

communities that are not incorporated as first or second class cities in the State of Alaska, and is not represented by a tribal government authority recognized by the Bureau of Indian Affairs. The non-profit entity that provides a statement of support must:

(1) Have articles of incorporation as a non-profit community association, homeowner association, community council, or other non-profit entity; and

(2) Have an established relationship with the State of Alaska Department of Community and Economic Development for purposes of representing that community for governmental functions.

(D) If an eligible community is not incorporated as a first or second class city in the State of Alaska, is not represented by a tribal government authority recognized by the Secretary of the Interior, and does not have a non-profit community association, homeowner association, community council, or other non-profit entity within that community with an established relationship with the Alaska Department of Community and Economic Development for purposes of representing that community for purposes of governmental functions, then the Regional Administrator, NMFS, will not consider any statement from a non-profit entity representing that community until that community:

(1) Is incorporated as a first or second class city in the State of Alaska;

(2) Establishes a tribal government authority recognized by the Secretary of the Interior; or

(3) Establishes a non-profit community association, homeowner association, community council, or other non-profit entity within that community that meets the requirements established in paragraph (E) of this section.

(E) If a community described under paragraph (1)(3)(v)(D) of this section establishes a non-profit community association, homeowner association, community council, or other non-profit entity within that community, then the Regional Administrator, NMFS, will consider any recommendations from this entity to support a particular applicant after reviewing:

(1) Petitions from residents affirming that the non-profit community associa-

tion, homeowner association, community council, or other non-profit entity within that community represents the residents within that community; and

(2) Comments from the State of Alaska Department of Community and Economic Development on the articles of incorporation for that non-profit entity and the ability of that non-profit entity to adequately represent the interests of that community for purposes of governmental functions.

(3) If the Regional Administrator determines that this statement of support is not adequate, than that determination may be appealed under the provisions established at 50 CFR 679.43.

(4) The governing body of an eligible community as that governing body is identified in Table 21 to this part, must provide authorization for any transfer of QS by the CQE that holds QS on behalf of that eligible community prior to that transfer of QS being approved by NMFS. This authorization must be submitted as part of the Application for Transfer. That authorization consists of a signature on the Application for Transfer by a representative of the governing body that has been designated by that governing body to provide such authorization to approve the transfer of QS.

[61 FR 31230, June 19, 1996, as amended at 61 FR 33385, June 27, 1996; 61 FR 41526, Aug. 9, 1996; 61 FR 67964, Dec. 26, 1996; 63 FR 47368, Sept. 4, 1998; 65 FR 14942, Mar. 20, 2000; 66 FR 27910, May 21, 2001; 67 FR 4133, 4148, Jan. 28, 2002; 69 FR 23691, Apr. 30, 2004]

§ 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:

(i) Notwithstanding § 679.4(d)(1), § 679.7(f)(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.

(3) Notwithstanding § 679.40(a)(5)(ii) of this part, IFQ assigned to vessel Category B must not be used on any vessel less than or equal to 60 ft (18.3 m) LOA to harvest IFQ halibut in IFQ regulatory area 2C or IFQ sablefish in the regulatory area east of 140° W. long. unless such IFQ derives from blocked QS units that result in IFQ of less than 5,000 lb (2.3 mt), based on the 1996 TAC for fixed gear specified for the IFQ halibut fishery and the IFQ sablefish fishery in each of these two regulatory areas.

(b) *Gear*—(1) *IFQ Fisheries*. Halibut IFQ must be used only to harvest halibut with fishing gear authorized in § 679.2. Sablefish fixed gear IFQ 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) *Requirements and deductions*. (1) Any individual who harvests halibut or sablefish with fixed gear must:

(i) Have a valid IFQ card.

(ii) Be aboard the vessel at all times during the fishing trip and present during the landing.

(iii) Sign any required fish ticket.

(iv) Sign the IFQ Landing Report required by § 679.5(1)(2)(iii)(M) or § 679.5(1)(2)(iv)(D).

(2) NMFS shall use the following sources of information to debit a CDQ or IFQ account.

(i) Except as provided in § 679.5(1)(2)(iii)(J), if offload of unproc-

essed IFQ halibut, CDQ halibut or IFQ sablefish from a vessel, the scale weight of the halibut or sablefish product actually measured at the time of offload, as required by § 679.5(1)(2)(iii) to be included in the IFQ Landing Report.

(ii) If offload of processed IFQ & CDQ halibut or IFQ sablefish from a vessel, the scale weight 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 enforcement inspection.

(3) All IFQ catch onboard a vessel must be debited from the IFQ permit holder's account under which the catch was harvested.

(d) *Emergency waiver*. The requirement of paragraph (c) of this section for an individual IFQ card holder to be aboard the vessel during fishing operations and to sign the IFQ landing report may be waived in the event of extreme personal emergency involving the IFQ user during a fishing trip. The waiving of these requirements shall apply only to IFQ halibut or IFQ sablefish retained on the fishing trip during which such emergency occurred.

(e) *Sablefish QS Use*. (1) No person, 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 areas of the Bering Sea subarea and the Aleutian Islands subareas.

(4) No CQE may hold more than 3,229,721 units of sablefish QS on behalf of any single eligible community.

(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 3 percent of the total QS in those IFQ regulatory areas specified in § 679.41(e)(2)(I) through (e)(2)(iv) of this part for sablefish in the first calendar year implementing the regulation in this section. In each subsequent calendar year, this aggregate limit on all CQEs shall increase by an additional 3 percent in each IFQ regulatory area specified in § 679.41(e)(2)(i) through (e)(2)(iv) of this part up to a maximum limit of 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.

(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 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.

(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, individually or collectively, may use 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 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.

(3) No CQE may hold halibut QS in the IFQ regulatory areas 4A, 4B, 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 3 percent of the total QS in those IFQ regulatory areas specified in §§ 679.41(e)(3)(i) through (e)(3)(iii) for halibut in the first calendar year implementing the regulation in this section. In each subsequent calendar year, this aggregate limit on all community quota entities shall increase by an additional 3 percent in each IFQ regulatory area specified in §§ 679.41(e)(3)(i) through (e)(3)(iii). This limit shall increase up to a maximum limit of 21 percent of the total QS in each regulatory area specified in §§ 679.41(e)(3)(i) through (e)(3)(iii) for halibut.

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

(7) A CQE receiving category B or C halibut QS through transfer may lease the IFQ resulting from that QS only to an eligible community resident of the eligible community represented by the CQE.

(g) *Limitations on QS blocks—(1) Number of blocks per species.* Except as provided in paragraphs (g)(1)(i) and (g)(1)(ii) of this section, no person, individually or collectively, may hold more than two blocks of each species in any IFQ regulatory area.

(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) *Holding or to hold blocks of QS.* For purposes of this section, “holding” or “to hold” blocks of QS means being registered by NMF’S 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

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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 from any halibut QS source if that vessel is used to harvest IFQ halibut derived from halibut QS held by a CQE.

(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 fixed gear TAC of sablefish 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 from any sablefish QS source if that vessel is used to harvest IFQ sablefish derived from sablefish QS held by a CQE.

(3) A person who receives an approved IFQ allocation of halibut or sablefish in excess of these limitations may nevertheless catch and retain all of that IFQ with a single vessel, except that this provision does not apply if that IFQ allocation includes IFQ derived from QS held by a CQE. However, two or more persons may not catch and retain their IFQ in excess of these limitations.

(i) *Use of IFQ resulting from QS assigned to vessel categories B, C, or D by individuals*. In addition to the requirements of paragraph (c) of this section, IFQ cards issued for IFQ resulting from QS assigned to vessel categories 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 categories 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 owns at

least a 20-percent interest in the vessel and is represented on the vessel by a master employed by that individual. NMFS will determine ownership interest for purposes of this paragraph only on the basis of written documentation. This minimum 20-percent ownership requirement does not apply to any individual who received an initial allocation of QS assigned to categories 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.

(2) The exemption provided in paragraph (i)(1) of this section does not apply to individuals who receive an initial allocation of QS assigned to vessel categories 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 transferrable.

(3) The exemption provided in paragraph (i)(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.

(4) 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 categories B, C, or D by corporations and partnerships*. Except as provided in paragraph (j)(5) of this section, a corporation or partnership that received an initial allocation of QS assigned to categories B, C, or D may fish the IFQ resulting from that QS and any

additional QS acquired within the limitations of this section provided that the corporation or partnership owns at least a 20- percent interest in the vessel on which its IFQ is fished, and that it is represented on the vessel by a master employed by the corporation or partnership that received the initial allocation of QS. NMFS will determine ownership interest for purposes of this paragraph only on the basis of written documentation. This provision is not transferrable and does not apply to QS assigned to vessel categories 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 or partnership. Such transfers of additional QS within these areas must be to an individual pursuant to §679.41(c) of this part and be used pursuant to paragraphs (c) and (i) of this section.

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

(2) 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 or partnership; or

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

(3) The Regional Administrator must be notified of a change in the corporation, partnership, or other 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 or partnership 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.

(4) QS assigned to vessel categories B, C, or D and IFQ resulting from that QS held in the name of a corporation, partnership, or other entity that changes, as defined in this paragraph, must be transferred to an individual, as prescribed in §679.41 of this part, before it may be used at any time after the effective date of the change.

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

(6) A corporation, partnership, or other entity, except for a publicly held corporation, that receives an initial allocation of QS assigned to categories B, C, or D must provide annual updates to the Regional Administrator identifying all current shareholders or partners and affirming the entity's continuing existence as a corporation or partnership.

(7) The exemption provided in paragraph (j) of this section may be exercised by a corporation, partnership, or other entity on a vessel owned by a person who is a shareholder in the corporation, partnership, or other entity, provided that the corporation, partnership, or other entity maintains a minimum of 20 percent interest in the vessel. For purposes of this paragraph, interest in a vessel is determined as the percentage of ownership in the corporation, partnership, or other entity by that person who is a shareholder in the corporation, partnership, or other entity, multiplied by the percentage of ownership in the vessel by that person who is a shareholder in the corporation, partnership, or other entity.

(k) *Processing of fish other than IFQ halibut and IFQ sablefish.* Fish other than IFQ halibut or IFQ sablefish may be processed on a vessel on which persons:

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(1) Are authorized to harvest IFQ halibut or IFQ sablefish based on allocations of IFQ resulting from QS assigned to vessel category A; or

(2) Are authorized to harvest IFQ sablefish based on allocations of IFQ resulting from QS assigned to vessel categories B or C unless any person aboard the vessel is authorized to harvest IFQ halibut based on allocations of IFQ resulting from QS assigned to vessel categories B, C, or D.

[61 FR 31230, June 19, 1996, as amended at 61 FR 33385, June 27, 1996; 61 FR 43314, Aug. 22, 1996; 62 FR 7948, Feb. 21, 1997; 62 FR 19690, Apr. 23, 1997; 62 FR 60669, Nov. 12, 1997; 62 FR 66311, Dec. 18, 1997; 63 FR 11167, Mar. 6, 1998; 63 FR 47368, Sept. 4, 1998; 63 FR 54611, Oct. 13, 1998; 64 FR 24962, May 10, 1999; 64 FR 61982, Nov. 15, 1999; 66 FR 27911, May 21, 2001; 67 FR 4133, Jan. 28, 2002; 67 FR 20918, Apr. 29, 2002; 67 FR 22011, May 2, 2002; 68 FR 44487, July 29, 2003; 69 FR 1949, Jan. 13, 2004; 69 FR 23693, Apr. 30, 2004; 70 FR 43331, July 27, 2005]

EFFECTIVE DATE NOTE: At 66 FR 27911, May 21, 2001, §679.42 was amended by adding paragraph (j)(6). The paragraph contains information collection and recordkeeping requirements and will not become effective until approval is given by the Office of Management and Budget.

§ 679.43 Determinations and appeals.

(a) *General.* This section describes the procedure for appealing initial administrative determinations made in this title under parts 679, 680, and under subpart E of part 300. This section does not apply to initial administrative determinations made under §679.30(d).

(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: