQ halibut and IFQ sablefish);

(ii) As provided in §679.41(i)(1) of this part (CDQ compensation QS exemption);

(iii) IFQ derived from QS held by a CQE may be used to harvest IFQ species from a vessel of any length, with the exception of IFQ derived from QS in IFQ regulatory areas 3A and 4B that are assigned to vessel category D.

(iv) In IFQ regulatory areas 3B, 4B, and 4C, category D QS and associated IFQ authorizes an IFQ permit holder to harvest IFQ halibut on a vessel less than or equal to 60 ft (18.3 m) LOA.

(b) Gear—(1) IFQ Fisheries. Halibut IFQ must be used only to harvest halibut with fishing gear authorized in §679.2 while fishing for IFQ halibut, CDQ halibut, or hook-and-line gear while fishing for IFQ sablefish must not be used to harvest sablefish with trawl gear in any IFQ regulatory area, or with pot gear in any IFQ regulatory area of the GOA.

(2) Seabird avoidance gear and methods. The operator of a vessel using gear authorized at §679.2 while fishing for IFQ halibut, CDQ halibut, or hook-and-line gear while fishing for IFQ sablefish must comply with requirements for seabird avoidance gear and methods set forth at §679.24(e).

(c) Permit holder aboard requirement. Any individual who harvests halibut or sablefish with fixed gear must have a valid IFQ permit, and if a hired master is conducting the harvest, a valid IFQ hired master permit, and must be aboard the vessel at all times during the fishing trip and be present during the landing.
(d) Emergency waivers and medical transfers. The person authorized to fish IFQ halibut or sablefish must be aboard the vessel during fishing operations and must sign the IFQ landing report except as provided in §679.41 and under the following circumstances:

(1) Emergency waiver. In the event of extreme personal emergency during a fishing trip involving a person authorized to fish IFQ halibut or sablefish, the requirements or paragraph (c)(1) of this section may be waived. The waiving of these requirements under this provision shall apply to IFQ halibut or IFQ sablefish retained on the fishing trip during which the emergency occurred.

(2) Medical transfers. In the event of a medical condition affecting a QS holder or an immediate family member of a QS holder that prevents the QS holder from being able to participate in the halibut or sablefish IFQ fisheries, a medical transfer may be approved for the IFQ derived from the QS held by the person affected by the medical condition.

(i) General. A medical transfer will be approved if the QS holder demonstrates that:

(A) He or she is unable to participate in the IFQ fishery for which he or she holds QS because of a medical condition that precludes participation by the QS holder; or

(B) He or she is unable to participate in the IFQ fishery for which he or she holds QS because of a medical condition involving an immediate family member that requires the QS holder’s full time attendance.

(ii) Eligibility. To be eligible to receive a medical transfer, a QS holder must:

(A) Possess one or more catcher vessel IFQ permits; and

(B) Not qualify for a hired master exception under paragraph (i)(1) of this section.

(iii) Application. A QS holder may apply for a medical transfer by submitting a medical transfer application to the Alaska Region, NMFS. A QS holder who has received an approved medical transfer from RAM may transfer the IFQ derived from his or her own QS to an individual eligible to receive IFQ. A medical transfer application is available at http://alaskafisheries.noaa.gov or by calling 1–800–304–4846. Completed applications must be mailed to: Restricted Access Management Program, NMFS, Alaska Region, P.O. Box 21668, Juneau, AK 99802-1668. A complete application must include:

(A) The applicant’s (transferor’s) identity including his or her full name, NMFS person ID, date of birth, Social Security Number or Tax ID, permanent business mailing address, business telephone and fax numbers, and e-mail address (if any). A temporary mailing address may be provided, if appropriate;

(B) The recipient’s (transferee’s) identity including his or her full name, NMFS person ID, date of birth, Social Security Number or Tax ID, permanent business mailing address, business telephone and fax numbers, and e-mail address (if any). A temporary mailing address may be provided, if appropriate;

(C) The identification characteristics of the IFQ including whether the transfer is for halibut or sablefish IFQ, IFQ regulatory area, number of units, range of serial numbers for IFQ to be transferred, actual number of IFQ pounds, transferor (seller) IFQ permit number, and fishing year;

(D) The price per pound (including leases) and total amount paid for the IFQ in the requested transaction, including all fees;

(E) The primary source of financing for the transfer, how the IFQ was located, and the transferee’s (buyer’s) relationship to the transferor (seller);

(F) A written declaration from a licensed medical doctor, advanced nurse practitioner, or primary community health aide as those persons are defined in §679.2. The declaration must include:

(1) The identity of the licensed medical doctor, advanced nurse practitioner, or primary community health aide including his or her full name, business telephone, permanent business mailing address (number and street, city and state, zip code), and whether the individual is a licensed medical doctor, advanced nurse practitioner, or primary community health aide;

(2) A concise description of the medical condition affecting the applicant or applicant’s family member including verification that the applicant is unable to participate in the IFQ fishery.
for which he or she holds IFQ permits during the IFQ season because of the medical condition and, for an affected family member, a description of the care required; and

(3) The dated signature of the licensed medical doctor, advanced nurse practitioner, or primary community health aide who conducted the medical examination;

(G) The signatures and printed names of the transferor and transferee, and date; and

(H) The signature, seal, and commission expiration of a notary public.

(iv) Restrictions. (A) A medical transfer shall be valid only during the calendar year for which the permit is issued;

(B) A medical transfer will be issued only for the IFQ derived from the QS held by the applicant;

(C) NMFS will not approve a medical transfer if the applicant has received a medical transfer in any 2 of the previous 5 years for the same medical condition.

(v) Medical transfer evaluations and appeals—(A) Initial evaluation. The Regional Administrator will evaluate an application for a medical transfer submitted in accordance with paragraphs (d)(2)(iii) and (d)(2)(iv) of this section. An applicant who fails to submit the information specified in the application for a medical transfer will be provided a reasonable opportunity to submit the specified information or submit a revised application.

(B) Initial administrative determinations (IAD). The Regional Administrator will prepare and send an IAD to the applicant if the Regional Administrator determines that the application provided by the applicant is deficient or if the applicant fails to submit the specified information or a revised application. The IAD will indicate the deficiencies in the application, including any deficiencies with the information on the revised application. An applicant who receives an IAD may appeal under the appeals procedures set out at §679.43.

(e) Sablefish QS Use. (1) No person other than a CQE representing the community of Adak, AK, individually or collectively, may use more than 3,229,721 units of sablefish QS, except if the amount of a person’s initial allocation of sablefish QS is greater than 3,229,721 units, in which case that person may not use more than the amount of the initial allocation.

(2) In the IFQ regulatory area east of 140° W. long., no person, individually or collectively, may use more than 688,485 units of sablefish QS for this area, except if the amount of a person’s initial allocation of sablefish QS is greater than 688,485 units, in which case that person may not use more than the amount of the initial allocation.

(3) No CQE may hold sablefish QS in the IFQ regulatory area of the Bering Sea subarea.

(4) No CQE may hold more than:

(i) 3,229,721 units of sablefish QS on behalf of any single eligible community in the GOA; or

(ii) 4,789,874 units of sablefish QS on behalf of any single eligible community in the Aleutian Islands subarea.

(5) In the IFQ regulatory area east of 140° W. long., no CQE may hold more than 688,485 units of sablefish QS for this area on behalf of any single eligible community.

(6) In the aggregate, all CQEs are limited to holding a maximum of:

(i) 21 percent of the total QS in each regulatory area specified in §679.41(e)(2)(i) through (e)(2)(iv) of this part for sablefish.

(ii) 15 percent of the total QS specified in §679.41(e)(2)(v) of this part for sablefish.

(7) No individual that receives IFQ derived from sablefish QS held by a CQE may hold, individually or collectively, more than 50,000 lb (22.7 mt) of IFQ sablefish derived from any sablefish QS source.

(8) A CQE receiving category B or C sablefish QS through transfer and representing an eligible community:

(i) In the GOA may lease the IFQ resulting from that QS only to an eligible community resident of the eligible community on whose behalf the QS is held; and

(ii) In the Aleutian Islands subarea may lease the IFQ resulting from that QS to any person who has received an approved Application for Eligibility as described in paragraph (d) of this section prior to March 17, 2019 and only to
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an eligible community resident of Adak, AK, after March 17, 2019.

(9) A CQE representing an eligible community in the Aleutian Islands subarea may receive by transfer or use sablefish QS only in the Aleutian Islands subarea.

(f) Halibut QS use. (1) Unless the amount in excess of the following limits was received in the initial allocation of halibut QS, no person other than a CQE representing the community of Adak, AK, individually or collectively, may use more than:

(i) IFQ regulatory Area 2C. 599,799 units of halibut QS, including halibut QS issued as IFQ and transferred to GAF, as defined in §300.61 of this title.

(ii) IFQ regulatory area 2C, 3A, and 3B. 1,502,823 units of halibut QS, including halibut QS issued as IFQ and transferred to GAF, as defined in §300.61 of this title.

(iii) IFQ regulatory area 4A, 4B, 4C, 4D, and 4E. 495,044 units of halibut QS.

(2) No CQE may receive an amount of halibut QS on behalf of any single eligible community which is more than:

(i) IFQ regulatory area 2C. 599,799 units of halibut QS.

(ii) IFQ regulatory area 2C, 3A, and 3B. 1,502,823 units of halibut QS.

(iii) IFQ regulatory area 4B. 1,392,716 units of halibut QS.

(3) No CQE may hold halibut QS in the IFQ regulatory areas 4A, 4C, 4D, and 4E.

(4) A CQE representing an eligible community may receive by transfer or use QS only in the IFQ regulatory areas designated for that species and for that eligible community as described in Table 21 to this part.

(5) In the aggregate, all CQEs are limited to holding a maximum of:

(i) 21 percent of the total QS in each regulatory area specified in §679.41(e)(3)(i) through (e)(3)(iii) of this part for halibut.

(ii) 15 percent of the total QS specified in §679.41(e)(3)(v) of this part for halibut.

(6) No individual that receives IFQ derived from halibut QS held by a CQE, including GAF as defined in §300.61 of this title, may hold, individually or collectively, more than 50,000 pounds (22.7 mt) of IFQ halibut, including IFQ halibut received as GAF, derived from any halibut QS source.

(7) A CQE receiving category B, C, or D halibut QS through transfer:

(i) In an IFQ regulatory area specified in §679.41(e)(3)(i) through (e)(3)(iii) of this part may lease the IFQ resulting from that QS only to an eligible community resident of the eligible community represented by the CQE.

(ii) In IFQ regulatory area 4B may lease the IFQ resulting from that QS to any person who has received an approved Application for Eligibility as described in paragraph (d) of this section prior to March 17, 2019 and only to an eligible community resident of Adak, AK, after March 17, 2019.

(g) Limitations on QS blocks.—(1) Number of blocks per species. No person, individually or collectively, may hold more than two blocks of sablefish or three blocks of halibut in any IFQ regulatory area, except:

(i) A person, individually or collectively, who holds unblocked QS for a species in an IFQ regulatory area, may hold only one QS block for that species in that regulatory area; and

(ii) A CQE may hold no more than ten blocks of halibut QS in any IFQ regulatory area and no more than five blocks of sablefish QS in any IFQ regulatory area on behalf of any eligible community.

(2) Action by the Regional Administrator in Areas 3B and 4A. In Areas 3B and 4A, the Regional Administrator shall:

(i) Identify any halibut blocks that result in an allocation of more than 20,000 lb (9.1 mt) of halibut IFQ, based on the 2004 TAC for fixed gear halibut in those areas and the QS pools for those areas as of January 31, 2004; and

(ii) Divide those halibut blocks into one block of 20,000 lb (9.1 mt) and the remainder unblocked, based on the 2004 TAC for fixed gear halibut in those areas and the QS pools for those areas as of January 31, 2004.

(3) Transfer of QS blocks. Notwithstanding paragraph (g)(1)(i) of this section, a person who holds more than one block of halibut QS and unblocked halibut QS as a result of the Regional Administrator’s action under paragraph (g)(2) of this section may transfer unblocked QS until such time as that
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person transfers a halibut QS block to another person.

(4) Holding or to hold blocks of QS. For purposes of this section, “holding” or “to hold” blocks of QS means being registered by NMFS as the person who received QS by initial assignment or approved transfer.

(h) Vessel limitations—(1) Halibut. No vessel may be used, during any fishing year, to harvest more than one-half percent of the combined total catch limits of halibut for IFQ regulatory areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E, except that:

(i) In IFQ regulatory area 2C, no vessel may be used to harvest more than 1 percent of the halibut catch limit for this area.

(ii) No vessel may be used, during any fishing year, to harvest more than 50,000 lb (22.7 mt) of IFQ halibut derived from QS held by a CQE, and no vessel used to harvest IFQ halibut derived from QS held by a CQE may be used to harvest more IFQ halibut than the vessel use caps specified in paragraphs (h)(1) introductory text and (h)(1)(i) of this section.

(2) Sablefish. No vessel may be used, during any fishing year, to harvest more than one percent of the combined fixed gear TAC of sablefish for the GOA and BSAI IFQ regulatory areas, except that:

(i) In the IFQ regulatory area east of 140 degrees W. long., no vessel may be used to harvest more than 1 percent of the halibut catch limit for this area.

(ii) No vessel may be used, during any fishing year, to harvest more than 50,000 lb (22.7 mt) of IFQ sablefish derived from QS held by a CQE, and no vessel used to harvest IFQ sablefish derived from QS held by a CQE may be used to harvest more IFQ sablefish than the vessel use caps specified in paragraphs (h)(2) introductory text and (h)(2)(i) of this section.

(3) Excess. An IFQ permit holder who receives an approved IFQ allocation of halibut or sablefish in excess of these limitations may nevertheless catch and retain all that IFQ with a single vessel. However, two or more IFQ permit holders may not catch and retain their IFQs with one vessel in excess of these limitations.

(4) Liability. Owners and operators of vessels exceeding these limitations are jointly and severally liable with IFQ permit holders and IFQ hired master permit holders whose harvesting causes the vessel to exceed these limitations.

(i) Use of IFQ resulting from QS assigned to vessel category B, C, or D by individuals. In addition to the requirements of paragraph (c) of this section, IFQ permits issued for IFQ resulting from QS assigned to vessel category B, C, or D must be used only by the individual who holds the QS from which the associated IFQ is derived, except as provided in paragraph (i)(1) of this section.

(1) An individual who received an initial allocation of QS assigned to category B, C, or D does not have to be aboard the vessel on which his or her IFQ is being fished or to sign IFQ landing reports if that individual:

(i) For a documented vessel, owns a minimum 20-percent interest in the vessel as shown by the U.S. Abstract of Title issued by the U.S. Coast Guard that lists the individual as an owner and, if necessary to prove the required percentage ownership, other written documentation;

(ii) For an undocumented vessel, owns a minimum 20-percent interest in the vessel as shown by a State of Alaska vessel license or registration that lists the individual as an owner and, if necessary to show the required percentage ownership interest, other written documentation; and

(iii) Is represented on the vessel by a hired master employed by that individual and permitted in accordance with §679.4(d)(2).

(2) Paragraph (i)(1) of this section does not apply to any individual who received an initial allocation of QS assigned to category B, C, or D and who, prior to April 17, 1997, employed a master to fish any of the IFQ issued to that individual, provided the individual continues to own the vessel from which the IFQ is being fished at no lesser percentage of ownership interest than that held on April 17, 1997, and provided that this individual has not acquired additional QS through transfer after September 23, 1997.
(3) Paragraph (j)(1) of this section does not apply to individuals who received an initial allocation of QS assigned to vessel category B, C, or D for halibut in IFQ regulatory Area 2C or for sablefish QS in the IFQ regulatory area east of 140° W. long., and this exemption is not transferable.

(4) The exemption provided in paragraph (j)(1) of this section may be exercised by an individual on a vessel owned by a corporation, partnership, or other entity in which the individual is a shareholder, partner, or member, provided that the individual maintains a minimum 20-percent interest in the vessel owned by the corporation, partnership, or other entity. For purposes of this paragraph, interest in a vessel is determined as the percentage ownership of a corporation, partnership, or other entity by that individual multiplied by the percentage of ownership of the vessel by the corporation, partnership, or other entity.

(5) IFQ derived from QS held by a CQE must be used only by the individual whose IFQ permit account contains the resulting IFQ.

(j) Use of IFQ resulting from QS assigned to vessel category B, C, or D by corporations, partnerships, or other non-individual entities. (1) Except as provided in paragraph (j)(7) of this section, a corporation, partnership, association, or other non-individual entity that received an initial allocation of QS assigned to category B, C, or D may fish the IFQ resulting from that QS and any additional QS acquired within the limitations of this section from a vessel if that corporation, partnership, association, or other non-individual entity:

(i) For a documented vessel, owns a minimum 20-percent interest in the vessel as shown by the U.S. Abstract of Title issued by the U.S. Coast Guard that lists the corporation, partnership, association, or other non-individual entity as an owner and, if necessary to prove the required percentage ownership interest, other written documentation;

(ii) For an undocumented vessel, owns a minimum 20-percent interest in the vessel as shown by a State of Alaska vessel license or registration that lists the corporation, partnership, association, or other non-individual entity as an owner and, if necessary to show the required percentage ownership interest, other written documentation; and

(iii) Is represented on the vessel by a hired master employed by that individual and permitted in accordance with §679.4(d)(2).

(2) The provision of paragraph (j)(1) of this section is not transferable and does not apply to QS assigned to vessel category B, C, or D for halibut in IFQ regulatory Area 2C or for sablefish in the IFQ regulatory area east of 140° W. long. that is transferred to a corporation, partnership, association, or other non-individual entity. Such transfers of additional QS within these areas must be to an individual pursuant to §679.41(c) and be used pursuant to paragraphs (c) and (i) of this section.

(3) A corporation, partnership, association, or other non-individual entity, except for a publicly held corporation, that receives an initial allocation of QS assigned to vessel category B, C, or D loses the exemption provided under this paragraph (j) on the effective date of a change in the corporation, partnership, association, or other non-individual entity from that which existed at the time of initial allocation.

(4) For purposes of this paragraph (j), a change means:

(i) For corporations and partnerships, the addition of any new shareholder(s) or partner(s), except that a court appointed trustee to act on behalf of a shareholder or partner who becomes incapacitated is not a change in the corporation, partnership, association, or other non-individual entity; or

(ii) For estates, the final or summary distribution of the estate.

(5) The Regional Administrator must be notified of a change in the corporation, partnership, association, or other non-individual entity as defined in this paragraph (j) within 15 days of the effective date of the change. The effective date of change, for purposes of this paragraph (j), is the date on which the new shareholder(s) or partner(s) may realize any corporate liabilities or benefits of the corporation, partnership, association, or other non-individual entity or, for estates, the date of the determination of a legal heir to the estate, or the date of the order for distribution of the estate.
(6) QS assigned to vessel category B, C, or D and IFQ resulting from that QS held in the name of a corporation, partnership, association, or other non-individual entity that changes, as defined in this paragraph (j), must be transferred to an individual, as prescribed in §679.41, before it may be used at any time after the effective date of the change.

(7) A corporation, partnership, association, or other non-individual entity that received an initial allocation of QS assigned to category B, C, or D and that, prior to April 17, 1997, employed a master to fish any of the IFQ issued to that corporation, partnership, association, or other non-individual entity may continue to employ a master to fish its IFQ on a vessel owned by the corporation, partnership, association, or other non-individual entity provided that the corporation, partnership, association, or other non-individual entity continues to own the vessel at no lesser percentage of ownership interest than that held on April 17, 1997, and provided that corporation, partnership, association, or other non-individual entity did not acquire additional QS through transfer after September 23, 1997.

(8) A corporation, partnership, or other non-individual entity, except for a publicly held corporation, that receives an allocation of QS must provide annual updates to the Regional Administrator identifying all current shareholders, partners, or members to the individual person level and affirming the entity’s continuing existence as a corporation or partnership, or other non-individual entity.

(9) The exemption provided in this paragraph (j) may be exercised by a corporation, partnership, association, or other non-individual entity on a vessel owned by a person who is a shareholder in the corporation, partnership, association, or other non-individual entity that changes, as defined in this paragraph (j), provided that the corporation, partnership, association, or other non-individual entity owns a minimum of 20-percent interest in the vessel. For purposes of this paragraph (j), interest in a vessel is determined as the percentage of ownership in the corporation, partnership, association, or other non-individual entity by that person who is a shareholder in the corporation, partnership, association, or other non-individual entity, multiplied by the percentage of ownership in the vessel by that person who is a shareholder in the corporation, partnership, association, or other non-individual entity.

(k) Sablefish vessel clearance requirements—(1) General. Any vessel operator who fishes for sablefish in the Bering Sea or Aleutian Islands IFQ regulatory areas must possess a transmitting VMS transmitter while fishing for sablefish.

(2) VMS requirements. (i) The operator of the vessel must comply with §679.28(f)(3), (f)(4), and (f)(5); and (ii) The operator of the vessel must contact NMFS at 800–304–4846 (option 1) between 0600 and 0000 A.l.t. and receive a VMS confirmation number at least 72 hours prior to fishing for sablefish in the Bering Sea or Aleutian Islands IFQ regulatory areas.

[61 FR 31230, June 19, 1996]
§ 679.42 Limitations on use of QS and IFQ.

2. At 79 FR 10011, Feb. 24, 2014, § 679.42 was amended by revising paragraphs (i)(1)(i), (i)(1)(ii), and (i)(4); and adding paragraphs (i)(1)(iv), (i)(1)(v), (i)(6) and (i)(7), effective Mar. 23, 2015. For the convenience of the user, the added and revised text is set forth as follows:

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* * * * *

(i) For a documented vessel, during the 12-month period previous to the application by the individual for a hired master permit, continuously owned a minimum 20-percent interest in the vessel as shown by the U.S. Abstract of Title issued by the U.S. Coast Guard that lists the individual as an owner and, if necessary to show 20-percent ownership for 12 months, additional written documentation; or

(ii) For an undocumented vessel, during the 12-month period previous to the application by the individual for a hired master permit, continuously owned a minimum 20-percent interest in the vessel as shown by a State of Alaska license or registration that lists the individual as an owner and, if necessary to show the 20-percent ownership for 12 months, additional written documentation; and

* * * * *

(iv) NMFS review of application for exemption—A: Initial evaluation. The Regional Administrator will evaluate an application for a hired master submitted in accordance with paragraphs (i)(1), (i)(6), and (i)(7) of this section. An applicant who fails to submit the information specified in the application for a hired master will be provided a reasonable opportunity to submit the specified information or submit a revised application.

(B) Initial administrative determinations (IAD). The Regional Administrator will prepare and send an IAD to an individual submitting an application for a hired master submitted in accordance with paragraphs (i)(1), (i)(6), and (i)(7) of this section if the Regional Administrator determines that the information required to be submitted to NMFS is deficient or if the applicant fails to submit the required information. The IAD will indicate the deficiencies with the information submitted. An applicant who receives an IAD may appeal under the appeals procedures set out at § 679.43.

(v) Upon request by the Regional Administrator or an authorized officer, a person must submit additional written documentation necessary to establish the required minimum 20-percent interest in the vessel during the 12-month period previous to the application by the individual for a hired master permit.

* * * * *

4. The exemption provided in paragraph (i)(1) of this section may be exercised by an individual on a vessel owned by a corporation, partnership, association or other non-individual entity in which the individual is a shareholder, partner, or member, provided that during the 12-month period previous to the application by the individual for a hired master permit, the individual continuously maintained a minimum 20-percent ownership interest in the vessel owned by the corporation, partnership, association or other non-individual entity. For purposes of this paragraph, an individual’s interest in a vessel is determined by the percentage ownership by the individual of a corporation, partnership, association or other non-individual entity that has an ownership interest in the vessel multiplied by the percentage of ownership of the vessel by the corporation, partnership, or other non-individual entity.

* * * * *

6. In the event of the total loss or irreparable damage to a vessel owned by an individual who qualifies for the exemption in paragraph (i)(1) of this section, the individual may remain exempt under paragraph (i)(1) of this section until December 31 of the year following the year in which the vessel was lost or damaged, provided that the individual meets the following requirements:

(i) The loss or irreparable damage to the vessel was caused by an act of God, an act of war, a collision, an act or omission of a party other than the individual or agent of the individual, or any other event not caused by the willful misconduct of the individual or agent of the individual.

(ii) The lost or irreparably damaged vessel is a commercial fishing vessel that was previously used to harvest halibut IFQ or sablefish IFQ of the individual who qualifies for the exemption in paragraph (i)(1) of this section;

(iii) As part of the application for exemption, the individual submits to NMFS a copy of the USCG Form 2692 submitted to the USCG as specified in 46 CFR 4.05; and

(iv) The individual is applying to use a hired master on a vessel in which the individual has a minimum 20-percent ownership interest as of the date of the application by the individual for a hired master permit.

7. In the event of temporary disablement of a vessel owned by an individual who qualifies for the exemption in paragraph (i)(1) of this section, the individual may remain exempt under paragraph (i)(1) of this section until December 31 of the year following the
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Determinations and appeals.

(a) General. This section describes the procedure for appealing initial administrative determinations made in this title under parts 300, 679, 680, and subpart E of part 300 of this chapter.

(b) Who may appeal. Any person whose interest is directly and adversely affected by an initial administrative determination may file a written appeal. For purposes of this section, such persons will be referred to as "applicant" or "appellant."

(c) Submission of appeals. Appeals must be in writing and must be mailed to the: National Marine Fisheries Service, Office of Administrative Appeals (OAA), P. O. Box 21668, Juneau, AK 99802–1668, or delivered to National Marine Fisheries Service, Attention: Appeals (OAA), 709 W. 9th Street, Room 453, Juneau, AK 99801.

(d) Timing of appeals. (1) If an applicant appeals an initial administrative determination, the appeal must be filed not later than 60 days after the date the determination is issued.

(2) The time period within which an appeal may be filed begins to run on the date the initial administrative determination is issued. If the last day of the time period is a Saturday, Sunday, or Federal holiday, the time period will extend to the close of business on the next business day.

(e) Address of record. General—NMFS will establish as the address of record the address used by the applicant in initial correspondence to NMFS concerning the application. Notifications of all actions affecting the applicant after establishing an address of record will be mailed to that address, unless the applicant provides NMFS, in writing, with any changes to that address. NMFS bears no responsibility if a notification is sent to the address of record and is not received because the applicant’s actual address has changed without notification to NMFS.

(f) Statement of reasons for appeals. Applicants must timely submit a full written statement in support of the appeal, including a concise statement of the reasons the initial administrative determination has a direct and adverse effect on the applicant and should be reversed or modified. If the applicant requests a hearing on any issue presented in the appeal, such request for hearing must be accompanied by a concise written statement raising genuine and substantial issues of adjudicative fact for resolution and a list of available and specifically identified reliable evidence upon which the factual issues can be resolved. The appellate officer will limit his/her review to the issues stated in the appeal; all issues not set out in the appeal will be waived.

(g) Hearings. The appellate officer will review the applicant’s appeal and request for hearing, and has discretion to proceed as follows:

(1) Deny the appeal;

(2) Issue a decision on the merits of the appeal, if the record contains sufficient information on which to reach final judgment; or

(3) Order that a hearing be conducted. The appellate officer may so order only if the appeal demonstrates the following:

(i) There is a genuine and substantial issue of adjudicative fact for resolution at a hearing. A hearing will not be ordered on issues of policy or law.

(ii) The factual issue can be resolved by available and specifically identified reliable evidence. A hearing will not be ordered on the basis of mere allegations or denials or general descriptions of positions and contentions.