

**Status of use of the IFQ Emergency Medical Transfer Provision**  
NOAA Fisheries/RAM

This report is provided for information only; no specific actions or program changes are requested or proposed at this time.

**Description of the provision**

An emergency medical transfer provision was added to the Fixed Gear Pacific Halibut and Sablefish Individual Fishing Quota (IFQ) Program in mid-September, 2007 (72 FR 44795, August 9, 2007). Under the IFQ Program, catcher vessel (CV) IFQ may be leased only in very limited circumstances, such as under “surviving heir” provisions and for military deployment of the QS holder. The emergency medical provision at 50 CFR § 679.42(d) authorizes leases of CV IFQ to accommodate medical conditions of individual Quota Share (QS) holders or their immediate family members, which preclude the QS holder from participating in the IFQ fishery for which (s)he holds IFQ. To limit potential abuse of the provision and encourage an owner-operator fishery, the Council recommended conservative measures which specify the provision is limited (a) to individuals who are not eligible to use Hired Masters; (b) to CV IFQ derived from QS held by the applicant; (c) include a requirement for certification by specific types of medical professionals who must describe the condition (and care required if for a family member), and certify the inability of the QS holder to participate in IFQ fisheries; further, (d) NMFS may 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. Note that the provision has been used by a small number of initial issue individuals who cannot use an IFQ Hired Master because they do not own a functional suitable vessel, or because they hold only QS for 2C (halibut) or SE (sablefish).

**Use statistics**

Since inception of medical leases on September 10, 2007, a total of 96 distinct individual CV QS holders have transferred IFQ to 90 recipients in a total of 173 transactions (note that some QS holders require multiple transfer transactions within a year to accommodate all of their IFQ). During this time period, the 173 medical leases represented 60 % of the total of 287 lease transactions for CV IFQ, and 41% of lease transactions for IFQ of any category. Numbers of transactions and transferors increased in 2009 over 2008. In these tables, for “overall” rows persons are counted “uniquely;” transactions are sums.

**Table 1. Medical Lease Transactions by Year, September 2007 - September 28, 2009**

	Number of Transactions	Number of Distinct Transferors	Number of Distinct Transferees
2007	17	13	14
2008	71	54	52
2009	85	57	53
<b>Overall</b>	<b>173</b>	<b>96</b>	<b>90</b>

**Table 2. Medical vs. other IFQ Lease Transactions, for September 10, 2007 - September 28, 2009 and Percent of Comparable Data for All CV Lease Transactions (Row “B”)**

	Number of Transactions	Number of Distinct Transferors	Number of Distinct Transferees
A. All IFQ leases	418	148	157
B. All CV leases	287	124	129
C. All Medical leases	<b>173 (60%)</b>	<b>96 (77%)</b>	<b>90 (70%)</b>

The small number of CV QS holders who use medical leases is apparently increasing, but remains a small fraction of the number of all CV QS holders:

**Table 3. Comparison of Medical Transferors with Number of QS Holders**  
(data are in numbers of unique persons and percents of CV QS holders as of year end)

Year	Number of all Persons Holding CV QS	Number of Persons Using Medical Leases (and pct of Persons Holding CV QS)
2007 from September 10	3,232	<b>30 (0.9%)</b>
2008	3,064	<b>70 (2.3%)</b>
2009 to date	3,024	<b>77 (2.6%)</b>

**Who is using the medical lease provision?**

Although small in absolute number, a substantial percentage of persons who have used medical transfers are initial issuees not otherwise eligible to use a Hired Master. In 2008 and 2009, 34 and 29 percent, respectively, of medical Transferors were initial issuees. And, at least two of the Transferors received their QS as surviving heirs.

Beginning in 2008, some individuals have used the medical transfer provision twice for the same condition. In 2009, some used a second condition as the basis for a third use.

**Table 4. Use of Multiple Medical Transfers**

Year	Number (and pct) of Medical Transferors using Same Condition Twice	Number (and pct) of Medical Transferors using More than one Successive Condition
2008	4 (4.2%)	0
2009	17 (17.7%)	9 (9.4%)

**For what types of reasons are QS holders using medical leases?**

Personal characteristics of specific QS holders, including age and health information, are confidential except in masked or aggregated form. There is no objective method for characterizing reported medical conditions. However, for analytic purposes use of subjective groupings is helpful in roughly estimating the likelihood for medical Transferors to resume future IFQ fishing in the future. Medical conditions typically of long duration were assigned to the “chronic” category.

**Table 5. Subjective Characterization of Conditions Reported for Medical Transfers**  
(percentages are approximate; some persons report multiple conditions)

Type of Condition	Number of Medical Transferors	Pct of Total (96) Transferors
“Chronic”	<b>68</b>	<b>70.8%</b>
Family Care	7	7.3%
Surgical	28	9.2%
Other	3	3.1%

Conditions assigned to the “chronic” category were further organized into 19 types of conditions and characterized as most likely, or as unlikely, to preclude resumption of fishing. Please note that this process is highly speculative; some “chronic” and “likely to preclude fishing” conditions (such as heart conditions and stroke), may be curable or manageable and may not, in fact, preclude fishing in the long term.

Each Transferor was assigned to the one “chronic” condition type that best fit even if they reported two different conditions to support more than two uses of the medical transfer provision. The following discussion and table displays results of this very subjective process. The majority of all applicants for medical transfers reported back and spinal conditions of a “continual” or “recurring” nature. The next most common reasons for medical transfers were cardiovascular conditions, cancer, or common conditions of the skeletal or musculature systems. Of the 68 Transferors persons with “chronic” conditions, 52 reported conditions that in severe form were considered likely to preclude resumption of fishing. Following this logic, 54% of all (96) persons using medical

transfers are unlikely to resume fishing; and 76% (52 of 68) reporting “chronic” medical conditions are unlikely to do so.

**Table 6. Detail of Applicant-Reported Conditions Grouped as “Chronic”**

Chronic Condition Type	Least Likely to Allow Resumption of Fishing	Number of Transferors Reporting Condition
Alzheimer’s/advanced age	x	1
Aneurysm	x	2
Anxiety about boats	x	1
Arthritis		3
Back, disc or spinal conditions	x	20
Cancer	x	8
Diabetes	x	2
Diverticulitis or related		2
Heart or cardiovascular	x	8
Multiple serious issues	x	4
Musculo-skeletal (general)		7
Parkinson’s	x	1
Progressive muscular atrophy	x	1
Seizure disorder	x	2
Skin condition/ sun damage		1
Sleep Apnea		1
Stroke	x	2
Other		2

**Discussion**

Regulations authorize the NOAA Fisheries Service, Restricted Access Management Program (RAM) to approve IFQ leases without representation or regard as to the likelihood or ability of applicants to resume IFQ fishing. From the nature of many of the conditions reported as well as specific statements made to RAM staff, it is clear that at least some applicants are using the provision to continue to hold QS as “absentee landlords” and have no expectation, ability, and/or desire to actively participate in harvesting their IFQ. As initial issue and other current QS holders age, use of medical transfers is likely to increase; especially as high lease rates provide incentive to continue to hold QS (see transfer reports on our web site: <http://alaskafisheries.noaa.gov>).

RAM staff is neither qualified nor interested in, “second guessing” medical opinion; and cannot be placed in the position of having to do so in order to approve IFQ or other transfers. However, some interpretation has been necessary to apply regulations appropriately and fairly. A common example is whether an applicant’s current reported condition is the “same” as a previously reported one. RAM’s practice is that when an

applicant reports multiple conditions in the same medical report, RAM considers the next use of any of the reported conditions to be the second and final allowed use of all of the conditions. However, in some cases an applicant reports a medical condition that has multiple effects (such as diabetes or arthritis) yet reports one effect at a time. And, some conditions such as “age” are unquestionably medical, but may not meet Council intent for use of the catcher vessel lease prohibition exemption. Absent additional requirements RAM has no choice but to approve such transfer requests. Thus, there are several ways in which applicants can repeatedly use medical transfers to support their holding QS without apparent prospects of or interest in resuming personal fishing activities.

In contrast, RAM has received a number of inquiries from initial issue individuals who have true medical issues that prevent their fishing but who do not qualify for medical transfers. Some cannot locate a willing Master, others do not want to have a master use their vessel and consider the need to acquire an interest in another vessel an unfair and “hollow” pro forma requirement.

The numbers of medical transfers and percentage of all transfer transactions requested are small and likely to remain so. However, if the Council believes that inappropriate use of the provision contravenes its intention for an owner-operator fishery, or that the provision as structured imposes unreasonable impediments to additional QS holders with bone fide medical needs, and that effective remedial steps are possible, it might wish to consider future action. Such action might include imposing an absolute limit on the number of times an applicant may use the medical provision. This would have to accommodate multiple transactions necessary to lease all of a Transferor’s IFQ within a year. If such a limit were conservative, the provision might be extended to persons able to hire masters.

The Council might wish to consider other options, such as requiring a statement from the applicant that they intend to fish in future, or from the medical professional that there exists a reasonable expectation that the applicant could resume fishing in the future, also might be considered. However, without means to deny a transfer based on such questions will likely not be effective in avoiding misuse of the transfers. Additionally, the Final Rule on page 44796 in #4 to “Changes in the Final Rule” discusses why the Council previously rejected a requirement for the medical professional to attest to the applicant’s ability to resume fishing when it said:

*The final rule eliminates the requirement proposed at § 679.42(d)(2)(iv)(B) that NMFS disapprove an application for a second medical transfer unless a health professional attested to a reasonable likelihood of recovery of the applicant. This requirement is eliminated from the final rule because the Council motion adopting this action did not have that requirement. Further, this requirement would put an applicant’s doctor or other health professional and the applicant in a difficult situation if the doctor could not attest that the applicant had a reasonable likelihood of recovery. Additionally it might be hard for a health professional to assess whether the applicant/patient has a reasonable likelihood of recovery if the patient is in the early stages of diagnosis and treatment of a disease or condition.*