

to encourage use of a broad distribution of community-held IFQ on vessels that may otherwise have limited or no participation in the IFQ Program.

Eligibility to lease IFQ derived from community-held QS would be limited to permanent residents of the community represented by the CQE. The Council recommended this provision to explicitly tie the potential benefits of QS held by a CQE on behalf of a community to the residents of that community. Such a resident who wishes to lease IFQ would be required to state that he or she maintains a permanent domicile in that specific community and is qualified to receive QS and IFQ by transfer under the existing regulations (i.e., that he or she holds a Transfer Eligibility Certificate issued by NMFS).

Existing regulations at 50 CFR 679.41 require that, for an individual to be eligible to receive QS/IFQ by transfer, such an individual must be a U.S. citizen and must either have received QS upon initial issuance or have 150 days of experience onboard a vessel working as part of the harvesting crew in a U.S. commercial fishery. Upon having demonstrated that he or she has satisfied those requirements, such an individual is issued a Transfer Eligibility Certificate (TEC). These requirements would remain in place for individuals seeking to lease IFQ derived from community QS. Individuals receiving IFQ must meet these qualifications and attest that they are permanently domiciled within that community when receiving IFQ by transfer from a CQE. For purposes of this program, an individual would need to affirm that he or she maintained a domicile in the community from which the IFQ is leased for 12 consecutive months immediately preceding the time when the assertion of residence is made, and had not claimed residency in another community, state, territory, or country.

An individual who receives IFQ derived from QS held by a CQE may not designate a skipper to fish the community IFQ, instead that individual must be onboard the vessel when the IFQ is being fished. The Council recommended this requirement to help ensure that the potential benefits of QS held by communities would be realized by resident fishermen of those communities and not leased outside the communities.

Individuals who hold leases of IFQ from communities would be considered to be IFQ permit holders and would be subject to the regulations that govern other permit holders, including the payment of annual fees as required

under 50 CFR 679.45, unless noted otherwise in this proposed rule.

(c) Sale Restrictions

Certain restrictions would apply to the transfer of QS held by a CQE on behalf of a community. A CQE is restricted to sell its QS to generate revenues to improve, sustain, or expand the opportunities for community residents to participate in the IFQ halibut and sablefish fisheries. These restrictions are designed to ensure that the goals of the program are met. NMFS would approve the transfer of QS held by a CQE on behalf of a community only if the community for which the CQE holds the QS authorizes that transfer. This authorization may be in the form of a signature from a authorized representative of the governing body of the eligible community for QS transfers on the Approval of Transfer form. The purpose of this authorization is to ensure that the community is fully aware of the transfer because certain restrictions apply to future transfers if the transfer of QS is for a reason other than to sustain, improve, or expand the program (i.e., the CQE would be prohibited from holding QS on behalf of that community for a period of three years and the CQE must divest itself of all QS held on behalf of that community).

This proposed action would also provide an opportunity for a CQE to transfer QS to dissolve the CQE; or as a result of a court order, operation of law, or as part of a security agreement. These provisions are allowed to account for those cases in which a CQE is no longer capable of representing an eligible community and seeks to divest itself of QS holdings in order to provide an opportunity for another non-profit to form and seek approval as a CQE for a community. Transfers that are required as a result of a court order, operation of law, or as part of a security requirement would be authorized under this proposed action. These forms of transfers are authorized under the existing IFQ program.

During Council deliberations, NMFS indicated that the enforcement and monitoring mechanism for these transfer provisions would be limited. The EA/RIR/IRFA prepared by the Council (see **ADDRESSES**) notes these concerns. Rather than requiring an extensive monitoring and auditing program for each transfer of QS, NMFS would rely on the declaration by the CQE about the purpose of the transfer of any QS held on behalf of a community and the authorization by the governing body of that community to transfer that QS. If subsequent information is made

available to NMFS that confirms that the transfer of QS is made for reasons other than to sustain, improve, or expand the opportunities for community residents, then NMFS would withhold annual IFQ permits on any remaining QS held by the CQE on behalf of that community and would disqualify that CQE from holding QS on behalf of that community for 3 calendar years following the year in which final agency action adopting that determination is made.

NMFS would not impose this restriction until the CQE had received full administrative due process, including notice of the potential action and the opportunity to be heard. An initial administrative determination (IAD) proposing an adverse action would only become final agency action if the CQE failed to appeal the IAD within 60 days, or upon the effective date of the decision issued by the Office of Administrative Appeals. The procedures for appeal are provided at 50 CFR 679.43.

The 3-year restriction was recommended by the Council because the Council did not intend for this program to provide a mechanism for speculating in the QS market or using potential assets to fund other unrelated projects but intended to encourage the long-term participation of fishery dependent communities in the IFQ Program. The public is encouraged to comment specifically on these transfer restrictions, the administrative process that would be established to monitor these requirements, and the enforcement of these restrictions.

6. Joint and Several Liability for Violations

Both the CQE and the individual fisherman to whom the CQE leases its IFQ will be considered jointly and severally liable for any IFQ fishery violation committed while the individual fisherman is in the process of fishing the leased IFQ. This joint and several liability is analogous to the joint and several liability currently imposed on IFQ permit holders and any hired skippers fishing the permit holders' IFQ.

7. Administrative Oversight

Implementing this proposal would require that NMFS: (1) review applications of eligibility for non-profit entities seeking to be qualified as a CQE for a particular community and certify eligible CQEs; and (2) review an annual report detailing the use of QS and IFQ by the CQE and community residents. These reviews ensure that the CQEs are adequately representing the communities and that the program is meeting the goals established by the