

## Fishery Conservation and Management

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amount of Class A IFQ held by each person.

(ii) Any amount of Class A IFQ that is issued in excess of the IPQ issuance limits for the BSS or BBR crab QS fisheries, as described in paragraph (j)(3) of this section, is not required to be delivered to an RCR with unused IPQ.

(i) *Annual allocation of IPQ.* IPQ is assigned based on the underlying PQS. The Regional Administrator shall assign crab IPQs to each person who submits a complete annual application for crab IFQ/IPQ permit as described under § 680.4. Each assigned IPQ will be specific to a crab QS fishery with the appropriate regional designation. This amount will represent the maximum amount of crab that may be received from the specified crab QS fishery by the person to whom it is assigned during the specified crab fishing year, unless the IPQ assignment is changed by the Regional Administrator because of an approved transfer, revoked, suspended, or modified under 15 CFR part 904.

(j) *Calculation of annual IPQ allocation—(1) General.* The annual allocation of TAC to PQS and the resulting IPQ in any crab QS fishery (f) is the Class A IFQ TAC (TAC<sub>a</sub>). A person's annual IPQ is based on the amount of PQS held by a person (PQS p) divided by the PQS pool for that crab QS fishery for all PQS holders (PQS pool f). Expressed algebraically, the annual IPQ allocation formula is as follows:

$$IPQ_{pf} = TAC_{af} \times PQS_{pf} / PQS_{pool_f}$$

(2) *PQS amounts for IPQ calculation.* For purposes of calculating IPQs for any crab fishing year, the amount of a person's PQS and the amount of the PQS pool for any crab PQS fishery will be the amounts on record with the Alaska Region, NMFS, at the time of calculation.

(3) *IPQ issuance limits.* The amount of IPQ issued in any crab fishing year shall not exceed:

(i) 157,500,000 raw crab pounds (71,441.5 mt) in the BSS crab QS fishery; and

(ii) 18,000,000 raw crab pounds (8,164.7 mt) in the BBR crab QS fishery.

(4) *IPQ issued to Blue Dutch, LLC—(i) BBR IPQ.* For each crab fishing year that the total allowable catch for BBR CR crab is greater than 15,732,480 lb

(7,136.2 mt), NMFS will issue IPQ for the 3,015,229 units of PQS issued to Blue Dutch, LLC, pursuant to Public Law 109-241.

(ii) *BSS IPQ.* For each crab fishing year that the total allowable catch for BSS CR crab is greater than 21,350,640 lb (9,684.6 mt), NMFS will issue IPQ for the 7,516,253 units of PQS issued to Blue Dutch, LLC, pursuant to Public Law 109-241.

(k) *Timing for issuance of IFQ or IPQ.* IFQ and IPQ will be issued once the TAC for that crab QS fishery in that crab fishing year has been specified by the State of Alaska. All IFQ and IPQ for all persons will be issued once for a crab fishing year for a crab QS fishery. QS issued after NMFS has issued annual IFQ for a crab QS fishery for a crab fishing year will not result in IFQ for that crab QS fishery for that crab fishing year.

(l) *Harvesting and processing privilege.* QS and PQS 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 QS, PQS, or permits represent only a harvesting or processing privilege that may be revoked or amended pursuant to the Magnuson-Stevens Act and other applicable law. IPQs do not create a right, title, or interest in any crab until that crab is purchased from a fisherman.

[70 FR 10241, Mar. 2, 2005, as amended at 70 FR 33395, June 8, 2005; 70 FR 75421, Dec. 20, 2005; 71 FR 32864, June 7, 2006; 73 FR 29983, May 23, 2008; 73 FR 30320, May 27, 2008; 73 FR 35088, June 20, 2008]

### § 680.41 Transfer of QS, PQS, IFQ and IPQ.

(a) *General.* (1) Transfer of crab QS, PQS, IFQ, or IPQ means any transaction, approved by NMFS, requiring QS or PQS, or the use thereof in the form of IFQ or IPQ, to pass from one person to another, permanently or for a fixed period of time, except that:

(2) A crab IFQ hired master permit issued by NMFS, as described in § 680.4, is not a transfer of crab QS or IFQ; and

(3) The use of IFQ assigned to a crab harvesting cooperative and used within

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that cooperative is not a transfer of IFQ.

(b) *Transfer applications.* An application is required to transfer any amount of QS, PQS, IFQ, or IPQ. The Regional Administrator shall provide applications to any person on request or on the Internet at <http://www.fakr.noaa.gov/>. Any transfer application will not be approved until the necessary eligibility application in paragraph (c) of this section has been submitted and approved by NMFS.

(1) *Application for transfer of crab QS/IFQ or PQS/IPQ.* This application, as described in paragraph (h) of this section, is required to transfer any amount of QS, PQS, IFQ, or IPQ from an entity that is not an ECCO or a crab harvesting cooperative.

(2) *Application for transfer of crab QS/IFQ to or from an ECCO.* This application, as described in paragraph (k) of this section, is required to transfer any amount of QS or IFQ to or from an entity that is an ECCO.

(3) *Application for inter-cooperative transfer.* This application, as described in § 680.21, is required to transfer any amount of IFQ from an entity that is a crab harvesting cooperative to another crab harvesting cooperative.

(4) *Application deadline.* The Regional Administrator will not approve any transfers of QS, PQS, IFQ, or IPQ in any crab QS fishery from August 1 until the date of the issuance of IFQ or IPQ for that crab QS fishery.

(5) *Notification of approval or disapproval of applications.* (i) Applicants submitting any application under this section will be notified by mail of the Regional Administrator's approval of an application. The Regional Administrator will notify applicants if an application submitted under this section is disapproved. This notification of disapproval will include an explanation why the application was not approved.

(ii) *Reasons for disapproval.* Reasons for disapproval of an application include, but are not limited to:

(A) Lack of U.S. citizenship, where U.S. citizenship is required.;

(B) Failure to meet minimum requirements for sea time as a member of a harvesting crew;

(C) An incomplete application, including fees and an EDR, if required;

(D) An untimely application; or

(E) Fines, civil penalties, or other payments due and owing, or outstanding permit sanctions resulting from Federal fishery violations.

(6) *QS, PQS, IFQ, or IPQ accounts.* QS, PQS, IFQ, or IPQ accounts affected by a transfer approved by the Regional Administrator will change on the date of approval. Any necessary IFQ or IPQ permits will be sent with the notification of approval if the receiver of the IFQ or IPQ permit has completed an annual application for crab IFQ/IPQ permit for the current fishing year as required under § 680.4.

(c) *Eligibility to receive QS, PQS, IFQ, or IPQ by transfer.* Persons, other than persons initially issued QS or PQS, must establish eligibility to receive QS, PQS, IFQ, or IPQ by transfer.

(1) To be eligible to receive QS, PQS, IFQ, or IPQ by transfer, a person must first meet the requirements specified in the following table:

| Quota type                                  | Eligible person   | Eligibility requirements  |
|---|---|---|
| (i) PQS not issued under § 680.40(e)(3)(i). | Any person .....  | None.   |
| (ii) IPQ .....                              | Any person .....  | None.   |
| (iii) CVO or CPO QS.                        | (A) A person initially issued QS.<br>(B) An individual.<br><br>(C) A corporation, partnership, or other entity.<br><br>(D) An ECCO<br><br>(E) A CDQ group.<br>N/A ..... | No other eligibility requirements.<br><br>who is a U.S. citizen with at least 150 days of sea time as part of a harvesting crew in any U.S. commercial fishery.<br>with at least one individual member who is a U.S. citizen and who:<br>(1) owns at least 20 percent of the corporation, partnership, or other entity; and<br>(2) has at least 150 days of sea time as part of a harvesting crew in any U.S. commercial fishery.<br>that meets the eligibility requirements described under paragraph (j) of this section.<br>No other eligibility requirements.<br>Converted CPO QS may not be transferred. |
| (iv) Converted CPO QS.                      | N/A .....   | Converted CPO QS may not be transferred.  |
| (v) CPO IFQ derived from Converted CPO QS.  | N/A .....   | CPO IFQ derived from Converted CPO may not be transferred.  |

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| Quota type             | Eligible person                         | Eligibility requirements   |
|------------------------|---|--|
| (vi) CVO or CPO IFQ.   | All eligible persons for CVO or CPO QS. | according to the requirements in paragraph (c)(1)(iii) of this section.  |
| (vii) CVC or CPC QS.   | An individual ..                        | who is a U.S. citizen with:<br>(A) at least 150 days of sea time as part of a harvesting crew in any U.S. commercial fishery; and<br>(B) recent participation in a CR crab fishery in the 365 days prior to submission of the application for eligibility. |
| (viii) CVC or CPC IFQ. | All eligible persons for CVC or CPC QS. | according to the requirements in paragraph (c)(1)(v) of this section.  |

(2) *Application for eligibility to receive QS/IFQ and PQS/IPQ by transfer.* (i) This application is required to establish a person's eligibility to receive QS, PQS, IFQ, or IPQ by transfer, if the person is not an ECCO. See paragraph (j) of this section for eligibility to transfer of QS/IFQ to or from an ECCO. The Regional Administrator shall provide an application to any person on request or on the Internet at <http://www.fakr.noaa.gov/>.

(ii) *Contents.* A complete Application for Eligibility to Receive QS/IFQ or PQS/IPQ by Transfer must include the following:

(A) Type of QS, IFQ, PQS, or IPQ for which the applicant is seeking eligibility. Indicate type of QS, IFQ, PQS, IPQ for which applicant is seeking eligibility.

(1) If seeking CVO or CPO QS/IFQ, complete paragraphs (c)(2)(ii)(B), (c)(2)(ii)(D) if applicable, (c)(2)(ii)(E), and (c)(2)(ii)(F) of this section;

(2) If seeking CVC or CPC QS/IFQ, complete paragraphs (c)(2)(ii)(B), (c)(2)(ii)(C), (c)(2)(ii)(E), and (c)(2)(ii)(F) of this section;

(3) If seeking PQS/IPQ, complete paragraphs (c)(2)(ii)(B) and (c)(2)(ii)(F) of this section;

(B) *Applicant information.* (1) Enter applicant's name and NMFS Person ID, applicant's date of birth or, if not an individual, date of incorporation; applicant's social security number or tax ID number; applicant's permanent business mailing address and any temporary business mailing address the ap-

plicant wishes to use, and the applicant's business telephone number, business facsimile number, and e-mail address (if available).

(2) Indicate (YES or NO) whether the applicant is a U.S. citizen or U.S. corporation, partnership or other business entity. Applicants for CVO, CPO, CVC or CPC QS (and associated IFQ) must be U.S. Citizens or U.S. Corporations, Partnerships or Other Business Entity. Applicants for PQS (and associated IPQ) are not required to be U.S. Citizens.

(C) *Eligibility for CVC or CPC QS/IFQ.* Indicate (YES or NO) whether this application is intended for a person who wishes to buy CVC or CPC QS/IFQ. If YES, provide evidence of at least one delivery of a crab species in any CR crab fishery in the 365 days prior to submission of this application. Acceptable evidence of such delivery shall be limited to an ADF&G fish ticket imprinted with applicant's State of Alaska permit card and signed by the applicant, an affidavit from the vessel owner, or a signed receipt for an IFQ crab landing on which applicant was acting as the permit holder's crab IFQ hired master.

(D) *U.S. Corporations, partnerships, or business entities.* (1) Indicate (YES or NO) whether this application is submitted by a CDQ Group. If YES, complete paragraph (c)(2)(ii)(F) of this section;

(2) Indicate (YES or NO) whether this application is submitted on behalf of a corporation, partnership or other business entity (not including CDQ groups). If YES: At least one member of the corporation, partnership or other business entity must submit documentation showing at least 20 percent interest in the corporation, partnership, or other entity and must provide evidence of at least 150 days as part of a harvesting crew in any U.S. commercial fishery. Identify the individual member and provide this individual's commercial fishing experience, name, NMFS person ID, and social security number, and business mailing address, business telephone number, and business facsimile number.

(E) *Commercial fishing experience.* (1) Species; enter any targeted species in a U.S. commercial fishery;

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(2) Gear Type; enter any gear type used to legally harvest in a U.S. commercial fishery;

(3) Location; enter actual regulatory, statistical, or geographic harvesting location;

(4) Starting date and ending date of claimed fishing period (MMYY);

(5) Number of actual days spent harvesting;

(6) Duties performed while directly involved in the harvesting of (be specific);

(7) Name and ADF&G vessel registration number or USCG documentation number of the vessel upon which above duties were performed;

(8) Name of vessel owner;

(9) Name of vessel operator;

(10) Reference name. Enter the name of a person (other than applicant) who is able to verify the above experience;

(11) Reference's relationship to applicant;

(12) Reference's business mailing address and telephone number.

(F) *Applicant certification.* (1) Printed name and signature of applicant and date signed;

(2) Notary Public signature, date commission expires, and notary stamp or seal.

(G) Verification that the applicant applying for eligibility to receive crab QS/IFQ or PQS/IPQ by transfer has submitted an EDR, if required to do so under § 680.6;

(H) A non-profit entity seeking approval to receive crab QS or IFQ by transfer on behalf of a ECC must first complete an Application to Become an ECCO under paragraph (j) of this section.

(d) *Transfer of CVO, CPO, CVC, CPC QS or PQS—(1) General.* PQS or QS may be transferred, with approval of the Regional Administrator, to persons qualified to receive PQS or QS by transfer. However, the Regional Administrator will not approve a transfer of any type of PQS or QS that would cause a person to exceed the maximum amount of PQS or QS allowable under the use limits provided for in § 680.42, except as provided for under paragraph (f) of this section.

(2) *CVO QS.* CVO QS may be transferred to any person eligible to receive

CVO or CPO QS as defined under paragraph (c) of this section.

(3) *CPO QS.* Persons holding CPO QS may transfer CPO QS as CVO QS and PQS to eligible recipients under the following provisions:

(i) Each unit of CPO QS shall yield 1 unit of CVO QS, and 0.9 units of PQS; and

(ii) The CVO QS and PQS derived from the transfer of CPO QS may be transferred separately, except that these shares must receive the same regional designation. The regional designation shall be determined at the time of transfer by the person receiving the CVO QS.

(4) *CVC or CPC QS.* CVC or CPC QS may be transferred to any person eligible to receive CVC or CPC QS as defined under paragraph (c) of this section. CVC and CPC QS may only be used in the sector for which it is originally designated.

(e) *Transfer of IFQ or IPQ by Lease—*  
(1) *IFQ derived from CVO or CPO QS.* IFQ derived from CVO or CPO QS may be transferred by lease until June 30, 2010. IFQ derived from CVO or CPO QS must be leased:

(i) If the IFQ will be used on a vessel on which the QS holder has less than a 10 percent ownership interest; or

(ii) If the IFQ will be used on a vessel on which the QS holder or the holder of a crab IFQ hired master permit, under § 680.4, is not present.

(2) *Ownership of a vessel, for the purposes of this section, means:*

(i) A sole proprietor; or

(ii) A relationship between 2 or more entities in which one directly or indirectly owns a 10 percent or greater interest in a vessel.

(3) *IFQ derived from CVC QS or CPC QS.* (i) IFQ derived from CVC or CPC QS may be transferred by lease only until June 30, 2008, unless the IFQ permit holder demonstrates a hardship.

(ii) In the event of a hardship, as described at paragraph (e)(2)(iii) in this section, a holder of CVC or CPC QS may lease the IFQ derived from this QS for the term of the hardship. However, the holder of CVC or CPC QS may not lease the IFQ under this provision for more than 2 crab fishing years total in any 10 crab fishing year period. Such transfers are valid only during the crab

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fishing year for which the IFQ permit is issued and the QS holder must re-apply for any subsequent transfers.

(iii) NMFS will not approve transfers of IFQ under this provision unless the QS holder can demonstrate a hardship by an inability to participate in the crab QS fisheries because:

(A) Of a medical condition of the QS holder. The QS holder is required to provide documentation of the medical condition from a licensed medical doctor who verifies that the QS holder cannot participate in the fishery because of the medical condition.

(B) Of a medical condition involving an individual who requires the QS holder's care. The QS holder is required to provide documentation of the individual's medical condition from a licensed medical doctor. The QS holder must verify that he or she provides care for that individual and that the QS holder cannot participate in the fishery because of the medical condition of that individual.

(C) Of the total or constructive physical loss of a vessel. The QS holder must provide evidence that the vessel was lost and could not be replaced in time to participate in the fishery for which the person is claiming a hardship.

(4) *IPQ derived from PQS*. IPQ derived from PQS may be leased.

(f) *Transfer of QS, PQS, IFQ or IPQ with restrictions*. If QS, PQS, IFQ or IPQ must be transferred as a result of a court order, operation of law, or as part of a security agreement, but the person receiving the QS, PQS, IFQ or IPQ by transfer does not meet the eligibility requirements of this section, the Regional Administrator will approve, with restrictions, an Application for transfer of crab QS/IFQ or PQS/IPQ. The Regional Administrator will not assign IFQ or IPQ resulting from the restricted QS or PQS to any person. IFQ or IPQ with restrictions may not be used for harvesting or processing species covered under the CR program. The QS, PQS, IFQ or IPQ will remain restricted until:

(1) The person who received the QS, PQS, IFQ or IPQ with restrictions meets the eligibility requirements of this section and the Regional Adminis-

trator approves an application for eligibility for that person; or

(2) The Regional Administrator approves the application for transfer from the person who received the QS, PQS, IFQ or IPQ with restrictions to a person who meets the eligibility requirements of this section.

(g) *Survivorship transfer privileges*. (1) On the death of an individual who holds QS or PQS, the surviving spouse or, in the absence of a surviving spouse, a beneficiary designated pursuant to paragraph (g)(3) of this section, receives all QS, PQS and IFQ or IPQ held by the decedent by right of survivorship, unless a contrary intent was expressed by the decedent in a will. The Regional Administrator will approve an application for transfer to the surviving spouse or designated beneficiary when sufficient evidence has been provided to verify the death of the individual.

(2) A QS or PQS holder may provide the Regional Administrator with the name of the designated beneficiary from the QS or PQS holder's immediate family to receive survivorship transfer privileges in the event of the QS or PQS holder's death and in the absence of a surviving spouse.

(3) The Regional Administrator will approve, for 3 calendar years following the date of the death of an individual, an Application for transfer of crab QS/IFQ or PQS/IPQ from the surviving spouse or, in the absence of a surviving spouse, a beneficiary from the QS or PQS holder's immediate family designated pursuant to this section, to a person eligible to receive IFQ or IPQ under the provisions of this section, notwithstanding the limitations on transfers of IFQ and IPQ in this section and the use limitations under § 680.42.

(h) *Application for transfer of crab QS/IFQ or PQS/IPQ*—(1) *General*. (i) An Application for transfer of crab QS/IFQ or PQS/IPQ must be approved by the Regional Administrator before the transferee may use the IFQ or IPQ to harvest or process crab QS species.

(ii) Persons who submit an Application for transfer of crab QS/IFQ or PQS/IPQ for approval will receive notification of the Regional Administrator's decision to approve or disapprove the application, and if applicable, the

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reason(s) for disapproval, by mail, unless another communication mode is requested on the application.

(2) *Contents.* A complete Application for transfer of crab QS/IFQ or PQS/IPQ must include the following information:

(i) *Type of transfer.* (A) Indicate type of transfer requesting.

(B) Indicate (YES or NO) whether this is a transfer of IFQ or IPQ only due to a hardship (medical emergency, etc.). If YES, provide documentation supporting the need for such transfer (doctor's statement, etc.).

(C) If requesting transfer of PQS/IPQ for use outside an ECC that has designated an entity to represent it in exercise of ROFR under paragraph (1), the application must include an affidavit signed by the applicant stating that notice of the desired transfer has been provided to the ECC entity under civil contract terms referenced under § 680.40(f)(3) for the transfer of any PQS or IPQ subject to ROFR.

(ii) *Transferor information.* (A) The transferor is the person currently holding the QS, PQS, IFQ, or IPQ.

(B) Enter the transferor's name and NMFS Person ID, social security number or tax ID number, transferor's permanent business mailing address and any temporary mailing address the transferor wishes to use, business telephone, business facsimile, and business e-mail address (if available).

(iii) *Transferee information.* (A) The transferee is person receiving QS, PQS or IFQ, IPQ by transfer.

(B) Enter the transferee's name and NMFS Person ID, social security number or tax ID number, transferee's permanent business mailing address and any temporary mailing address the transferee wishes to use, business telephone, business facsimile, and business e-mail address (if available);

(iv) *Transfer of QS or PQS and IFQ or IPQ.* Complete the following information if QS or PQS and IFQ or IPQ are to be transferred together or if transferring only QS or PQS:

(A) QS species;

(B) QS type;

(C) Range of serial numbers to be transferred (shown on QS certificate) numbered to and from;

(D) Number of QS units to be transferred;

(E) Transferor (seller) IFQ or IPQ permit number;

(F) Indicate (YES or NO) whether remaining IFQ or IPQ pounds for the current fishing year should be transferred; if NO, specify the number of pounds to be transferred;

(G) If this is a transfer of CPO QS, indicate whether being transferred as CPO QS or CVO QS and PQS;

(H) If CPO QS is being transferred as both CVO QS and PQS, specify number of units of each; and

(I) If CPO QS is being transferred as CVO QS, select region for which the QS is designated.

(v) *Transfer of IFQ or IPQ only.* Complete the following information if transferring IFQ or IPQ only:

(A) QS species;

(B) IFQ/IPQ type;

(C) Range of serial numbers shown on QS certificate, numbered to and from;

(D) Number of IFQ or IPQ pounds to be transferred;

(E) Transferor (seller) IFQ or IPQ permit number; and

(F) Crab fishing year of the transfer.

(vi) *Price paid for the QS, PQS and/or IFQ, IPQ.* The transferor must provide the following information.

(A) Indicate whether (YES or NO) a broker was used for this transaction; If YES, provide dollar amount paid in brokerage fees or percentage of total price.

(B) Provide the total amount paid for the QS/IFQ or PQS/IPQ in this transaction, including all fees.

(C) Provide the price per unit of QS (price divided by QS units) and the price per pound (price divided by IFQ or IPQ pounds) of IFQ or IPQ.

(D) Indicate all reasons that apply for transferring the QS/IFQ or PQS/IPQ.

(vii) *Method of financing for the QS, PQS and/or IFQ, IPQ.* The transferee must provide the following information.

(A) Indicate (YES or NO) whether QS/IFQ or PQS/IPQ purchase will have a lien attached; if YES, provide the name of lien holder.

(B) Indicate one primary source of financing for this transfer.

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(C) Indicate the sources used to locate the QS, PQS and/or IFQ, IPQ being transferred.

(D) Indicate the relationship, if any, between the transferor and the transferee.

(E) Indicate (YES or NO) whether an agreement exists to return the QS/IFQ or PQS/IPQ to the transferor or any other person, or with a condition placed on resale; If YES, provide written explanation.

(F) Attach a copy of the terms of agreement for the transfer, the bill of sale for QS or PQS, or lease agreement for IFQ or IPQ.

(G) Indicate whether an EDR was submitted, if required by §680.6, and whether all fees have been paid, as required under §680.44.

(viii) *Notary information*—(A) *Certification of transferor*. (1) Printed name and signature of transferor or authorized agent and date signed. If authorized agent, proof of authorization to act on behalf of the transferor must be provided with the application; and

(2) Notary Public signature, date commission expires, and notary stamp or seal

(B) *Certification of transferee*. (1) Printed name and signature of transferee or authorized agent and date signed. If authorized agent, proof of authorization to act on behalf of the transferee must be provided with the application; and

(2) Notary Public signature, date commission expires, and notary stamp or seal.

(ix) *Attachments to the application and other conditions to be met*. (A) Indicate whether the person applying to make or receive the QS, PQS, IFQ or IPQ transfer has submitted an EDR, if required to do so under §680.6, and has paid all fees, as required by §680.44; and

(B) All individuals applying to receive CVC QS or IFQ or CPC QS or IFQ by transfer must submit proof of at least one delivery of a crab species in any CR crab fishery in the 365 days prior to submission to NMFS of the Application for Transfer of QS/IFQ or PQS/IPQ. Proof of this landing is:

(1) Signature of the applicant on an ADF&G Fish Ticket; or

(2) An affidavit from the vessel owner attesting to that individual's participa-

tion as a member of a fish harvesting crew on board a vessel during a landing of a crab QS species within the 365 days prior to submission of an Application for transfer of crab QS/IFQ or PQS/IPQ.

(i) *Approval criteria for an Application for transfer of crab QS/IFQ or PQS/IPQ*. Except as provided in paragraph (f) of this section, an application for transfer of QS/IFQ or PQS/IPQ will not be approved until the Regional Administrator has determined that:

(1) The person applying to receive the QS, PQS, IFQ or IPQ meets the requirements of eligibility in paragraph (c) of this section;

(2) The person applying for transfer and the person applying to receive QS or IFQ/IPQ have their original notarized signatures on the application;

(3) No fines, civil penalties, or other payments due and owing, or outstanding permit sanctions, resulting from Federal fishery violations involving either party exist;

(4) The person applying to receive QS, PQS, IFQ or IPQ currently exists;

(5) The transfer would not cause the person applying to receive the QS, PQS, IFQ or IPQ to exceed the use limits in §680.42;

(6) The person applying to make or receive the QS, PQS, IFQ or IPQ transfer has paid all IFQ or IPQ fees described under §680.44; or has timely appealed the IAD of underpayment as described under §680.44;

(7) The person applying to make or receive the QS, PQS, IFQ or IPQ transfer has submitted an EDR, if required to do so under §680.6;

(8) In the case of an application for transfer of PQS or IPQ for use outside an ECC that has designated an entity to represent it in exercise of ROFR under paragraph (1), the Regional Administrator will not act upon the application for a period of 10 days. At the end of that time period, the application will be approved pending meeting the criteria set forth in this paragraph (i).

(9) In the case of an application for transfer of PQS for use within an ECC that has designated an entity to represent it in exercise of ROFR under paragraph (1), The Regional Administrator will not approve the application unless either the ECC entity provides

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an affidavit to the Regional Administrator that the ECC wishes to permanently waive ROFR for the PQS or the proposed recipient of the PQS provides an affidavit affirming the completion of a contract for ROFR that includes the terms enacted under section 313(j) of the Magnuson-Stevens Act and referenced under § 680.40(f)(3).

(10) Other pertinent information requested on the application for transfer has been supplied to the satisfaction of the Regional Administrator.

(j) *Transfer of crab QS/IFQ to or from and ECCO*—(1) *Designation of an ECCO*.

(i) The appropriate governing body of each ECC may designate a non-profit organization to serve as the ECCO for that ECC. To transfer and hold QS on the behalf of that ECC, this designation must be submitted by the non-profit organization in its Application to Become an ECCO.

(ii) If the non-profit entity is approved by NMFS to serve as the ECCO, then the appropriate governing body of the ECC must authorize the transfer of any QS from the ECCO.

(iii) The appropriate governing body for purposes of designating a non-profit organization for the Application to Become an ECCO, or acknowledging the transfer of any QS from an ECCO in each ECC is as follows:

(A) If the ECC is also a community eligible to participate in the Western Alaska CDQ Program, then the CDQ group is the appropriate governing body;

(B) If the ECC is not a CDQ community and is incorporated as a municipality and is not within an incorporated borough, then the municipal government is the appropriate governing body;

(C) If the ECC is not a CDQ community and is incorporated as a municipality and also within an incorporated borough, then the municipality and borough jointly serve as the appropriate governing body and both must agree to designate the same non-profit organization to serve as the ECCO or acknowledge the transfer of QS from the ECCO; and

(D) If the ECC is not a CDQ community and is not incorporated as a municipality and is in a borough, then the

borough in which the ECC is located is the appropriate governing body.

(iv) The appropriate governing body in each ECC may designate only one non-profit organization to serve as the ECCO for that community at any one time.

(2) *Application to become an ECCO*. Prior to initially receiving QS or IFQ by transfer on behalf of a specific ECC, a non-profit organization that intends to represent that ECC as a ECCO must submit an application to become an ECCO and have that application approved by the Regional Administrator. The Regional Administrator shall provide an application to become an ECCO to any person on request or on the Internet at <http://www.fakr.noaa.gov/>.

(i) *Contents of application*—(A) *Applicant identification*. (1) Enter the name of the non-profit organization, taxpayer ID number, and NMFS Person ID, applicant's permanent business mailing address and any temporary business mailing address the applicant wishes to use, and the name of contact person, business telephone number, business facsimile number, and e-mail address (if available);

(2) Name of community or communities represented by the non-profit organization; and

(3) Name of contact person for the governing body of each community represented.

(B) Required attachments to the application. (1) The articles of incorporation under the laws of the State of Alaska for that non-profit organization;

(2) A statement indicating the ECC(s) represented by that non-profit organization for purposes of holding QS;

(3) The bylaws of the non-profit organization;

(4) A list of key personnel of the management organization including, but not limited to, the board of directors, officers, representatives, and any managers;

(5) Additional contact information of the managing personnel for the non-profit organization and resumes of management personnel;

(6) A description of how the non-profit organization is qualified to manage



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QS on behalf of the ECC it is designated to represent, and a demonstration that the non-profit organization has the management skills and technical expertise to manage QS and IFQ; and

(7) A statement describing the procedures that will be used to determine the distribution of IFQ to residents of the ECC represented by that non-profit organization, including procedures used to solicit requests from residents to lease IFQ and criteria used to determine the distribution of IFQ leases among qualified community residents and the relative weighting of those criteria.

(C) *Applicant certification.* (1) Printed name of applicant or authorized agent, notarized signature, and date signed. If authorized agent, proof of authorization to act on behalf of the applicant must be provided with the application.

(2) Notary Public signature and date when commission expires, and notary seal or stamp.

(ii) [Reserved]

(k) *Application for transfer of crab QS/IFQ to or from an ECCO.* (1) An application for transfer of crab QS/IFQ to or from an ECCO must be approved by the Regional Administrator before the transferee may use the IFQ to harvest crab QS species.

(2) An application for transfer of crab QS/IFQ to or from an ECCO will not be approved until the Regional Administrator has reviewed and approved the transfer agreement signed by the parties to the transaction. Persons who submit an application for transfer of crab QS/IFQ to or from an ECCO for approval will receive notification of the Regional Administrator's decision to approve or disapprove the application, and if applicable, the reason(s) for disapproval, by mail, unless another communication mode is requested on the application.

(3) *Contents.* A complete application for transfer of crab QS/IFQ to or from an ECCO includes the following:

(i) *General requirements.* (A) This form may only be used if an ECCO is the proposed transferor or the proposed transferee of the QS or IFQ.

(B) The party to whom an ECCO is seeking to transfer the QS/IFQ must be eligible to receive QS/IFQ by transfer.

(C) If the ECCO is applying to permanently transfer QS, a representative of the community on whose behalf the QS is held must sign the application.

(D) If authorized representative represents either the transferor or transferee, proof of authorization to act on behalf of transferor or transferee must be attached to the application.

(ii) *Transferor information.* Enter the transferor's (person currently holding the QS or IFQ) name, NMFS Person ID, social security number or Tax ID, permanent business mailing address, business telephone, business facsimile, and business e-mail address. If transferor is an ECCO, enter the name of ECC represented by the ECCO. The transferor may also provide a temporary address for each transaction in addition to the permanent business mailing address.

(iii) *Transferee information.* Enter the transferee's (person receiving QS or IFQ by transfer) name, NMFS Person ID, social security number or Tax ID, permanent business mailing address, business telephone, business facsimile, and business e-mail. If transferee is an ECCO, name of the community (ECC) represented by the ECCO. The transferee may also provide a temporary address for each transaction in addition to the permanent business mailing address.

(iv) *Identification of QS/IFQ to be transferred.* Complete the following information if QS and IFQ are to be transferred together or if transferring only QS:

(A) QS species;

(B) QS type;

(C) Number of QS or IFQ units to be transferred;

(D) Total QS units;

(E) Number of IFQ pounds;

(F) Range of serial numbers to be transferred (shown on QS certificate) numbered to and from;

(G) Name of community to which QS are currently assigned; and

(H) Indicate (YES or NO) whether remaining IFQ pounds for the current fishing year should be transferred; if NO, specify the number of pounds to be transferred.

(v) *Transfer of IFQ only.* (A) IFQ permit number and year of permit, and

(B) Actual number of IFQ pounds to be transferred.

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(vi) *Transferor Information, if an ECCO.* Reason(s) for transfer:

- (A) ECCO management and administration;
- (B) Fund additional QS purchase;
- (C) Participation by community residents;
- (D) Dissolution of ECCO; and
- (E) Other (specify).

(vii) *Price paid for QS, PQS, and/or IFQ, IPQ (Transferor).* The transferor must provide the following information:

(A) Whether (YES or NO) a broker was used for this transaction; If YES, provide dollar amount paid in brokerage fees or percentage of total price;

(B) Provide the total amount paid for the QS/IFQ in this transaction, including all fees;

(C) Provide the price per unit of QS (price divided by QS units) and the price per pound (price divided by IFQ) of IFQ; and

(D) Indicate all reasons that apply for transferring the QS/IFQ.

(viii) *Price paid for QS, PQS, and/or IFQ, IPQ (Transferee).* The transferee must provide the following information:

(A) Indicate (YES or NO) whether QS/IFQ purchase will have a lien attached; if YES, provide the name of lien holder;

(B) Indicate one primary source of financing for this transfer;

(C) Indicate the sources used to locate the QS or IFQ being transferred;

(D) Indicate the relationship, if any, between the transferor and the transferee;

(E) Indicate (YES or NO) whether an agreement exists to return the QS or IFQ to the transferor or any other person, or with a condition placed on resale; If YES, explain; and

(F) Attach a copy of the terms of agreement for the transfer, the bill of sale for QS, or lease agreement for IFQ.

(ix) *Notary information—(A) Certification of transferor.* (1) Printed name and signature of transferor or authorized agent and date signed. If authorized agent, proof of authorization to act on behalf of the transferor must be provided with the application.

(2) Notary Public signature, date commission expires, and notary stamp or seal.

(B) *Certification of transferee.* (1) Printed name and signature of transferor or authorized agent and date signed. If authorized agent, proof of authorization to act on behalf of the transferee must be provided with the application.

(2) Notary Public signature, date commission expires, and notary stamp or seal.

(C) *Certification of authorized representative of community.* (1) Printed name, title and signature of authorized community representative, date signed, and printed name of community.

(2) Notary Public signature, date commission expires, and notary stamp or seal;

(4) *Attachments to the application and other conditions to be met.* (i) Indicate whether the person applying to make or receive the QS, PQS, IFQ or IPQ transfer has submitted an EDR, if required to do so under § 680.6, and paid all fees, as required by § 680.44.

(ii) A copy of the terms of agreement for the transfer, the bill of sale for QS or PQS, or lease agreement for IFQ or IPQ.

(iii) An affirmation that the individual receiving IFQ from an ECCO has been a permanent resident in the ECC for a period of 12 months prior to the submission of the Application for Transfer QS/IFQ to or from an ECCO on whose behalf the ECCO holds QS.

(5) *Approval criteria for an application for transfer of crab QS/IFQ to or from an ECCO.* In addition to the criteria required for approval under paragraph (i) of this section, the following criteria are also required:

(i) The ECCO applying to receive or transfer crab QS has submitted a complete annual report(s) required by § 680.5;

(ii) The ECCO applying to transfer crab QS has provided information on the reasons for the transfer as described in paragraph (e) of this section; and

(iii) An individual applying to receive IFQ from an ECCO is a permanent resident of the ECC in whose name the ECCO is holding QS.

(1) *Eligible crab community right of first refusal (ROFR)—(1) Applicability—(i) Exempt Fisheries.* PQS and IPQ issued for

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the EBT, WBT, WAG, or WAI crab QS fisheries are exempt from ROFR provisions.

(ii) *Eligible Crab Communities (ECCs)*. The ROFR extends to the ECCs, other than Adak, and their associated governing bodies. The ROFR may be exercised by the ECC entity representing that ECC.

(2) *Community representation*—(i) *CDQ Communities*. ECC entity for purposes of exercise of ROFR for any ECC that is also a CDQ community shall be the CDQ group to which the ECC is a member.

(ii) *Non-CDQ communities*. (A) Any ECC, other than Adak, that is a non-CDQ community may designate an ECC entity that will represent the community in the exercise of ROFR at least 30 days prior to the ending date for the initial application period for the crab QS program specified in the FEDERAL REGISTER.

(B) The ECC entity eligible to exercise the right of first refusal on behalf of an ECC will be identified by the governing body(s) of the ECC. If the ECC is incorporated under the laws of the State of Alaska, and not within an incorporated borough, then the municipality is the governing body; if the ECC is incorporated and within an incorporated borough, then the municipality and borough are the governing bodies and must agree to designate the same ECC entity; if the ECC is not incorporated and in an incorporated borough, then the borough is the governing body.

(C) Each ECC may designate only one ECC entity to represent that community in the exercise of ROFR at any one time through a statement of support from the governing body of the ECC. That statement of support identifying the ECC entity must be submitted to the Regional Administrator, NMFS, Post Office Box 21668, Juneau, Alaska 99802, at least 30 days prior to the ending date of the initial application period for the crab QS program under § 680.40.

(D) The ECC ROFR is not assignable by the ECC entity.

(3) *Restrictions on transfer of PQS or IPQ out of North Gulf of Alaska communities*—(i) *Applicability*. Any community

in the Gulf of Alaska north of a line at 56°20' N. lat.

(ii) *Notification of PQS or IPQ transfer*. A PQS holder submitting an application to transfer PQS or IPQ for use in processing outside any community identified under paragraph (1)(3)(i) must notify the ECC entity designated by the City of Kodiak and Kodiak Island Borough under paragraph (1)(2) of this section 10 days prior to the intended transfer of PQS or IPQ for use outside the community. At the end of that time period, the application will be approved pending meeting the criteria set forth in paragraph (i) of this section.

[70 FR 10241, Mar. 2, 2005, as amended at 71 FR 32864, June 7, 2006; 73 FR 29983, May 23, 2008]

### § 680.42 Limitations on use of QS, PQS, IFQ, and IPQ.

(a) *QS and IFQ use caps*—(1) *General*. Separate and distinct QS and IFQ use caps apply to all QS and IFQ categories pertaining to a given crab QS fishery with the following provisions:

(i) A person who receives an initial allocation of QS that exceeds the use cap listed in paragraph (a)(2) of this section may not receive QS by transfer unless and until that person's holdings are reduced to an amount below the use cap.

(ii) A person will not be issued QS in excess of the use cap established in this section based on QS derived from landings attributed to an LLP license obtained via transfer after June 10, 2002 unless:

(A) The person applies to receive QS based on an LLP transferred after June 10, 2002 but prior to November 24, 2004, and

(B) The person will receive the amount of QS associated with that transferred LLP in excess of the use cap established in this section for a crab QS fishery solely because of the adjustment to legal landings available for QS allocation resulting from the BSAI Crab Capacity Reduction Program.

(iii) QS and IFQ use caps shall be based on the initial QS pools used to determine initial allocations of QS.