

Fishery Conservation and Management

§ 679.40

made between January 1 and December 31 of the same year.

(4) *Applicable percentage.* The CDQ group representative must use the CDQ fee percentage applicable at the time a CDQ groundfish and halibut landing is debited from a CDQ group's allocation to calculate the CDQ fee liability for any retroactive payments for that CDQ species.

(5) *Fee liability determination for a CDQ group.* (i) Each CDQ group will be subject to a CDQ fee for any CDQ groundfish and halibut debited from that CDQ group's allocation during a calendar year.

(ii) The CDQ fee assessed to a CDQ group will be based on the proportion of the standard ex-vessel value of CDQ groundfish and halibut debited from a CDQ group's allocation relative to all CDQ groups during a calendar year as determined by NMFS.

(iii) NMFS will provide a CDQ fee liability summary letter to each CDQ group representative by December 1 of each year. The summary will explain the CDQ fee liability determination including the current fee percentage, and details of CDQ pounds debited from the CDQ group allocations by permit, species, date, and prices.

(d) *Underpayment of fee liability*—(1) No CDQ group will receive its allocations of CDQ groundfish or halibut until the CDQ group representative submits full payment of that CDQ group's complete CDQ fee liability.

(2) If a CDQ group representative fails to submit full payment for its CDQ fee liability by the date described in paragraph (a)(3) of this section, the Regional Administrator may:

(i) At any time thereafter send an IAD to the CDQ group representative stating that the CDQ group's estimated fee liability, as indicated by his or her own submitted information, is the CDQ fee liability due from the CDQ group.

(ii) Disapprove any application to transfer CDQ to or from the CDQ group in accordance with § 679.31(c).

(3) If a CDQ group fails to submit full payment by December 31 of each year, the Regional Administrator will not issue allocations of CDQ groundfish and halibut to that CDQ group for the following calendar year.

(4) Upon final agency action determining that a CDQ group representative has not paid the CDQ fee liability due for that CDQ group, the Regional Administrator may continue to not issue allocations of CDQ groundfish and halibut for that CDQ group for any subsequent calendar years until NMFS receives the unpaid fees. If payment is not received by the 30th day after the final agency action, the agency may pursue collection of the unpaid fees.

(e) *Over payment.* Upon issuance of final agency action, payment submitted to NMFS in excess of the CDQ fee liability determined to be due by the final agency action will be returned to the CDQ group representative unless the CDQ group representative requests the agency to credit the excess amount against the CDQ group's future CDQ fee liability.

(f) *Appeals.* A CDQ group representative who receives an IAD for incomplete payment of a CDQ fee liability may appeal under the appeals procedures set out at 15 CFR part 906.

(g) *Annual report.* Each year, NMFS will publish a report describing the CDQ Cost Recovery Fee Program for groundfish and halibut.

[81 FR 167, Jan. 5, 2016]

Subpart D—Individual Fishing Quota Management Measures

§ 679.40 Sablefish and halibut QS.

The Regional Administrator shall annually divide the annual commercial fishing catch limit of halibut as defined in § 300.61 of this title and published in the FEDERAL REGISTER pursuant to § 300.62 of this title, among qualified halibut quota share holders. The Regional Administrator shall annually divide the TAC of sablefish that is apportioned to the fixed gear fishery pursuant to § 679.20, minus the CDQ reserve, among qualified sablefish quota share holders.

(a) *Initial allocation of QS*—(1) *General.* The Regional Administrator shall initially assign to qualified persons, on or after October 18, 1994, halibut and sablefish fixed gear fishery QS that are specific to IFQ regulatory areas and vessel categories. QS will be assigned

as a block in the appropriate IFQ regulatory area and vessel category, if that QS would have resulted in an allocation of less than 20,000 lb (9 mt) of IFQ for halibut or sablefish based on the 1994 TAC for fixed gear in those fisheries for specific IFQ regulatory areas and the QS pools of those fisheries for specific IFQ regulatory areas as of October 17, 1994.

(2) *Qualified person.* (i) As used in this section, a “qualified person” means a “person,” as defined in § 679.2:

(A) That owned a vessel that made legal landings of halibut or sablefish, harvested with fixed gear, from any IFQ regulatory area in any QS qualifying year; or

(B) That leased a vessel that made legal landings of halibut or sablefish, harvested with fixed gear, from any IFQ regulatory area in any QS qualifying year. A person who owns a vessel cannot be a qualified person based on the legal fixed gear landings of halibut or sablefish made by a person who leased the vessel for the duration of the lease.

(C) Who is a citizen of the United States at the time of application for QS.

(D) Who is a corporation, partnership, association, or other non-individual entity that would have qualified to document a fishing vessel as a vessel of the United States during the QS qualifying years of 1988, 1989, and 1990.

(ii) Qualified persons, or their successors-in-interest, must exist at the time of their application for QS.

(iii) A former partner of a dissolved partnership or a former shareholder of a dissolved corporation who would otherwise qualify as a person may apply for QS in proportion to his or her interest in the dissolved partnership or corporation.

(iv) Sablefish harvested within Prince William Sound, or under a State of Alaska limited entry program, will not be considered in determining whether a person is a qualified person.

(3) *Qualification for QS—(i) Year.* A QS qualifying year is 1988, 1989, or 1990.

(ii) *Vessel ownership.* Evidence of vessel ownership shall be limited to the following documents, in order of priority:

(A) For vessels required to be documented under the laws of the United States, the USCG abstract of title issued in respect of that vessel.

(B) A certificate of registration that is determinative as to vessel ownership.

(C) A bill of sale.

(iii) *Vessel lease.* Conclusive evidence of a vessel lease will include a written vessel lease agreement or a notarized statement from the vessel owner and lease holder attesting to the existence of a vessel lease agreement at any time during the QS qualifying years. Conclusive evidence of a vessel lease must identify the leased vessel and indicate the name of the lease holder and the period of time during which the lease was in effect. Other evidence, which may not be conclusive, but may tend to support a vessel lease, may also be submitted.

(iv) *Ownership interest.* Evidence of ownership interest in a dissolved partnership or corporation shall be limited to corporate documents (e.g., articles of incorporation) or notarized statements signed by each former partner, shareholder or director, and specifying their proportions of interest.

(v) *Legal landing of halibut or sablefish—(A) Definition.* As used in this section, a “legal landing of halibut or sablefish” means halibut or sablefish harvested with fixed gear and landed in compliance with state and Federal regulations in effect at the time of the landing.

(B) *Documentation.* Evidence of legal landings shall be limited to documentation of state or Federal catch reports that indicate the amount of halibut or sablefish harvested, the IPHC regulatory area or groundfish reporting area in which it was caught, the vessel and gear type used to catch it, and the date of harvesting, landing, or reporting. State catch reports are Alaska, Washington, Oregon, or California fish tickets. Federal catch reports are production reports required under § 679.5. Sablefish harvested within Prince William Sound or under a State of Alaska limited entry program will not be considered in determining qualification to receive QS, nor in calculating initial QS.

(4) *Calculation of initial QS*—(i) *Halibut QS*. The Regional Administrator shall calculate the halibut QS for any qualified person in each IFQ regulatory area based on that person's highest total legal landings of halibut in each IPHC regulatory area for any 5 years of the 7-year halibut QS base period 1984 through 1990. The sum of all halibut QS for an IFQ regulatory area will be the halibut QS pool for that area.

(ii) *Sablefish QS*. The Regional Administrator shall calculate the sablefish QS for any qualified person in each IFQ regulatory area based on that person's highest total legal landings of sablefish in each groundfish reporting area for any 5 years of the 6-year sablefish QS base period 1985 through 1990. The sum of all sablefish QS for an IFQ regulatory area will be the sablefish QS pool for that area.

(iii) *CDQ program*. Each initial QS calculation will be modified to accommodate the CDQ program prescribed at subpart C of this part.

(5) *Assignment of QS to vessel categories*—(i) *LOA*. Each qualified person's QS will be assigned to a vessel category based on the LOA of vessel(s) from which that person made fixed gear legal landings of groundfish or halibut in the most recent year of participation and the product type landed. As used in this paragraph (a)(5), "the most recent year of participation" means the most recent of 4 calendar years in which any groundfish or halibut were harvested using fixed gear, as follows: 1988, 1989, or 1990; or calendar year 1991 prior to September 26, 1991.

(ii) *Vessel categories*. QS and its associated IFQ assigned to vessel categories include:

(A) Category A QS and associated IFQ, which authorizes an IFQ permit holder to harvest and process IFQ species on a vessel of any length;

(B) Category B QS and associated IFQ, which authorizes an IFQ permit holder to harvest IFQ species on a vessel of any length;

(C) Category C QS and associated IFQ, which authorizes an IFQ permit holder to harvest IFQ species on a vessel less than or equal to 60 ft (18.3 m) LOA;

(D) Category D QS and associated IFQ, which authorizes an IFQ permit

holder to harvest IFQ halibut on a vessel less than or equal to 35 ft (10.7 m) LOA, except as provided in § 679.42(a).

(iii) *QS assignment*. A qualified person's QS will be assigned:

(A) To vessel category A if, at any time during his/her most recent year of participation, that person's vessel processed any groundfish or halibut caught with fixed gear.

(B) To vessel category B if, at any time during his/her most recent year of participation, that person's vessel was greater than 60 ft (18.3 m) LOA and did not process any groundfish or halibut caught with fixed gear.

(C) To each applicable vessel category in proportion to the landings of halibut or sablefish made by that person if, at any time during their most recent year of participation, that person used more than one vessel in different categories.

(iv) *Sablefish QS*. A qualified person's sablefish QS will be assigned:

(A) To vessel category C if, at any time during his/her most recent year of participation, that person's vessel was less than or equal to 60 ft (18.3 m) LOA and did not process any groundfish or halibut caught with fixed gear.

(B) To the vessel category in which halibut and groundfish were landed, or vessel categories in proportion to the total fixed gear landings of halibut and groundfish, if, at any time during the most recent year of participation, that person's vessel(s) makes no landing(s) of sablefish.

(v) *Halibut QS*. A qualified person's halibut QS will be assigned:

(A) To vessel category C if, at any time during his/her most recent year of participation, that person's vessel was less than or equal to 60 ft (18.3 m), but greater than 35 ft (10.7 m), LOA and did not process any groundfish or halibut caught with fixed gear.

(B) To vessel category D if, at any time during his/her most recent year of participation, that person's vessel was less than or equal to 35 ft (10.7 m) LOA and did not process any groundfish or halibut caught with fixed gear.

(C) To the vessel category in which groundfish were landed, or vessel categories in proportion to the total fixed gear landings of groundfish, if, at any time during the most recent year of

participation, that person's vessel(s) makes no landing(s) of halibut.

(vi) *Both species QS.* A qualified person's QS for both species will be assigned to the vessel category in which groundfish were landed in the most recent year of participation if, at any time during that year, that person landed halibut in one vessel category and sablefish in a different vessel category.

(6) *Application for initial QS—(i) Application form.* The Application period for QS ended on July 15, 1994. As of that date, the Request for QS Application form replaced the QS Application form as the means by which the Administrator, RAM, reviews and makes initial administrative determinations on requests for initial allocations of QS. A Request for QS Application must contain the following: information identifying the individual, representative of a deceased fisherman's estate, corporation, partnership, or other non-individual entity, or dissolved corporation, partnership, or other non-individual entity making the request; contact numbers; vessel identification, length overall, and purchase date; and information on any vessel leasing arrangement pertinent to the claim of eligibility.

(ii) *Application period.* An application period of no less than 180 days will be specified by notification in the FEDERAL REGISTER and other information sources that the Regional Administrator deems appropriate.

(iii) *Complete application.* Complete applications received by the Regional Administrator will be acknowledged. An incomplete application will be returned to the applicant with specific kinds of information identified that are necessary to make it complete.

(7) *Insufficient documentation.* Halibut and sablefish catch history, vessel ownership or lease data, and other information supplied by an applicant will be compared with data compiled by the Regional Administrator. If additional data presented in an application are not consistent with the data compiled by the Regional Administrator, the applicant will be notified of insufficient documentation. The applicant will have 90 days to submit corroborating documents (as specified in paragraph

(a) of this section) in support of his/her application or to resubmit a revised application. All applicants will be limited to one opportunity to provide corroborating documentation or a revised application in response to notification of insufficient documentation.

(8) *Verified data.* Uncontested data in applications will be approved by the Regional Administrator. Based on these data, the Regional Administrator will calculate each applicant's initial halibut and sablefish QS, as provided in paragraph (b) of this section, for each IFQ regulatory area, respectively, and will add each applicant's halibut and sablefish QS for an IFQ regulatory area to the respective QS pool for that area.

(9) *Unverified data.* Catch history, vessel ownership, or lease data that cannot be verified by the Regional Administrator, following the procedure described in paragraph (a)(7) of this section, will not qualify for QS. An initial determination denying QS on the grounds that claimed catch history, vessel ownership or lease data were not verified may be appealed following the procedure described in §679.43. Quota share reflecting catch history, vessel ownership, or lease data that are contested between two or more applicants, at least one of which is likely to qualify for QS when the dispute is resolved, will be assigned to a reserve that will be considered part of the QS pool for the appropriate IFQ regulatory area. Any QS and IFQ that results from agency action resolving the dispute will be assigned to the prevailing applicant(s) pursuant to paragraphs (a)(4), (a)(5), (b), and (c) of this section. If the assigned IFQ for the 1995 fishing season becomes moot by passage of time needed to resolve the dispute, the assignment of QS and IFQ for subsequent fishing seasons will be unaffected.

(10) NMFS revokes inactive QS if the person holding inactive QS does not:

(i) Respond in writing to NMFS, within 60 days after NMFS issues a Notice of Determination of Quota Share Inactivity (Inactive QS Notice) sent to the address of record as defined at §679.43(e) of this part, requesting that the inactive QS not be revoked. Responses must be received by NMFS no later than the date contained on the Inactive QS Notice

(ii) For purposes of paragraph (a)(10) of this section, “respond in writing” means write a statement directing NMFS to change the status of QS to “active” and sign and date the statement or complete the form attached to the Inactive QS Notice and send by U.S. Mail, courier, hand delivery, or facsimile to the NMFS, Alaska Region as provided on the Inactive QS Notice and printed on the front side of the form. The written response must be received by NMFS no later than the date contained on the Inactive QS Notice or if sent by mail, postmarked by that date. If delivered by hand or courier, the receiving date is the date the notice is stamped received by NMFS.

(iii) For purposes of paragraph (a)(10) of this section, the term “inactive QS” means halibut QS or sablefish QS, held by a person who received an initial allocation of halibut QS or sablefish QS and has not taken any of the following actions:

(A) Transferred any halibut QS or sablefish QS pursuant to §679.41;

(B) Transferred any halibut IFQ or sablefish IFQ pursuant to §679.41;

(C) Landed any halibut authorized by IFQ halibut permit(s) issued to that person; or

(D) Landed any sablefish authorized by IFQ sablefish permit(s) issued to that person.

(b) *Annual allocation of IFQ and RFQ.* The Regional Administrator shall assign halibut or sablefish IFQs to each person, except the RQE, holding unrestricted QS halibut or sablefish, respectively, up to the limits prescribed in §679.42(e) and (f). Each assigned IFQ will be specific to an IFQ regulatory area and vessel category, and will represent the maximum amount of halibut or sablefish that may be harvested from the specified IFQ regulatory area and by the person to whom it is assigned during the specified fishing year, unless the IFQ assignment is changed by the Regional Administrator within the fishing year because of an approved transfer or because all or part of the IFQ is sanctioned for violating rules of this part. The Regional Administrator shall assign RFQ to the RQE pursuant to paragraph (c)(4) of this section.

(c) *Calculation of annual IFQ and RFQ allocations—(1) General.* (i) The annual allocation of halibut IFQ to any person (person p) in any IFQ regulatory area (area a) will be equal to the product of the annual commercial catch limit as defined in §300.61 of this title, after adjustment for purposes of the Western Alaska CDQ Program, and that person’s QS divided by the QS pool for that area. Overage adjustments will be subtracted from a person’s IFQ pursuant to paragraph (d) of this section; underage adjustments will be added to a person’s IFQ pursuant to paragraph (e) of this section. Expressed algebraically, the annual halibut IFQ allocation formula is as follows:

$$IFQ_{pa} = [(fixed\ gear\ TAC_a - CDQ\ reserve_a) \times (QS_{pa}/QS\ pool_a)] - overage\ adjustment\ of\ IFQ_{pa} + underage\ adjustment\ of\ IFQ_{pa}.$$

(ii) The annual allocation of sablefish IFQ to any person (person p) in any IFQ regulatory area (area a) will be equal to the product of the TAC of sablefish by fixed gear for that area (after adjustment for purposes of the Western Alaska CDQ Program) and that person’s QS divided by the QS pool for that area. Overage adjustments will be subtracted from a person’s IFQ pursuant to paragraph (d) of this section; underage adjustments will be added to a person’s IFQ pursuant to paragraph (e) of this section. Expressed algebraically, the annual IFQ allocation formula is as follows:

$$IFQ_{pa} = [(fixed\ gear\ TAC_a - CDQ\ reserve_a) \times (QS_{pa}/QS\ pool_a)] - overage\ adjustment\ of\ IFQ_{pa} + underage\ adjustment\ of\ IFQ_{pa}.$$

(2) *QS amounts.* For purposes of calculating IFQs and RFQ for any fishing year, the amount of a person’s QS and the amount of the QS pool for any IFQ regulatory area will be the amounts on record with the Alaska Region, NMFS, on January 15 of that year.

(3) *IFQ permit.* The Regional Administrator shall issue to each QS holder, pursuant to §679.4, an IFQ permit specifying the maximum amount of halibut and sablefish that may be harvested with fixed gear in a specified IFQ regulatory area and vessel category. Such IFQ permits will be sent to

each QS holder at the address on record for that person prior to the start of the IFQ fishing season or to any IFQ holder(s) following transfers or penalties (15 CFR part 904).

(4) *RFQ allocation to RQE*—(i) *RQE QS amounts*. For purposes of calculating RFQ for any fishing year, the amount of halibut QS held by the RQE for either IFQ regulatory area 2C or 3A for the corresponding IFQ regulatory area will be the amounts on record with the Alaska Region, NMFS on October 1 of the year prior.

(ii) *Calculation of RFQ*. The annual allocation of RFQ halibut to an RQE (person *r*) in IFQ regulatory area 2C or 3A (area *a*) will be equal to the product of the annual commercial catch limit as defined in §300.61 of this title, and the QS held by the RQE (specified in paragraph (c)(4)(i) of this section) divided by the QS pool for that area (specified in paragraph (c)(2) of this section). No overage or underage adjustments will be applied to the RQE's annual RFQ. Expressed algebraically, the annual RFQ halibut allocation formula is as follows:

$$\text{RFQ}_{ra} = [\text{fixed gear TAC}_a \times (\text{QS}_{ra}/\text{QS pool}_a)]$$

(iii) *Excess RFQ*. NMFS will not issue the RQE any excess RFQ. Excess RFQ is the difference between the amount of RFQ based on the QS held by the RQE and the amount of RFQ needed to provide charter fishery management measures that are equivalent to unguided recreational fishery management measures. If the annual management measures published pursuant to §300.62 of this title specify charter fishery management measures that are equivalent to the unguided recreational management measures, NMFS will:

(A) Calculate the annual allocation of halibut RFQ to the RQE as specified in paragraph (c)(4)(ii) of this section; and

(B) Determine the amount of RFQ needed to supplement the annual guided sport catch limit from the CSP in Area 2C and Area 3A (described in §300.65(c) of this title) to account for charter fishery harvests under the charter fishery management measures specified in the annual management

measures and issue that amount of RFQ to the RFQ permit account.

(C) Calculate the amount of excess RFQ by subtracting the amount of RFQ issued as determined in paragraph (c)(4)(iii)(B) of this section from the annual calculation of RFQ halibut to the RQE as calculated in paragraph (c)(4)(iii)(A) of this section.

(iv) *Redistribution of excess RFQ*. Excess pounds of RFQ will be redistributed as IFQ as follows:

(A) 50 percent to all catcher vessel QS holders in the applicable area who held not more than 32,333 QS units in Area 2C, and 47,469 QS units in Area 3A in the current calendar year and in the calendar year prior to the redistribution, in proportion to their QS holdings; and

(B) 50 percent divided equally among all CQEs that held halibut QS in the applicable IFQ regulatory area (Area 2C or Area 3A) in the current calendar year and in the calendar year prior to the redistribution. If no CQE held QS in the applicable IFQ regulatory area (Area 2C and Area 3A) in the current calendar year and in the calendar year prior to the redistribution, that RFQ will not be redistributed as IFQ and will not be available for use by any CQE, IFQ permit holder, or RQE in that calendar year.

(d) *Ten-percent adjustment policy*. A person's annual IFQ account will be adjusted in the year following a determination that the person harvested or landed IFQ species in an amount is greater than the amount available in the person's annual IFQ account and if the amount greater than the amount available does not exceed 10 percent of the amount available in the person's annual IFQ account at the time of landing. The adjustment would be a deduction of the amount of IFQ species harvested or landed that was determined to exceed the amount available in the person's annual IFQ account and will apply to any person to whom the affected IFQ is allocated in the year following the determination.

(e) *Underages*. Underages of up to 10 percent of a person's total annual IFQ account for a current fishing year will be added to that person's annual IFQ

account in the year following determination of the underage. This underage adjustment to the annual IFQ allocation will be specific to IFQ species, IFQ regulatory area, and vessel category for which an IFQ is calculated, and will apply to any person to whom the affected IFQ is allocated in the year following determination of an underage.

(f) *Harvesting privilege.* Quota shares allocated or permits issued pursuant to this part do not represent either an absolute right to the resource or any interest that is subject to the “takings” provision of the Fifth Amendment of the U.S. Constitution. Rather, such quota shares or permits represent only a harvesting privilege that may be revoked or amended subject to the requirements of the Magnuson-Stevens Act and other applicable law.

(g) *External research tags for halibut and sablefish.* (1) Nothing contained in this part 679 shall prohibit any person at any time from retaining and landing a Pacific halibut or sablefish that bears at the time of capture an external research tag from any state, Federal, or international agency, provided that the halibut or sablefish is one of the following:

(i) A Pacific halibut landed pursuant to §300.62 of this title and to this part 679; or

(ii) A sablefish landed in accordance with the Tagged Groundfish Research Program, and in compliance with all sablefish requirements of this part 679.

(2) Halibut and sablefish bearing an external research tag from any state, Federal, or international agency, landed pursuant to paragraph (g)(1)(i) or (g)(1)(ii) of this section, and in accordance with §679.5(1), shall be excluded from IFQ or CDQ deduction as follows:

(i) The fish shall not be calculated as part of a person’s IFQ harvest of halibut or sablefish and shall not be debited against a person’s halibut IFQ or a person’s sablefish IFQ; or

(ii) The fish shall not be calculated as part of the CDQ harvest of halibut or sablefish and shall not be debited

against a CDQ group’s halibut CDQ or a CDQ group’s sablefish CDQ.

(iii) The fish will not be calculated as part of the recreational harvest of halibut and will not be debited against the RFQ permit account or the annual guided sport catch limit as defined in §300.61 of this title.

(h) *Properly debited landing—(1) Permit holder’s account.* Except as provided in paragraph (g) of this section, all IFQ halibut, CDQ halibut, and IFQ sablefish catch onboard a vessel must be weighed and debited from the IFQ permit holder’s account or CDQ halibut permit holder’s account under which the catch was harvested.

(2) *Properly debited account.* A properly concluded sablefish/halibut IFQ landing receipt, crab IFQ landing receipt, or a manual IFQ landing report which is signed by the Registered Buyer and IFQ permit holder or IFQ hired master permit holder or CDQ hired master permit holder constitutes confirmation that the IFQ permit holder’s or CDQ permit holder’s account is properly debited.

(3) *Source of debit.* NMFS will use the following sources (see paragraphs (h)(3)(i), (ii) and (iii) of this section) of information to debit a CDQ halibut, IFQ halibut, IFQ sablefish, or RFQ permit account:

(i) *Unprocessed landing.* If offload of unprocessed IFQ halibut, CDQ halibut, or IFQ sablefish from a vessel, the scale weight (to the nearest pound) of the halibut or sablefish product actually measured at the time of offload, as required by §679.5(e)(7)(i)(E)(6) to be included in the IFQ Landing Report.

(ii) *Processed landing.* If offload of processed IFQ halibut, CDQ halibut, or IFQ sablefish from a vessel, the scale weight (to the nearest pound) of the halibut or sablefish processed product actually measured at or before the time of offload. If the product scale weights are taken before the time of offload, then the species and actual product weight of each box or container must be visibly marked on the outside of each container to facilitate inspection by OLE or designees.

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(iii) *Landed RFQ.* All annual RFQ halibut issued to an RQE will be considered landed in the year for which it is issued.

[61 FR 31230, June 19, 1996, as amended at 61 FR 35579, July 5, 1996; 61 FR 41525, Aug. 9, 1996; 61 FR 43314, Aug. 22, 1996; 62 FR 59299, Nov. 3, 1997; 66 FR 27910, May 21, 2001; 67 FR 4133, Jan. 28, 2002; 71 FR 36492, June 27, 2006; 72 FR 44809, Aug. 9, 2007; 73 FR 76166, Dec. 15, 2008; 76 FR 40633, July 11, 2011; 77 FR 29563, May 18, 2012; 78 FR 75893, Dec. 12, 2013; 83 FR 47831, Sept. 21, 2018]

§ 679.41 Transfer of quota shares and IFQ.

(a) *General.* (1) Except as provided in paragraph (a)(2) of this section, transfer of QS or IFQ means any transaction requiring QS, or the use thereof in the form of IFQ, to pass from one person to another, permanently or for a fixed period of time.

(2) Transactions requiring IFQ permits to be issued in the name of a hired master employed by an individual or a corporation are not transfers of QS or IFQ.

(3) Any transaction involving a transfer between IFQ and guided angler fish (GAF), as defined in § 300.61 of this title, is governed by regulations in § 300.65(c) of this title.

(b) *Transfer procedure*—(1) *Application for transfer.* An Application for Transfer of QS/IFQ (Application for Transfer) must be approved by the Regional Administrator before a person may use IFQ to harvest IFQ halibut or IFQ sablefish, whether the IFQ was the result of a direct transfer or the result of a QS transfer. An Application for Transfer will not be approved until the Regional Administrator has reviewed and approved the transfer agreement signed by the parties to the transaction. The Regional Administrator shall provide an Application for Transfer form to any person on request. Persons who submit an Application for Transfer to the Regional Administrator for approval will receive notification of the Regional Administrator's decision to approve or disapprove the Application for Transfer, and, if applicable, the reason(s) for disapproval, by mail posted on the date of that decision, unless another communication mode is requested on the Application for Transfer.

(2) *QS or IFQ accounts.* QS or IFQ accounts affected by an Application for Transfer approved by the Regional Administrator will change on the date of approval. Any necessary IFQ permits will be sent with the notification of the Regional Administrator's decision.

(c) *Application for Transfer approval criteria.* Except as provided in paragraph (f) of this section, an Application for Transfer will not be approved until the Regional Administrator has determined that:

(1) The person applying for transfer received the QS or IFQ to be transferred:

(i) By initial assignment by the Regional Administrator as provided in § 679.40(a); or

(ii) By approved transfer.

(2) The person applying to receive the QS or IFQ meets the requirements of eligibility in paragraph (d) of this section.

(3) The person applying for transfer and the person applying to receive the QS or IFQ have their notarized signatures on the Application for Transfer.

(4) There are no fines, civil penalties, or other payments due and owing, or outstanding permit sanctions, resulting from Federal fishery violations involving either person.

(5) The person applying to receive the QS or IFQ currently exists.

(6) The transfer would not cause the person applying to receive the QS or IFQ to exceed the use limits in § 679.42 (e) or (f).

(7) The transfer would not violate the provisions of paragraph (g) of this section.

(8)(i) The person applying to make or receive the IFQ or QS transfer has paid all IFQ fees that have become due as a result of an initial administrative determination.

(ii) The person applying to make or receive the IFQ or QS transfer who has not paid all IFQ fees that are due (as provided under § 679.45(a)) has timely appealed the administrative determination that IFQ fees have not been paid in full and has submitted to NMFS an amount sufficient to satisfy any disputed liability pending a final agency action.

(9) Other pertinent information requested on the Application for Transfer