

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Parts 300 and 679

[Docket No. 101027534–3546–01]

RIN 0648–BA37

## Pacific Halibut Fisheries; Catch Sharing Plan for Guided Sport and Commercial Fisheries in Alaska

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes regulations that would implement a catch sharing plan for the guided sport (charter) and commercial fisheries for Pacific halibut in waters of International Pacific Halibut Commission (IPHC) Regulatory Areas 2C (Southeast Alaska) and 3A (Central Gulf of Alaska). If approved, this catch sharing plan will replace the Guideline Harvest Level program, define an annual process for allocating halibut between the charter and commercial fisheries in Area 2C and Area 3A, and establish allocations for each fishery. The commercial fishery will continue to be managed under the Individual Fishing Quota system. To allow flexibility for individual commercial and charter fishery participants, the proposed catch sharing plan also will authorize annual transfers of commercial halibut quota to charter halibut permit holders for harvest in the charter fishery. This action is necessary to achieve the halibut fishery management goals of the North Pacific Fishery Management Council.

**DATES:** Written comments must be received by August 12, 2013.

**ADDRESSES:** You may submit comments, identified by FDMS Docket Number NOAA–NMFS–2011–0180, by any of the following methods:

- **Electronic Submission:** Submit all electronic public comments via the Federal eRulemaking Portal. Go to [www.regulations.gov/](http://www.regulations.gov/)#!/docketDetail;D=NOAA-NMFS-2011-0180, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.

- **Mail:** Submit written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.

- **Fax:** Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Fax comments to 907–586–7557.

**Instructions:** Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

Electronic copies of the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared for this action are available from <http://www.regulations.gov> or from the NMFS Alaska Region Web site at <http://alaskafisheries.noaa.gov>.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this rule may be submitted to NMFS at the above address and by email to [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov) or fax to 202–395–7285.

**FOR FURTHER INFORMATION CONTACT:** Julie Scheurer, 907–586–7228.

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**I. Current Management of the Halibut Fisheries****A. Regulatory Authority**

The International Pacific Halibut Commission (IPHC) and NMFS manage fishing for Pacific halibut (*Hippoglossus stenolepis*) through regulations established under authority of the Northern Pacific Halibut Act of 1982 (Halibut Act). The IPHC adopts regulations governing the Pacific halibut fishery under the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the North Pacific Ocean and Bering Sea (Convention), signed at Ottawa, Ontario, on March 2, 1953, as amended by a Protocol Amending the Convention (signed at Washington, DC, on March 29, 1979). For the United States, regulations developed by the IPHC are subject to acceptance by the Secretary of State with concurrence from the Secretary of Commerce. After acceptance by the Secretary of State and the Secretary of Commerce, NMFS publishes the IPHC regulations in the **Federal Register** as annual management measures pursuant to 50 CFR 300.62. The final rule implementing IPHC regulations for the 2013 fishing season was published March 15, 2013, at 78 FR 16423. IPHC regulations affecting sport fishing for halibut and vessels in the charter fishery in Areas 2C and 3A may be found in sections 3, 25, and 28 of that final rule.

The Halibut Act, at sections 773c(a) and (b), provides the Secretary of Commerce with general responsibility to carry out the Convention and the Halibut Act. In adopting regulations that may be necessary to carry out the purposes and objectives of the Convention and the Halibut Act, the Secretary of Commerce is directed to consult with the Secretary of the department in which the U.S. Coast Guard is operating, currently the Department of Homeland Security.

The Halibut Act, at section 773c(c), also provides the North Pacific Fishery Management Council (Council) with authority to develop regulations, including limited access regulations, that are in addition to, and not in conflict with, approved IPHC regulations. Regulations developed by the Council may be implemented by NMFS only after approval by the Secretary of Commerce. The Council has exercised this authority in the development of subsistence halibut fishery management measures, codified at 50 CFR 300.65, and the guideline harvest level program and limited access program for charter operators in the charter fishery, codified at 50 CFR 300.67. The Council also developed the Individual Fishing Quota (IFQ) Program for the commercial halibut and sablefish fisheries, codified at 50 CFR part 679, under the authority of section 773 of the Halibut Act and section 303(b) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*).

#### *B. Background on the Halibut Fishery*

The harvest of halibut in Alaska occurs in three fisheries—the commercial, sport, and subsistence fisheries. The commercial halibut fishery is a fixed gear fishery managed under an Individual Fishing Quota program. The sport fishery includes unguided and guided anglers. Guided anglers are commonly called “charter” anglers because they fish from chartered vessels. The subsistence fishery allows rural residents and members of an Alaska Native tribe to retain halibut for personal use or customary trade.

The IPHC annually determines the amount of halibut that may be removed from the resource by regulatory area in all Convention waters. The IPHC estimates the exploitable biomass of halibut using a combination of harvest data from the commercial, sport, and subsistence fisheries, and information collected during scientific surveys and sampling of bycatch in other fisheries. The IPHC calculates a range of total allowable removals of halibut from all sources in an IPHC regulatory area based on the annual stock assessment and apportionment process conducted by the IPHC. The range of total allowable removals is referred to as the Total Constant Exploitation Yield (CEY) and represents the total removals for that area in the coming year at varying levels of harvest and risk. The Total CEY is expressed in net pounds, which is defined as the weight of halibut from which the gills, entrails, head, and ice and slime have been removed. The Fishery CEY represents the difference

between the Total CEY and all other removals, including sport, subsistence, bycatch, and waste. The Fishery CEY is the basis for the IPHC’s determination of catch limits for the directed commercial fixed gear halibut fishery. The IPHC considers staff recommendations, harvest policy, and stakeholder input when it determines commercial catch limits.

Pursuant to Article III of the Convention, the IPHC must develop and maintain halibut stocks to levels that will permit the optimum yield for the halibut fisheries. The IPHC addresses this objective through a harvest strategy that is designed to balance the benefits of yield with the risk of spawning biomass dropping below a minimum level. To the extent possible, the IPHC accounts for all sources of fishing mortality within the Total CEY and establishes the commercial fixed gear catch limits only after subtracting waste in the commercial halibut fishery and halibut removals from other non-halibut commercial fisheries and non-commercial uses. Because the IPHC subtracts non-commercial halibut fishery removals (including charter harvest or the guideline harvest level) from the Total CEY, and because the charter fishery harvest increased during the 1990s and early 2000s, the amount of halibut available for the commercial halibut fishery decreased relative to the long-term historic proportion of the fishery available to the commercial fishery. The commercial IFQ halibut fishery therefore views charter harvests in excess of established policies or goals as uncompensated reallocations of fishing privileges.

#### **II. History of Management in the Charter Halibut Fisheries**

This section provides an overview of management policies applicable to charter halibut fishing in Areas 2C and 3A. Additional details on the management measures specific to each regulatory area are addressed later in this preamble. Until 2007, harvest restrictions for the charter halibut fisheries were developed by the IPHC. In 1973, the IPHC first adopted halibut sport fishing regulations to provide consistent and uniform halibut sport fishing regulations in all regulatory areas. At that time, the IPHC established that the sport fishing season for halibut would occur from March 1 through October 31, and limited the number of halibut that anglers could retain by imposing a daily three-fish bag limit. From 1984 through 1997, the IPHC required charter vessels to have IPHC licenses. Since the initial three-fish bag limit was established in 1973, the IPHC

has adjusted the bag limit to vary among one, two, and three fish per angler per day. The current bag limit under IPHC regulations is two fish of any size per day unless a more restrictive bag limit applies in Federal regulations. There is not a more restrictive limit currently in effect in Federal regulations for Area 3A, but NMFS has established a more restrictive one-fish bag limit for charter vessels for Area 2C as described in the following section of this preamble.

In 1997, the Council adopted separate guideline harvest levels (GHLs) for the Area 2C and Area 3A charter halibut fisheries. The proposed and final rules implementing the current GHLs were published in the **Federal Register** in 2002 and 2003, respectively (67 FR 3867, January 2, 2002; 68 FR 47256, August 8, 2003). These regulations are codified at 50 CFR 300.65. A more detailed description of GHL management and the Council’s rationale behind such management can be found in the proposed and final rules cited above; a brief description follows.

The GHLs represent pre-season specifications of acceptable annual harvests in the charter halibut fisheries in Areas 2C and 3A. To accommodate some growth in the charter halibut fishery, while approximating historical levels, the Council recommended the GHLs were to be based on 125 percent of the average charter halibut fishery harvest from 1995 through 1999 in each area. For Area 2C the maximum GHL was set at 1,432,000 pounds (lb), or 649.5 metric tons (mt), net weight, and in Area 3A the maximum GHL was set at 3,650,000 lb (1,655.6 mt) net weight. The Council recommended a system of step-wise adjustments to the GHLs to accommodate decreases and subsequent increases in halibut abundance. The Council recommended this system of GHL adjustments to provide a relatively predictable and stable harvest target for the charter halibut fishery. Although the Council had a policy that charter halibut fisheries should not exceed the GHL, the 2003 GHL regulations did not actually limit charter halibut fishery harvests. Rather, the GHL regulations set benchmarks for use in future regulations, and harvest restrictions could be adopted in the year following a year that the GHL was exceeded.

In response to concerns that growth in the charter halibut fishery was resulting in overcrowding in productive halibut grounds, the Council recommended, and the Secretary of Commerce adopted, a limited access program to provide stability for the charter halibut fishery and decrease the need for regulatory adjustments affecting charter vessel anglers. NMFS published a final rule on

January 5, 2010 (75 FR 554), that implemented the charter halibut limited access program (CHLAP) in 2011. This rule capped the number of charter businesses that could operate in Areas 2C and 3A to limit further expansion of the industry.

Under the CHLAP, NMFS initially issued permits to those businesses that historically and recently participated in the charter halibut fishery. The CHLAP also issues a limited number of permits to non-profit corporations representing specified rural communities and to U.S. military morale programs for service members. Beginning February 1, 2011, all vessel operators in Areas 2C and 3A

with charter anglers on board were required to have an original, valid permit on board during every charter halibut vessel fishing trip. Charter Halibut Permits (CHPs) are endorsed for the appropriate regulatory area and, except for military CHPs, the number of anglers catching and retaining halibut on a trip. In October 2012, NMFS published an implementation report for the CHLAP after all interim permits had been adjudicated and resolved. This report is available at [http://alaska.fisheries.noaa.gov/ram/charter/chp\\_review1012.pdf](http://alaska.fisheries.noaa.gov/ram/charter/chp_review1012.pdf). At the time of publication, a total of 972 charter halibut permits had been issued to 356

permit holders in Area 2C and 439 permit holders in Area 3A. Of these 972 CHPs, 711 are transferable. Transfers of permits allow new entrants into the charter halibut fishery. With the exception of initial recipients of CHPs who meet specified requirements under 50 CFR 300.67, permit-holders are limited to 5 permits.

#### A. Southeast Alaska (Area 2C)

The Area 2C charter halibut harvest exceeded its GHL every year during 2004 through 2010, despite management measures designed to control charter halibut harvest in this area (Table 1).

TABLE 1—AREA 2C GUIDELINE HARVEST LEVEL AND ESTIMATED CHARTER HALIBUT HARVEST FROM 2004 TO 2013  
[Rounded to the nearest 1,000 lb]

Year	Area 2C GHL	Area 2C estimated harvest
2004	1,432,000 lb (649.5 mt)	1,750,000 lb (793.8 mt)
2005	1,432,000 lb (649.5 mt)	1,952,000 lb (885.4 mt)
2006	1,432,000 lb (649.5 mt)	1,804,000 lb (818.3 mt)
2007	1,432,000 lb (649.5 mt)	1,918,000 lb (870.0 mt)
2008	931,000 lb (422.3 mt)	1,999,000 lb (906.7 mt)
2009	788,000 lb (357.4 mt)	1,245,000 lb (564.7 mt)
2010	788,000 lb (357.4 mt)	1,086,000 lb (492.6 mt)
2011	788,000 lb (357.4 mt)	344,000 lb (156.0 mt)
2012	931,000 lb (422.3 mt)	645,000 lb (292.6 mt) *
2013	788,000 lb (357.4 mt)	not available

\* Harvest estimate for 2012 is preliminary.

To ensure that the halibut stocks would continue to develop to a level that would allow optimum yield in the halibut fisheries, beginning in 2007 the IPHC and Council have recommended, and the Secretary of Commerce has adopted, a number of regulatory measures in Area 2C to limit charter halibut harvest to the Area 2C GHL. In 2007, NMFS implemented regulations to require that under the two-fish daily bag limit, one of the harvested halibut could not exceed 32 inches head-on length (81.3 cm) (72 FR 30714, June 4, 2007). These regulations were in effect for 2007 and 2008. In 2008, the GHL dropped to 931,000 lb (422.3 mt) in Area 2C and charter halibut harvest was more than double the GHL.

In 2009, the GHL dropped again to 788,000 lb (357.4 mt), prompting NMFS to implement additional restrictions on Area 2C charter anglers: A one-fish daily bag limit superseded the two-fish with maximum size rule, harvest by the charter vessel guide and crew was prohibited, and a line limit equal to the number of charter vessel anglers on board, but not to exceed six lines was implemented (74 FR 21194, May 6, 2009). This rule was challenged by participants in the charter halibut

fishery, and the U.S. District Court for the District of Columbia granted summary judgment in favor of the Secretary of Commerce on November 23, 2009 (*Van Valin v. Locke*, 671 F. Supp 2d 1 D.D.C. 2009). The one halibut per day bag limit for charter vessel anglers remained in effect for Area 2C for the 2009 and 2010 seasons, yet catch still exceeded the GHL by approximately 58 percent in each of these years.

Because NMFS imposed no additional charter restrictions in 2011, the IPHC believed that charter halibut harvest was likely to exceed the 788,000 lb GHL again. As such, the IPHC recommended and the Secretary of State accepted, with the concurrence of the Secretary of Commerce, a daily bag limit for charter vessel anglers in Area 2C of one halibut with a maximum length of 37 inches (94.0 cm) per day (76 FR 14300, March 16, 2011). The 2011 Area 2C charter halibut harvest under the 37-inch maximum length rule was estimated at 344,000 lb, significantly below the GHL of 788,000 lb. The Council determined that it would be appropriate for IPHC to consider alternative management measures to limit charter halibut harvest to the GHL, and requested an analysis

of two options in addition to a maximum size limit for management measures for the 2012 Area 2C charter halibut fishery to limit charter halibut harvest to the 2012 GHL. One alternative management measure was a reverse slot limit, in which anglers may retain fish that are smaller or larger than a specified range of lengths, but must release fish within that range. Another alternative considered was charter halibut fishery closures on selected days of the week.

In December 2011, the Council reviewed the analysis of the range of management measures to limit Area 2C charter halibut harvest to its 2012 GHL (available at [www.alaskafisheries.noaa.gov/npfmc/PDFdocuments/halibut/2012MgmtMeasures2C.pdf](http://www.alaskafisheries.noaa.gov/npfmc/PDFdocuments/halibut/2012MgmtMeasures2C.pdf)) and unanimously recommended that the IPHC implement a reverse slot limit that allowed retention of halibut less than or equal to (under) 45 inches (U45) and greater than or equal to (over) 68 inches (O68) in length. This U45/O68 reverse slot limit would allow the retention of halibut that are less than approximately 32 lb and greater than 123 lb (headed and gutted). At its annual meeting in January 2012, the IPHC reviewed the

Council analysis for charter halibut management measure options and the Council's recommendation. The IPHC unanimously recommended implementing the U45/O68 reverse slot limit for charter anglers in Area 2C for the 2012 halibut fishing season. This recommendation was implemented through the 2012 IPHC annual management measures (77 FR 16740, March 22, 2012).

In November 2012, the preliminary estimate of charter halibut harvest for 2012 was 645,000 lb (292.6 mt), which was below the GHL of 931,000 lb (422.3 mt). In December 2012, the Council undertook the same process it used in December 2011 to consider options for the appropriate Area 2C charter halibut management measures for implementation in 2013. Based on an analysis of charter halibut management options and advice from its advisory committees and the public, the Council recommended a continuation of the status quo charter management measures in Area 2C for the 2013

season. At its annual meeting in January 2013, the IPHC reviewed the Council analysis for 2013 charter halibut management measure options (available at [www.alaskafisheries.noaa.gov/npfmc/PDFdocuments/halibut/2013charterAnalysis\\_1212.pdf](http://www.alaskafisheries.noaa.gov/npfmc/PDFdocuments/halibut/2013charterAnalysis_1212.pdf)) and the Council's recommendation. Based on the Total CEY, the resulting GHL for Area 2C in 2013 was 788,000 lb (357.4 mt). The IPHC unanimously recommended status quo management (i.e., the U45/O68 reverse slot limit) for charter anglers in Area 2C for the 2013 halibut fishing season, which was implemented through the 2013 IPHC annual management measures (78 FR 16423, March 15, 2013).

#### B. Southcentral Alaska (Area 3A)

Since the GHL was implemented in 2004, charter anglers in Area 3A have been managed by the same harvest restrictions as unguided anglers, i.e., a two-fish daily bag limit with no size restrictions. Charter halibut harvest in 2004 through 2007 was at or slightly

above the GHL of 3,650,000 lb (1,655.6 mt) in Area 3A (Table 2). Each year from 2007 to 2009, the Alaska Department of Fish and Game (ADF&G) issued an Emergency Order that prohibited charter skipper and crew harvest of all species for the major portion of the season under ADF&G's general authorities to regulate state-licensed sport fishing vessels. From 2010 until 2012, the charter halibut fishery had a two-fish of any size bag limit with no prohibition on skipper and crew harvest. Charter halibut harvest in Area 3A has remained below the GHL since 2008, even after the GHL dropped in 2012 from 3,650,000 lb (1,655.6 mt) to 3,103,000 lb (1,407.5 mt). Table 2 summarizes GHLs and charter halibut harvest in Area 3A since 2004. The IPHC adopted commercial halibut fishery catch limits based on a Total CEY which resulted in a 2013 GHL of 2,734,000 lb (1,240.1 mt) and approved status quo management measures for Area 3A for 2013 (78 FR 16423, March 15, 2013), following the Council's recommendation.

TABLE 2—AREA 3A GUIDELINE HARVEST LEVEL AND ESTIMATED CHARTER HALIBUT HARVEST FROM 2004 TO 2013  
[Rounded to the nearest 1,000 lb]

Year	Area 3A GHL	Area 3A estimated harvest
2004 .....	3,650,000 lb (1,655.6 mt)	3,668,000 lb (1,672.8 mt)
2005 .....	3,650,000 lb (1,655.6 mt)	3,689,000 lb (1,673.3 mt)
2006 .....	3,650,000 lb (1,655.6 mt)	3,664,000 lb (1,662.0 mt)
2007 .....	3,650,000 lb (1,655.6 mt)	4,002,000 lb (1,815.3 mt)
2008 .....	3,650,000 lb (1,655.6 mt)	3,378,000 lb (1,532.2 mt)
2009 .....	3,650,000 lb (1,655.6 mt)	2,734,000 lb (1,240.1 mt)
2010 .....	3,650,000 lb (1,655.6 mt)	2,698,000 lb (1,223.8 mt)
2011 .....	3,650,000 lb (1,655.6 mt)	2,793,000 lb (1,266.9 mt)
2012 .....	3,103,000 lb (1,407.5 mt)	2,375,000 lb (1,077.3 mt) *
2013 .....	2,734,000 lb (1,240.1 mt)	not available

\* Harvest estimate for 2012 is preliminary.

### III. Proposed Catch Sharing Plan (CSP) for Area 2C and Area 3A

#### A. Overview

In October 2008, the Council adopted a motion to recommend a CSP for the charter and commercial halibut fisheries in Areas 2C and 3A to NMFS. The 2008 Council motion is available at [www.alaskafisheries.noaa.gov/npfmc/PDFdocuments/halibut/HalibutCSPmotion1008.pdf](http://www.alaskafisheries.noaa.gov/npfmc/PDFdocuments/halibut/HalibutCSPmotion1008.pdf). The Council intended that the CSP be a comprehensive management program for the charter halibut fisheries in Area 2C and Area 3A. In July 2011, NMFS published a proposed rule for that CSP based on the Council's 2008 preferred alternative (76 FR 44156, July 22, 2011) and received more than 4,000 public comments. The majority of the comments addressed the proposed

allocation percentages and the matrix of charter halibut fishery harvest restrictions that would have been automatically triggered by changes in the annual commercial and charter halibut fisheries' combined catch limits (annual combined catch limits) supported by halibut exploitable biomass. In October 2011, in part due to questions raised in the public comments on the proposed rule, NMFS and the Council decided that further analysis and clarification of provisions of the proposed 2011 CSP were required. In December 2011, the Council requested a supplemental analysis of new information since its 2008 preferred alternative, including an evaluation of the management implications and economic impacts of the proposed CSP at varying levels of halibut abundance.

Based on this new evaluation and additional public input, the Council recommended a revised preferred alternative for the CSP in October 2012. The 2012 Council motion, upon which this proposed rule is based, is available at [www.alaskafisheries.noaa.gov/npfmc/PDFdocuments/halibut/CSPMotion1012.pdf](http://www.alaskafisheries.noaa.gov/npfmc/PDFdocuments/halibut/CSPMotion1012.pdf).

Consistent with the intent of the first proposed CSP in 2011, the Council intends this proposed CSP to address ongoing allocation conflicts between the charter and commercial halibut fisheries. The commercial halibut fishery is subject to defined allocations of individual harvest shares that generally rise and fall with halibut abundance, and the charter halibut fishery, which experienced many years of sustained annual growth, is not

directly subject to limitation with changes in fishery abundance. The commercial IFQ and charter halibut fishery are harvesting a fully utilized resource. The primary objectives of the CSP are to define an annual process for allocating halibut between the charter and commercial halibut fisheries in Area 2C and Area 3A, establish allocations that vary with changing levels of annual halibut abundance and that balance the differing needs of the charter and commercial halibut fisheries, and specify a process for determining harvest restrictions for charter anglers that are intended to limit harvest to the annual charter halibut fishery catch limit.

The CSP allocations would replace the GHL with a percentage allocation to the charter halibut fishery of the annual combined catch limit. The Council also intends to follow the process it used in 2011 and 2012 to specify annual management measures for the charter halibut fishery prior to the upcoming fishing season based on projected harvests and charter catch limits (i.e., currently the GHL). Prior to 2012, restrictions to limit charter halibut harvests to the respective GHLs were implemented either by IPHC regulation in the annual management measures without input from the Council, or by separate NMFS rulemaking after the GHL was exceeded. The pre-season harvest restriction specification process recommended in this proposed rule is intended to limit charter halibut harvest to the target level before an overage occurs, as opposed to an approach that implements management measures several years after the target harvest level has been exceeded.

The pre-season specification of harvest restrictions for charter anglers is consistent with the Council's objective to maintain the charter halibut fishery season length in effect (February 1 through December 31) with no inseason changes to harvest restrictions, even if it appears that the regulatory measures may result in an overage. The Council developed this objective based on committee recommendations and public testimony from charter vessel operators indicating that inseason changes to harvest restrictions would be disruptive to charter operators and anglers. Many charter vessel anglers book fishing trips with operators well in advance of the trip date with an expectation that the harvest restrictions that are effective at the beginning of the fishing season will be in place throughout that season. Management changes to bag or size limits for charter vessel anglers within a fishing season may cause considerable inconvenience for charter anglers and

adverse economic impacts to charter operators if anglers decide to postpone or cancel their charter fishing trip due to a mid-season change in regulations. The potential for inseason management changes also could result in fewer anglers planning charter fishing trips in Alaska, which could have significant long-term adverse economic impacts on charter vessel operators by reducing revenue.

The Council recommended, and NMFS agrees, that the annual CSP catch limits for the commercial and charter halibut fisheries should be determined by a predictable and standardized process utilizing the IPHC's annual management measures. This proposed rule would establish a procedure for determining the commercial and charter halibut fisheries' catch limits for each area. If this proposed rule for a CSP is implemented, the IPHC's annual combined catch limits for 2C and 3A would be apportioned between the annual charter catch limits and annual commercial catch limits in those areas. At its annual meeting, the IPHC would consider the Council's recommendations designed to constrain the charter halibut fisheries in 2C and 3A to their allocated annual catch limits, and would consider the advice of IPHC staff, advisors, and the public. The IPHC would be expected to adopt the catch limits and appropriate management measures as part of the annual IPHC halibut fishery conservation and management regulations. Should the Secretary of State accept the IPHC regulations, with concurrence of the Secretary of Commerce, the approved IPHC regulations would be published in the **Federal Register** as specified by regulations at 50 CFR 300.62. The IPHC annual management measures would remain in effect until superseded by future regulations.

In recent years, this implementation schedule for IPHC annual management measures has occurred after the February 1 season opening date for halibut sport fisheries in Alaska. In most years, the effective date of the IPHC annual management measures has been around March 15. Thus, the period between the February 1 opening of the sport season and the mid-March effective date of the superseding annual management measures has been subject to the previous year's IPHC regulations. This schedule will continue under the proposed CSP unless the IPHC recommends a change to the February 1 opening for the sport fishing season. However, implementation of the annual management measures in March likely does not impact the charter halibut

fishery because there has historically been little or no charter halibut harvest during February 1 through mid-March.

As part of this proposed action, the Council also recommended that ADF&G Saltwater Charter Logbooks be used as the primary data source to estimate the number of halibut harvested in the charter halibut fishery following each charter halibut fishing season and to project the number of halibut harvested in the charter fishery in the following year. Since the mid-1990s, the primary data source to estimate the numbers of halibut harvested in the charter fishery provided to the IPHC and the Council has been the Alaska Statewide Harvest Survey (SWHS). The SWHS is a mail survey that employs stratified random sampling of households containing at least one licensed angler. Survey respondents are asked to report the numbers of fish caught and kept by all members of the entire household, and the data are expanded to cover all households.

The ADF&G Saltwater Charter Logbook is the primary reporting requirement for operators in the charter fisheries for all species harvested in saltwater in Areas 2C and 3A. ADF&G developed the saltwater charter logbook program in 1998 to provide information on participation and harvest by individual vessels and businesses in charter fisheries for halibut as well as other state-managed species. Saltwater charter logbook data are compiled to show where fishing occurs, the extent of participation, and the species and the numbers of fish caught and retained by individual anglers. This information is essential to estimate harvest for regulation and management of the charter halibut fisheries in Area 2C and Area 3A. Since 1998, the saltwater charter logbook design has undergone annual revision, driven primarily by changes or improvements in the collection of fisheries data. In recent years, ADF&G has added saltwater charter logbook reporting requirements to accommodate information required to implement and enforce Federal charter halibut fishing regulations, such as the Area 2C one-halibut per day bag limit and the charter halibut limited access program.

In 2006, ADF&G adopted a number of new measures to improve the quality of saltwater charter logbook data including requiring charter operators to report angler license numbers and the numbers of fish caught per angler, and increasing staff resources to verify the data collected. Following these changes, ADF&G sought to determine whether the quality of logbook data had in fact improved, and whether logbook data

should be used to monitor and manage the charter halibut fishery. In 2008 and 2009, ADF&G presented two evaluations of the logbook data to the Council and the Council's Scientific and Statistical Committee. The reports included comparisons of charter halibut harvest estimates using saltwater charter logbook data and SWHS data. Based on these reports and additional information, the Council determined that the use of saltwater charter logbook data instead of the SWHS offers several advantages. Most important among these advantages is that logbook data are available sooner; they are reported on a weekly basis and partial-year harvest can be summarized by the end of the charter halibut fishing season. In contrast, data from the SWHS are not available until nearly a year after the fishing season has ended. It is important to obtain timely estimates of charter halibut harvest so the performance of management measures relative to the charter catch limits can be evaluated and modified, if necessary, before the next fishing season begins. Additionally, logbook data are intended to provide a complete census of the harvest without recall bias or sampling error that may be present in the SWHS and are therefore thought to be more accurate than SWHS data. NMFS anticipates that if the CSP is approved, i.e., this proposed rule is implemented, ADF&G will report charter halibut harvest to the IPHC and the Council using saltwater charter logbooks as the primary data source for the number of fish harvested.

In order to provide flexibility for individual commercial and charter halibut fishery participants, the Council also recommended that the CSP authorize annual transfers of commercial halibut IFQ as guided angler fish (GAF) to charter halibut permit holders for harvest in the charter halibut fishery. Under the commercial IFQ Program, commercial halibut operators hold quota share (QS) that yields a specific amount of an annual harvest privilege, or IFQ. GAF would

offer charter halibut permit holders in Area 2C or Area 3A an opportunity to lease a limited amount of IFQ from commercial QS holders to allow charter clients to harvest halibut in addition to, or instead of, the halibut harvested under the daily bag limit for charter anglers. Charter anglers using GAF would be subject to the harvest limits in place for unguided sport anglers in that area, currently a two-fish of any size limit in Areas 2C and 3A. GAF harvested in the charter halibut fishery would be accounted for as commercial halibut IFQ harvest.

Except for authorizing commercial halibut QS holders to transfer IFQ as GAF to charter halibut permit holders, the Council did not intend for the CSP to change the management of the commercial halibut fisheries in Area 2C and Area 3A. The directed commercial halibut fisheries in Area 2C and Area 3A are managed under the IFQ Program pursuant to regulations at 50 CFR part 679 subparts A through E. The proposed rule would amend only those sections of the IFQ Program's regulations to authorize transfers between IFQ and GAF and establish the requirements for using GAF.

#### *B. Annual Combined Catch Limit*

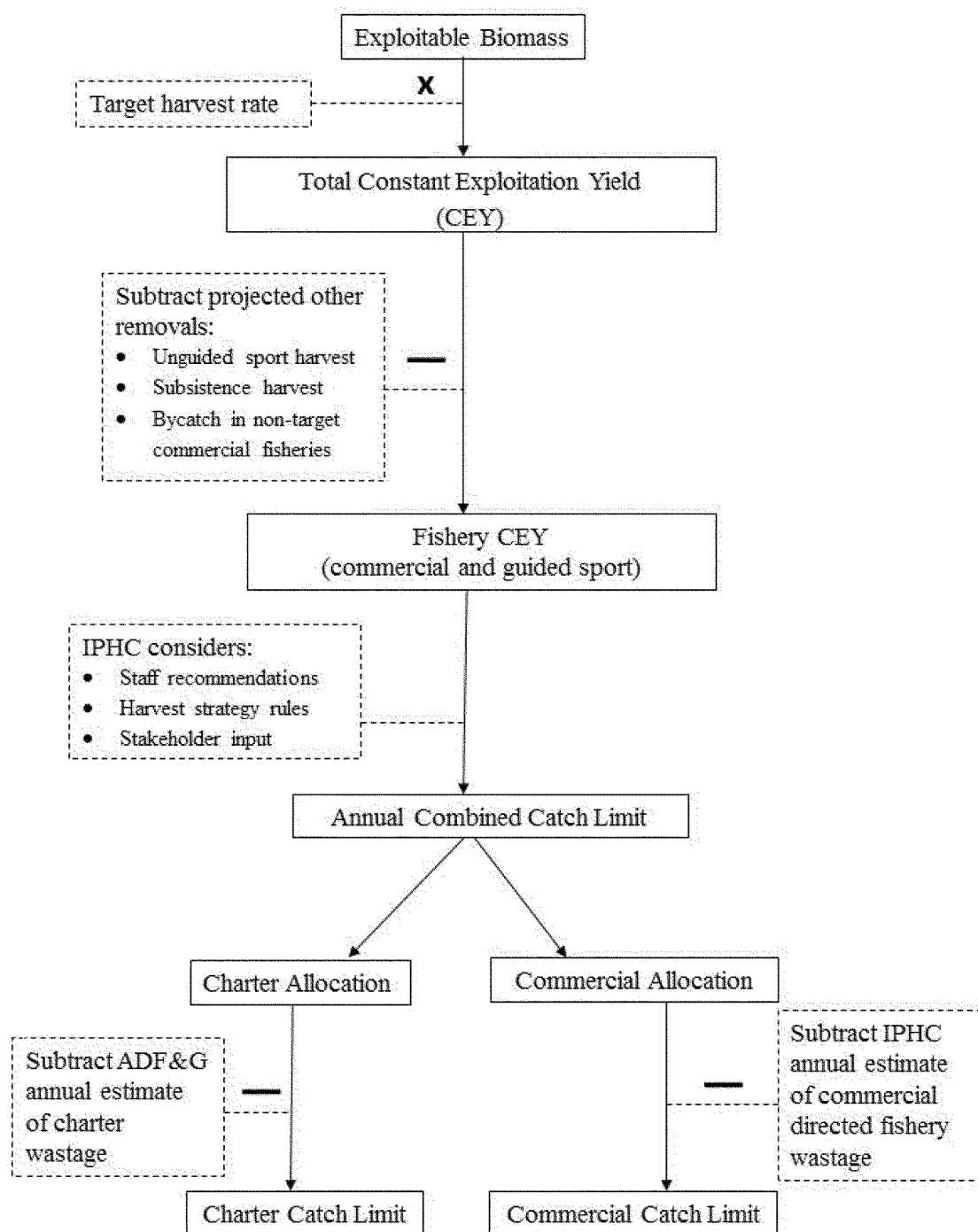
The CSP would change the current process for specifying annual catch limits for the commercial halibut fisheries in Area 2C and Area 3A, and establish a process for specifying annual charter halibut fishery catch limits in Area 2C and Area 3A. The process for specifying annual guided sport catch limits under the CSP would replace the GHL for the charter halibut fisheries in Area 2C and Area 3A. The IPHC currently only specifies annual catch limits for the directed commercial halibut fisheries, and Federal regulations determine the GHL for charter halibut fisheries based on the Total CEY in Area 2C and Area 3A as determined by the IPHC. Under the proposed CSP, the IPHC would specify an annual combined catch limit for Area 2C and for Area 3A at its annual meeting in January. Each area's annual

combined catch limit in net pounds would be the total allowable halibut harvest for the directed commercial halibut fishery plus the total allowable halibut harvest for the charter halibut fishery under the CSP.

NMFS anticipates that the IPHC process for determining the annual combined catch limit would be similar to the process it has typically used in the past for determining annual commercial catch limits. A notable exception is how each fishery's wastage would be deducted from the combined catch limit, as described in the "Calculation of Annual Fishery Catch Limits" section of this preamble. The IPHC would continue to estimate the exploitable biomass of halibut using a combination of harvest data from the commercial, sport, and subsistence fisheries, and information collected during scientific surveys and sampling of bycatch in other fisheries. The IPHC would calculate the Total CEY, or the target level for total removals (in net pounds) for that area in the coming year, by multiplying the estimate of exploitable biomass by the harvest rate in that area. The IPHC would subtract estimates of other removals from the Total CEY. Other removals would include unguided sport harvest, subsistence harvest, and bycatch of halibut in non-target commercial fisheries. The remaining CEY, after the other removals are subtracted, would be the Fishery CEY which would be the basis for the IPHC's determination of the annual combined catch limit for Areas 2C and 3A. The IPHC would continue to consider the combined commercial and charter halibut Fishery CEY, staff analysis, harvest policy, and stakeholder input when it specifies the Area 2C and Area 3A annual combined catch limits in net pounds.

The IPHC process for determining annual combined catch limits and commercial and charter allocations and catch limits under the proposed CSP is presented in Figure 1 and described further in subsequent sections of this preamble.

Figure 1. Process for Setting Annual Combined Catch Limits, Charter and Commercial Allocations, and Charter and Commercial Catch Limits for Area 2C and Area 3A Under the Proposed Catch Sharing Plan



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#### C. Annual Commercial Fishery and Charter Fishery Allocations

Under the CSP, the IPHC would divide the annual combined catch limits into separate annual catch limits for the

commercial and charter halibut fisheries. A fixed percentage of the annual combined catch limit would be allocated to each fishery at most levels of the combined catch limit. The fixed percentage allocation to each fishery

would vary with halibut abundance, with higher allocations to the charter halibut fishery at lower levels of abundance. The charter halibut fishery would receive a fixed poundage allocation at intermediate abundances to

avoid a “vertical drop” in allocation (described further below). The IPHC would multiply the CSP allocation percentages for each area by the annual combined catch limit to calculate the commercial and charter halibut allocations in net pounds.

The CSP allocation method is a significant change from the current guidelines established under the GHL. At moderate to low levels of halibut abundance, the CSP would provide the charter halibut fishery with a smaller poundage allocation than the guideline limits established under the GHL program. Conversely, at higher levels of abundance, the CSP would provide the charter halibut fishery with a larger poundage allocation than the guideline limits established under the GHL program. The Council intended the CSP fishery allocations to balance the needs of the charter and commercial halibut fisheries at all levels of halibut abundance. The Council believes, and NMFS agrees, that the allocation under the CSP provides a more equitable management response to changes in Total CEY, compared to the GHL program.

One of the primary disadvantages of the GHL program is that it is not responsive or adaptable to changes in halibut abundance and fishing effort. For example, the Area 2C GHL was 788,000 lb in 2009. The Area 2C Total CEY declined by approximately 10 percent from 2009 to 2010, but this decline did not trigger a change in the GHL, which remained at 788,000 lb in 2010. Therefore, the commercial halibut fishery IFQ allocations were reduced, but there was no change in the charter halibut fishery GHLs. Conversely, when halibut exploitable biomass increases, the GHL does not allow the charter halibut fishery to fully benefit from this increase. For example, the Area 3A Total CEY increased by approximately 11 percent from 2006 to 2007, but this increase did not trigger a change in the GHL, which was limited to the maximum level of 3,650,000 lb in those years.

Among other options, the Council considered establishing fixed poundage allocations to the charter halibut fishery similar to the guidelines established under the GHL program. However, the Council determined that use of a fixed percentage allocation of the combined catch limit to each fishery under the CSP would result in both the commercial and charter halibut fishery allocations adjusting directly with changes in halibut exploitable biomass. In contrast, in this proposed rule, both fisheries would share in the benefits and

costs of managing the resource for long-term sustainability.

The allocation under the proposed CSP provides a more transparent and equitable management response than the GHL program because unlike the current allocation system, it would use the same method to establish commercial and charter halibut fishery allocations. Under the current management structure, the GHL is calculated directly from the IPHC's determination of Total CEY, or total allowable removals of halibut from all sources. The commercial halibut catch limit is based on the Total CEY and is also affected by other halibut removals from sport harvest, subsistence harvest, bycatch of halibut in commercial fisheries targeting other species, and wastage in the commercial halibut fishery. As described above in the “Background on the Halibut Fishery” section, the IPHC currently establishes the commercial fishery catch limits only after subtracting these other halibut removals from the Total CEY. Therefore, an increase in other removals directly reduces the amount of halibut available for the commercial halibut fishery. The GHL for the charter halibut fishery is not affected by changes in other halibut removals.

Section 2.5.10 of the EA/RIR/IRFA (see **ADDRESSES**) describes the effects of the current allocation system, in which the proportion of total halibut harvested in the Area 2C and Area 3A commercial halibut fishery has declined and the proportion harvested in the charter halibut fishery has increased. From 2008 through 2012, the Area 2C commercial halibut fishery harvest declined from 60.2 percent to 43.1 percent of the Total CEY, and charter halibut fishery harvest increased from 14.3 percent to 15.9 percent of the Total CEY over the same time period. In Area 3A, commercial halibut fishery harvest decreased from 76.8 percent to 60.3 percent of the Total CEY, and charter halibut fishery harvest increased from 12.6 percent to 15.7 percent of the Total CEY from 2008 through 2012. Thus, while both the GHL and commercial halibut fishery catch limits have declined in recent years, the commercial halibut fisheries have borne larger poundage and proportional reductions under the current allocation system. The Council and NMFS determined that the proposed CSP would stabilize the proportions of harvestable halibut available to the commercial and charter fisheries at all levels of halibut abundance by basing both fishery allocations on the annual combined catch limit.

The Council considered historical and recent catch information when determining the recommended CSP allocation percentages for the commercial and charter halibut fisheries. The Council reviewed average charter halibut harvest estimates for individual years and for different combinations of years ranging from 1999 through 2005. The Council recommended multiple CSP allocation percentages for the commercial and charter halibut fisheries in Area 2C and in Area 3A depending on the combined catch limit set for that area. Combined catch limits would be divided into tiers based on abundance. As described above, at lower levels of abundance the CSP would allocate a higher percentage of the combined catch limit to the charter halibut fishery than it would receive under higher combined catch limits. The Council recommended, and NMFS proposes, higher charter allocation percentages at relatively low abundance levels of halibut to ameliorate the effects of replacing the GHL stair-step benchmark in pounds with a CSP allocation percentage that varies directly with the annual combined catch limit. A higher percentage allocation at lower abundance levels is also intended to keep charter businesses from being severely restricted at times of low halibut abundance.

Section 2.5 of the EA/RIR/IRFA (see **ADDRESSES**) analyzes several alternatives for allocations under the CSP. Under the Council's preferred alternative for the CSP in Area 2C, the poundage allocation to the charter halibut fishery would have been from 4.8 percent to 32 percent lower than the GHL from 2008 through 2012. For Area 3A, the poundage allocation to the charter halibut fishery would have been from 4.7 percent to 24.5 percent lower than the GHL in Area 2C from 2008 through 2012. The Council acknowledged that reductions in charter halibut fishery catch limits relative to the GHL may reduce demand for charter services and may result in reduced demand for charter services and negative economic impacts for charter operators. Section 2.6 of the EA/RIR/IRFA notes that it is not possible to quantify the effects of the reduction in pounds allocated to the charter halibut fishery under the CSP relative to the GHL. However, the Council noted that from 2008 through 2012, catch limits in the commercial halibut fisheries were reduced by 57.7 percent in Area 2C and by 51.7 percent in Area 3A, which resulted in reduced revenues for participants in the fishery, most of whom are also small businesses



(Section 3.2.2 of the EA/RIR/IRFA, see **ADDRESSES**). In recommending the CSP, the Council faced the challenge of balancing historical harvests, economic impacts to each sector, and the declining status of the halibut stock in both areas, under the proposed range of allocation options. As a result, it is not possible for any allocation under the proposed CSP to make participants in both fisheries whole economically given current halibut abundance levels.

The proposed allocations differ for Area 2C and Area 3A. The Council considered that Area 2C and Area 3A are distinct from each other in terms of halibut abundance trends and charter fishing effort when it selected its preferred alternative. In Area 2C, the main indices of halibut abundance have shown a steady decline in exploitable biomass from high levels in the mid-1990s. While it appears that the rate of decline in the Total CEY in Area 2C has slowed or stopped, halibut abundance continues to remain at historically low levels. From 2004 through 2008, Area 2C charter halibut harvests increased by 41.5 percent, which demonstrated the ability of participants in that fishery to increase capacity to meet angler demand. This rapid growth in the

charter halibut industry in Area 2C, combined with the delay in setting harvest restrictions, made it difficult for managers to set harvest restrictions to avoid exceeding the GHL, while meeting the Council's objectives of avoiding in-season changes to harvest restrictions and maintaining a traditional season length. Until 2011, no mechanism was in place to implement new charter halibut harvest restrictions in a timely fashion in response to harvests exceeding the GHL. As a result, the charter halibut fishery in Area 2C exceeded its GHL each year 2004 through 2010. After considering these factors, the Council recommended, and NMFS proposes, more conservative CSP charter halibut fishery allocations in Area 2C, particularly at low levels of abundance, to accommodate imprecision in managing harvest in a fishery that depends on inseason regulatory stability but that also has exhibited the ability to undertake rapid growth, particularly at current low levels of halibut abundance. The Council also noted that a more conservative charter halibut fishery allocation was appropriate under the CSP because participants in the Area 2C commercial halibut fishery have

experienced significant economic losses in revenue from reductions in catch limits since 2007. While ex-vessel prices for halibut have increased in recent years, the increases have not compensated all revenue losses experienced by the Area 2C commercial halibut fishery (see section 2.3.2 and 2.6 of the EA/RIR/IRFA).

In contrast, while declines in Total CEY in Area 3A have occurred over the last several years, the Total CEY remains the largest of any of the regulatory areas. In addition, following implementation of the GHL, charter halibut fishery removals in this area did not increase at the rate seen in Area 2C, increasing by just 9 percent from 2004 through 2007. The following sections provide additional details on the proposed CSP allocations for Area 2C and Area 3A.

#### 1. Calculation of Annual Fishery Allocations and Catch Limits—Area 2C

In Area 2C, the proposed charter halibut fishery allocation percentages were based on Alternative 3 of the EA/RIR/IRFA (see **ADDRESSES**). The proposed CSP would establish three allocation tiers for Area 2C (Table 3 and Figure 2).

TABLE 3—AREA 2C PROPOSED CATCH SHARING PLAN (CSP) ALLOCATIONS TO THE CHARTER AND COMMERCIAL HALIBUT FISHERIES RELATIVE TO THE ANNUAL COMBINED CATCH LIMIT (CCL)

Area 2C annual combined catch limit for halibut in net pounds (lb)	Charter halibut fishery CSP allocation (% of annual combined catch limit)	Commercial halibut fishery CSP allocation (% of annual combined catch limit)
0 to 4,999,999 lb .....	18.3% .....	81.7%.
5,000,000 to 5,755,000 lb .....	915,000 lb .....	Area 2C CCL minus 915,000 lb.
5,755,001 lb and up .....	15.9% .....	84.1%.

When the IPHC sets an annual combined catch limit of less than 5,000,000 lb (2,268 mt) in Area 2C, the commercial halibut fishery allocation would be 81.7 percent and the charter halibut fishery allocation would be 18.3 percent of the annual combined catch limit. This percentage allocation was calculated as 125 percent of the average charter halibut harvest in Area 2C from 2001 through 2005 divided by the annual average combined charter and commercial halibut harvests in Area 2C from 2001 through 2005 (17.3 percent) and then adjusted to account for the Council's recommendation to use saltwater charter logbooks as the primary mechanism to estimate charter halibut harvest.

The Council considered smaller percentage allocations to the charter halibut fishery, including an allocation based on the current GHL formula, which uses a calculation of 125 percent

of the average 1995 through 1999 charter halibut harvest divided by the 1995 through 1999 combined charter and commercial halibut harvests in Area 2C. However, the Council received testimony from Area 2C charter halibut fishery participants that the GHL had been overly restrictive since it was implemented in 2004, particularly during times of low halibut abundance. These participants requested that the Council base the CSP allocation on higher levels of historical charter halibut harvest to accommodate growth in the fishery since implementation of the GHL. The Council considered this testimony and the effects on participants in the commercial and charter halibut fisheries, and determined that using 2001 through 2005 average charter halibut harvests for the charter fishery allocation provided an equitable balance for both fisheries. Using these years would provide the

charter halibut fishery with an increase in the proportion of the combined charter and commercial halibut harvests allocated to the charter fishery relative to the GHL formula. However, in consideration of the effects of an increased charter fishery allocation on commercial halibut fishery participants at low halibut abundance levels, NMFS proposes to base the CSP allocation on 2001 through 2005 charter halibut harvest levels rather than on more recent years in which charter halibut harvests reached historically high levels.

As discussed in Section 1.7.3 of the EA/RIR/IRFA (see **ADDRESSES**), data from the most recent five years of harvest (2006 through 2010) that were available when the Council selected its preferred alternative were used to calculate the average difference between harvest estimates provided by logbooks and the statewide harvest survey

(SWHS). Estimates using saltwater charter logbook data are on average higher than estimates using SWHS data. The Council considered this average difference (5.6 percent) when it recommended its CSP preferred alternative. Without this adjustment factor incorporated into the CSP, the charter halibut fishery would have been held to allocations that were based on charter halibut harvest estimates using SWHS as the primary data source, but would be managed based on charter halibut harvest projections using saltwater charter logbooks as the primary data source.

For the first allocation tier in Area 2C (i.e., a combined catch limit of less than 5,000,000 lb), the adjustment factor was applied to the allocation using the following equation:

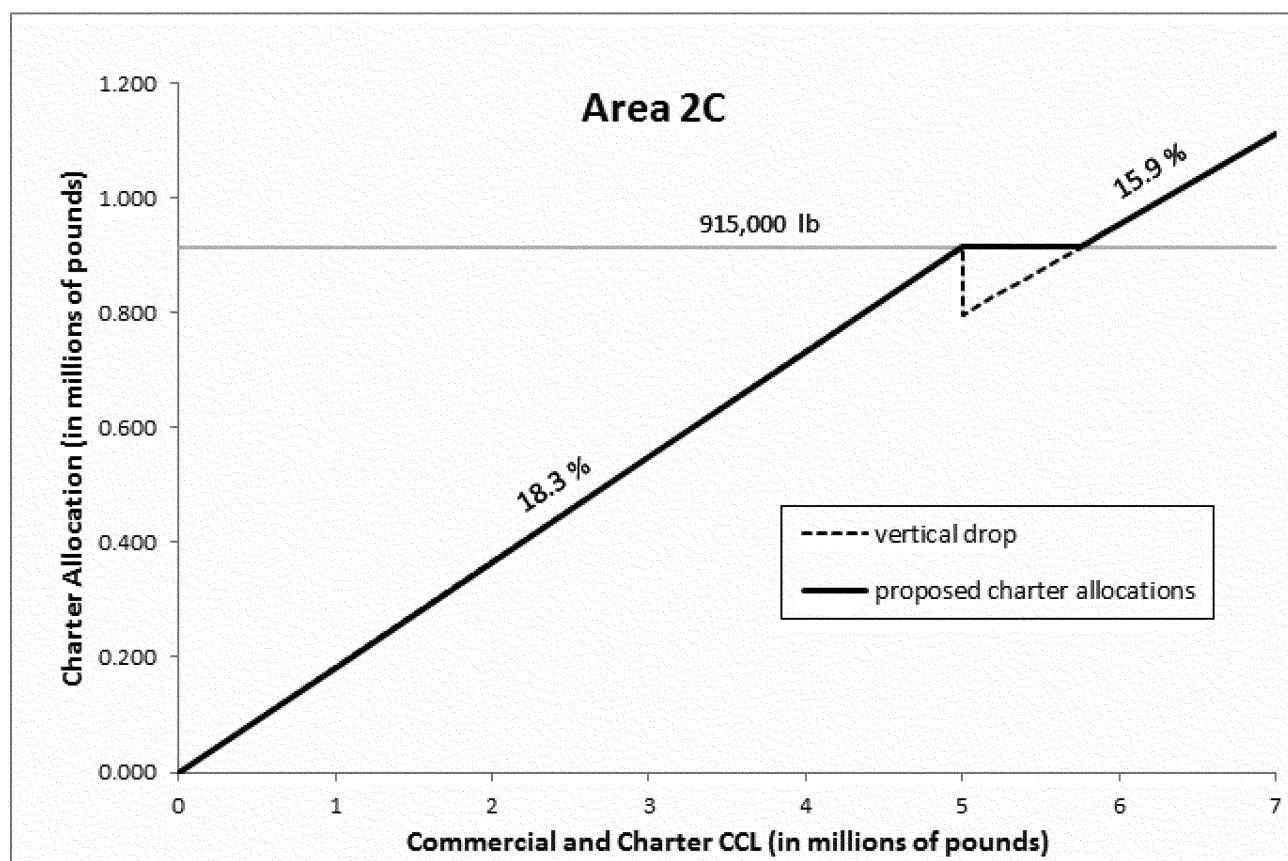
$$(\text{CSP allocation} \times \text{adjustment factor}) + \text{CSP allocation} = \text{adjusted CSP allocation}$$

$$\text{or} \\ (17.3\% \times 5.6\%) + 17.3\% = 18.3\%$$

When the IPHC sets the annual combined catch limits at the second tier, between 5,000,000 lb and 5,755,000 lb (2,610.4 mt), the allocation to the charter halibut fishery would be a fixed 915,000 lb (405 mt), to smooth the vertical drop in the poundage allocation that would occur without this adjustment (Figure 2). Without this adjustment, a 1 lb increase in combined catch limit from 4,999,999 lb to 5,000,000 lb would trigger a 2.4 percent drop in the charter allocation, resulting in a significant drop in the poundage allocated to the charter halibut fishery. For example, without the adjustment, if the combined catch limit were set at

4,999,999 lb, the charter allocation would be 18.3 percent or 915,000 lb. However, if the combined catch limit increased to 5,000,000 lb, the charter allocation percentage would be 15.9 percent, or 795,000 lb (360.6 mt). By adding this fixed poundage allocation tier for Area 2C to the proposed CSP, the vertical drop in the allocation is removed. The charter halibut fishery allocation would be fixed at 915,000 lb until the combined catch limit increased to the point where the charter allocation percentage at higher abundance levels would not result in a decrease in poundage allocated to the charter halibut fishery. With the proposed allocation percentages, the poundage allocated to the charter halibut fishery would increase as a fixed percentage at combined catch limits above 5,755,000 lb.

Figure 2. Area 2C Charter Allocations at Varying Levels of the Combined Catch Limit (CCL).



When the CCL is between 0 and 4,999,999 lb, the charter halibut fishery receives 18.3 percent of the CCL. Above 5,755,000 lb, the charter halibut fishery

receives 15.9 percent of the CCL. When the CCL is between 5,000,000 and 5,755,000 lb, the charter halibut fishery would receive a fixed poundage

allocation of 915,000 lb. The dashed line represents the vertical drop in allocation that would occur without the fixed poundage adjustment. The

commercial halibut fishery would be allocated the Area 2C combined catch limit minus the 915,000 lb fixed allocation to the charter halibut fishery.

When the IPHC sets the annual combined catch limit at the third tier, greater than 5,755,000 lb (2,610.4 mt), in Area 2C, the commercial halibut fishery allocation would be 84.1 percent and the charter halibut fishery allocation would be 15.9 percent of the Area 2C annual combined catch limit. This proposed charter halibut CSP allocation percentage was calculated as the 2005 charter halibut harvest estimates divided by the combined 2005 charter and commercial halibut harvests in Area 2C and adjusted to account for the Council’s recommendation to use saltwater charter logbooks as the primary mechanism to estimate charter halibut harvest. For the third allocation tier in Area 2C, the adjustment factor was applied to the allocation using the same equation as for the first tier:

(CSP allocation × adjustment factor) +  
CSP allocation = adjusted CSP  
allocation

or  
(15.1% × 5.6%) + 15.1% = 15.9%

Although the Council considered smaller percentage allocations to the charter halibut fishery, the Council determined, and NMFS agrees, that 2005 charter halibut harvest would be a more appropriate basis at higher levels of halibut abundance for determining the charter halibut allocation percentages under the CSP. The charter halibut harvest in 2005 was the second highest halibut harvest estimated since 1999. The Council determined that at higher levels of abundance, the CSP would provide an allocation to the charter halibut fishery based on a relatively high historical level of harvest and would allow participants to benefit from higher halibut abundance. NMFS agrees that 2005 is an appropriate basis for the charter halibut fishery allocation because it represents a year in which halibut abundance was relatively high in Area 2C. Halibut abundance began to decline in the years following 2005, and as a result, charter halibut fishery harvests increased in proportion to commercial halibut fishery harvests. NMFS agrees with the Council’s recommendation for a charter halibut fishery allocation at the highest combined catch limit tier that balances the needs of participants in the

commercial and charter halibut fisheries.

2. Calculation of Annual Fishery Allocations and Catch Limits—Area 3A

In Area 3A, the proposed charter halibut fishery allocation percentages were based on the methodology presented in Section 1.6 of the EA/RIR/IRFA. The Council recommended three different percentages of allocations depending on the level of the combined catch limit, with smaller percentage allocations to the charter halibut fishery as the combined catch limit increases from one percentage allocation to another, NMFS also would establish fixed allocations to the charter halibut fishery for Area 3A. Because there would be two transitions between the three combined catch limit percentage allocations in this area, this proposed rule would add two tiers with fixed poundage allocations to remove the vertical drops. The proposed Area 3A allocation therefore contains 5 tiers (Table 4 and Figure 3).

TABLE 4—AREA 3A PROPOSED CATCH SHARING PLAN (CSP) ALLOCATIONS TO THE CHARTER AND COMMERCIAL HALIBUT FISHERIES RELATIVE TO THE ANNUAL COMBINED CATCH LIMIT (CCL)

Area 3A annual combined catch limit for halibut in net pounds (lb)	Charter halibut fishery CSP allocation (% of annual combined catch limit)	Commercial halibut fishery CSP allocation (% of annual combined catch limit)
0 to 9,999,999 lb .....	18.9% .....	81.1%.
10,000,000 to 10,800,000 lb .....	1,890,000 lb .....	Area 3A CCL minus 1,890,000 lb.
10,800,001 to 20,000,000 lb .....	17.5% .....	82.5%.
20,000,001 to 25,000,000 lb .....	3,500,000 lb .....	Area 3A CCL minus 3,500,000 lb.
25,000,001 lb and up .....	14.0% .....	86.0%.

For Area 3A, when the IPHC sets the annual combined catch limits at the first tier, less than 10,000,000 lb (4,535.9 mt), the commercial halibut fishery allocation would be 81.1 percent and the charter halibut fishery allocation would be 18.9 percent of the Area 3A annual combined catch limit. These allocation percentages were calculated using the same formula as for Area 2C, i.e., as 125 percent of the average charter halibut harvest in Area 3A from 2001 through 2005 divided by the annual average combined charter halibut and commercial halibut harvests in Area 3A from 2001 through 2005 (15.4 percent). Additionally, the Council recommended that this allocation be increased by 3.5 percent to establish the CSP allocation at the upper end of the target range around the allocation originally proposed in the 2011 CSP (18.9 percent).

The Council determined that this allocation would be appropriate for Area 3A because it provided for a limited increase in allocation relative to the years used as the basis for the GHL by including two (2004 and 2005) of the four (2004 through 2007) years in which charter halibut fishery harvests reached historically high levels. In determining its recommendation for the Area 3A charter halibut fishery allocation, the Council also considered public testimony that the lower poundage allocation under the CSP relative to the GHL at lower levels of abundance would negatively impact angler demand and reduce charter operator revenues (see sections 2.5.8 and 2.5.10 of the EA/RIR/IRFA). The Council considered this information and recommended increasing the Area 3A charter halibut fishery allocation by an additional 3.5 percent at lower levels of abundance. In

developing the CSP, the Council considered including a buffer of 3.5 percent around the charter allocations to account for the imprecision of managing charter halibut fisheries using pre-season specifications of harvest restrictions without in-season adjustments or an early season closure (section 1.6.2 of the EA/RIR/IRFA). While the Council ultimately did not recommend a 3.5 percent buffer for all charter halibut fishery allocations under the proposed CSP, it did determine that it would be appropriate to increase the Area 3A charter halibut fishery allocation by 3.5 percent at lower levels of abundance in order to increase the poundage allocation to levels more consistent with the GHL. This adjustment was recommended because the charter fishery in Area 3A does not have a history of excessive overages and also because the abundance of halibut is

higher. A similar adjustment was not approved for the allocation to the Area 2C charter halibut fishery. The Council chose a more conservative allocation option in Area 2C because of that area's potential for rapid increases in charter harvests and the increased likelihood of exceeding its allocation at low levels of abundance. NMFS agrees that this allocation increase for Area 3A likely would mitigate the negative impact on charter halibut fishery participants of the reduced CSP allocation (in pounds of halibut) relative to the GHL.

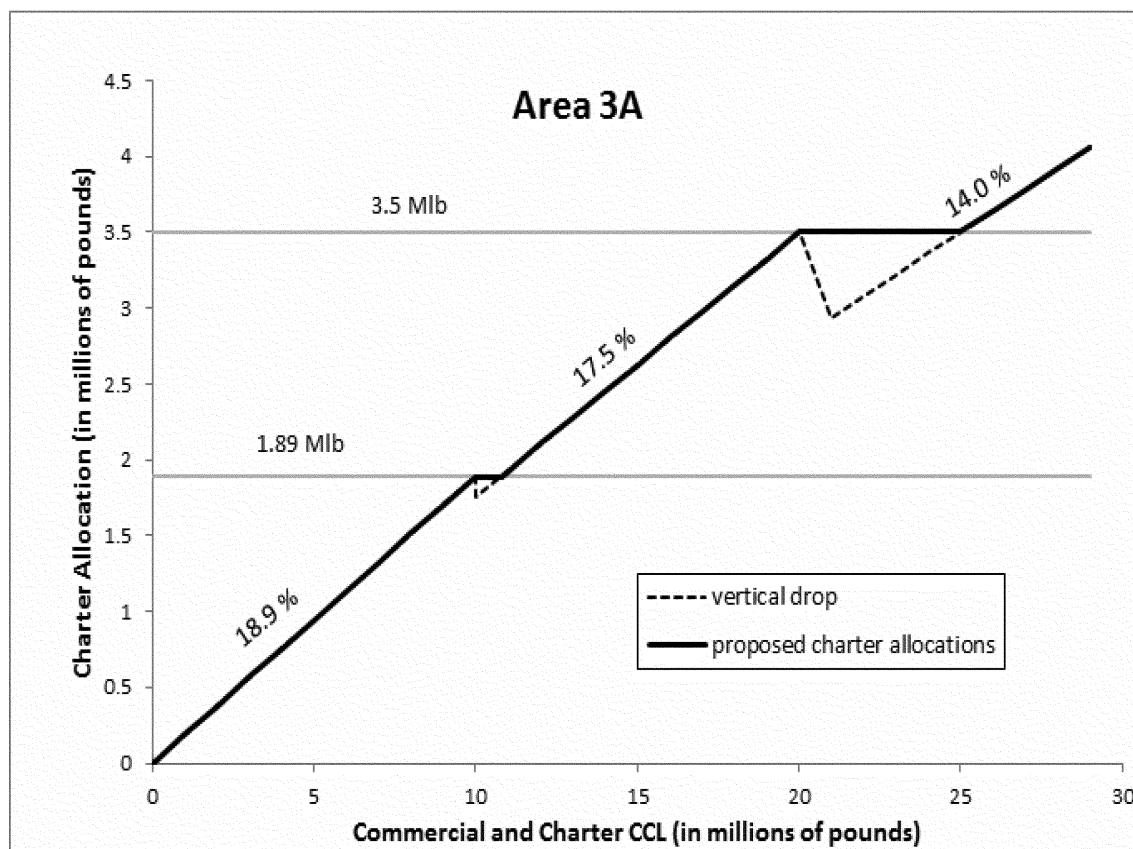
For Area 3A annual combined catch limits between 10,000,000 lb and 10,800,000 lb (4,898.8 mt), the allocation to the charter halibut fishery would be 1,890,000 lb (857.3 mt). The commercial halibut fishery would be allocated the Area 3A combined catch limit minus the 1,890,000 lb fixed allocation to the charter halibut fishery. This allocation tier would ensure that charter halibut fishery allocations would not decrease as the combined catch limit (and commercial catch limit) increased.

At abundances greater than 10,800,000 lb and less than 20,000,000 lb (9,071.9 mt), the allocations in Area 3A would be based on the same methods used to calculate the GHL, i.e., the charter allocation would be 125 percent of the average charter halibut harvest between 1995 and 1999 divided by the annual average combined charter halibut and commercial halibut harvests in Area 3A from 1995 through 1999. The Council and NMFS determined that this allocation to the charter halibut fishery was appropriate because harvest by the Area 3A charter GHL was not overly restrictive at comparable halibut abundance levels. This allocation tier would also include the 3.5 percent upward adjustment from the allocations proposed in the 2011 CSP in order to mitigate the negative impact on charter halibut fishery participants of the lower CSP allocation (in pounds of halibut) relative to the GHL. The resulting allocations would be 82.5 percent of the combined catch limit to the commercial halibut fishery and 17.5 percent to the charter halibut fishery.

When the combined catch limit for Area 3A is set at greater than 20,000,000 lb and less than or equal to 25,000,000 lb (11,339.8 mt), the charter halibut fishery would receive a fixed 3,500,000 lb allocation. This fixed poundage allocation would ensure that charter fishery allocations would not decrease as the combined catch limit (and commercial catch limit) increased. The commercial halibut fishery allocation would equal the combined catch limit minus 3,500,000 lb.

At combined catch limits greater than 25,000,000 lb, the commercial halibut fishery allocation would be 86 percent and the charter halibut fishery allocation would be 14 percent of the Area 3A annual combined catch limit. The Council determined that allocating a larger percentage to the charter halibut fishery would give more to the charter halibut fishery than they could harvest based on available historic harvest data and information on charter business operations received during the development of the CSP (see Section 1.6.7 of the EA/RIR/IRFA for additional detail).

Figure 3. Area 3A Charter Allocations at Varying Levels of the Combined Catch Limit (CCL).



When the CCL is less than 10 million pounds (Mlb), the charter halibut fishery receives 18.9 percent of the CCL. Between 10.8 Mlb and 20 Mlb, the charter halibut fishery receives 17.5 percent of the CCL. When the CCL is greater than 25 Mlb, the charter halibut fishery receives 14.0 percent of the CCL. Two adjustments for vertical drops in allocation are made at intermediate abundance levels as shown.

NMFS would publish the combined catch limits and associated allocations for the charter and commercial halibut fisheries in the **Federal Register** as part of the IPHC annual management measures pursuant to 50 CFR 300.62. Fishery-specific catch limits are calculated by deducting separate estimates of wastage from the commercial and charter halibut allocations, as described in the following section.

#### *D. Calculation of Annual Fishery Catch Limits*

Under the proposed CSP, the commercial and charter halibut fisheries would have separate accountability for their discard mortality or “wastage,” such that each fishery’s wastage would be deducted from its respective allocation to obtain its catch limit. Wastage is currently only estimated for the commercial fishery and includes undersized halibut (regulatory discards) that die after release and halibut of all sizes that die on lost or abandoned gear. Under the current process for setting commercial catch limits, commercial wastage is deducted with other removals from the Total CEY. Through 2012, discard mortality in the recreational fishery has not been included in the other removals for calculating the Fishery CEY for any IPHC regulatory area, because estimates of recreational fishery discards have not been available. Under the proposed CSP, separate fishery accountability for

wastage would not change the allocation percentages for each fishery. Instead, each fishery’s allocation would be reduced by an estimate of its wastage to obtain the fishery’s catch limits. The processes for estimating wastage by fishery are described below.

Each year the IPHC estimates wastage, or the discard mortality of halibut captured in the commercial fishery that are under the minimum legal size of 32 inches, based on data collected from the IPHC’s annual stock assessment survey (available at [www.iphc.int/publications/rara/2012/rara2012053\\_commwastage.pdf](http://www.iphc.int/publications/rara/2012/rara2012053_commwastage.pdf)). The discard mortality rate is currently estimated to be 16 percent. The amount of halibut wasted on lost or abandoned commercial fixed gear is extrapolated from logbook interview and fishing log data, and represents a small percentage of the total wastage in the fishery. Additional forms of mortality in the commercial fishery that are not currently included in estimates of

wastage may include excess harvest that must be discarded when more gear is set than is needed to obtain fishing limits, and halibut that are damaged by predators and are discarded at sea. The IPHC intends to re-evaluate this approach for estimating wastage in the directed commercial halibut fishery once data on halibut discards from the previously unobserved commercial halibut fleet are available from the restructured North Pacific Groundfish and Halibut Fisheries Observer Program (77 FR 70062, November 21, 2012).

Wastage occurs in the charter fishery as a result of stress or injuries sustained from hooking, hook removal, and handling. Although recreational harvest is routinely estimated, the additional removals of halibut due to catch-and-release mortality are not currently estimated. Discard mortality rates vary with the type of gear used, handling and release methods, water temperature, hook type, and size of the fish, among other factors. NMFS anticipates that ADF&G would generate annual estimates of charter wastage in each area that could then be deducted by the IPHC from the charter allocation to obtain the charter catch limit in each area under this proposed rule.

NMFS proposes that the deduction of wastage from each fishery's allocation to calculate its catch limit promotes the Council's objective for the CSP to determine catch limits for the commercial and charter halibut fisheries using a predictable and standardized methodology for separate accountability. As shown in Figure 1, the basis for the catch limit recommendations, the Fishery CEY, would no longer be reduced only by commercial halibut fishery wastage. Instead, the commercial fishery allocation would be reduced by the commercial halibut fishery's estimated wastage, and the charter fishery allocation would be reduced by the charter halibut fishery's estimated wastage. NMFS proposes that the deduction of wastage from each fishery's allocation promotes conservation because it would encourage better handling of discarded fish to reduce the discard mortality rates and thus increase fishery catch limits.

#### *E. Annual Process for Setting Charter Management Measures*

Prior to 2012, charter management measures were recommended by the Council and implemented by NMFS through proposed and final rulemaking, or implemented by IPHC regulations without specific recommendations by the Council. The Council recommended a different approach under the CSP

because it sought a more timely and responsive process to address harvest overages or underages, or changes in halibut exploitable biomass. The Scientific and Statistical Committee (SSC), the Council's primary scientific advisory body, reviewed and endorsed this process for analyzing and recommending charter management measures at its December 2012 meeting.

In 2012 and 2013, charter management measures were implemented to limit the charter halibut fishery to its GHL using the process outlined below. The Council and IPHC have endorsed this same process for setting charter halibut management measures in Area 2C and 3A up to and following implementation of the CSP to limit the charter halibut fishery to its allocation and catch limit under the CSP. The steps in the annual process would continue as follows until modified by the Council or IPHC:

1. In October, the Council's Charter Halibut Management Implementation Committee makes preliminary recommendations of proposed annual management measures for the next year for Area 2C and Area 3A for analysis.

2. In December, the Council's advisory bodies and the public review the analysis of proposed management measures and make final recommendations to the Council.

3. At its December Council meeting, the Council selects the charter halibut management measures to recommend to the IPHC that would most likely constrain charter halibut harvest for each area within its allocation, while considering the economic impacts on charter operations.

4. In January of the next year at its annual meeting, the IPHC considers the Council recommendations and input from its stakeholders and staff. The IPHC then may adopt the Council's recommendation or alternative charter halibut management measures for Area 2C and Area 3A. The IPHC recommends these measures to the Secretaries of State and Commerce consistent with the provisions of the Convention.

5. In March, NMFS publishes in the **Federal Register** the charter halibut management measures for each area as part of the IPHC annual management measures accepted by the Secretary of State with the concurrence of the Secretary of Commerce.

This approach is an improvement over the previous method of setting charter management measures though Federal proposed and final rulemaking often years after an overage had occurred. The current process reduces the delay in implementing regulations to address overages and allows the most

recent halibut stock status and charter fishery data to be used to implement the appropriate measures for the next halibut fishing season. This method for setting charter harvest management measures is likely to limit the charter halibut fishery to its catch limit over time because adjustments to management measures could change in response to harvest overages and underages before the next season begins.

The Council, SSC, IPHC, and NMFS would continue to assess effectiveness of this method of recommending and implementing charter management measures after the CSP is implemented. The SSC provides the Council, NMFS, and the public with scientific and technical reviews of regulatory amendment analyses, stock assessments, and research and data needs for fisheries management in Alaska. The Council expects that any modifications to the process for setting charter harvest restrictions would be reviewed by these entities.

NMFS recognizes that, because the CSP would not change management measures during a sport fishing season, the management measures implemented prior to the start of a sport fishing season may result in harvests that are greater or less than the catch limit. However, the Council anticipates, and NMFS agrees, that over time, halibut harvests by the charter halibut fishery under the CSP would stabilize around the charter halibut catch limits, thereby promoting conservation and management objectives over the long term. The IPHC would continue to account for all removals when determining the annual combined catch limit under the CSP, and IPHC stock assessments would continue to account for charter halibut harvests that unintentionally exceed the fishery's catch limit. Operationally, overages may contribute to a corresponding decrease in the combined charter and commercial catch limit in the following year. Underages would accrue to the benefit of the halibut biomass and all user groups and could result in an increase in the combined catch limit in the following year. The Council determined, and NMFS agrees, that halibut fishery management under the CSP is more responsive to changes in halibut abundance than the GHL program.

Because management measures would be determined annually under the CSP, and implemented as IPHC annual management measures, the Council recommended and NMFS proposes to remove two restrictions from Federal regulations: the one-fish daily bag limit for Area 2C at § 300.65(d)(2)(i); and the line limit at (d)(2)(iii). NMFS anticipates

that under the process described above, daily charter halibut fishery bag limits would be established in the IPHC annual management measures. It is important to note that by removing the one-fish bag limit from Federal regulations, NMFS will be relying on the IPHC annual management measures to implement that bag limit, if necessary. NMFS proposes that a Federal line limit regulation is no longer necessary for three reasons. First, the charter halibut limited access program regulations at § 300.66(s) restrict the number of anglers retaining halibut to the number endorsed on the charter halibut permit being used for that charter fishing trip. Also, U.S. Coast Guard safety regulations limit the number of clients that may be onboard most charter vessels. Additionally, a line limit for Area 2C is unnecessary because line limits do not directly restrict halibut retention by charter vessel anglers. NMFS proposes to revise a prohibition at § 300.66(m) to reference the IPHC annual management measures for charter halibut fishery gear and harvest restrictions.

#### *F. Other Restrictions Under the CSP*

The Council recommended two additional restrictions as part of the proposed CSP. NMFS would implement a prohibition on retention of halibut by skipper and crew on a charter vessel fishing trip. Previously, NMFS published a final rule (74 FR 21194, May 6, 2009) to implement, along with other restrictions, a prohibition on operator, guide, and crew retention of halibut in Area 2C. The proposed CSP would not modify this prohibition in Area 2C, but would implement the same prohibition in Area 3A. As noted in Section 2.3.2 of the EA/RIR/IRFA prepared for the CSP (see **ADDRESSES**), NMFS estimates that prohibiting retention of halibut by operators, guides, and crew reduces charter halibut harvest by approximately 5.5 percent in Area 3A relative to current harvests (see [www.alaskafisheries.noaa.gov/npfmc/PDFdocuments/halibut/2013charterAnalysis\\_1212.pdf](http://www.alaskafisheries.noaa.gov/npfmc/PDFdocuments/halibut/2013charterAnalysis_1212.pdf)). The Council recommended that NMFS implement this prohibition in the CSP to clarify that only halibut harvested by charter anglers will be counted toward the CSP charter halibut fishery allocation. Charter operators, guides, and crew are not considered charter anglers under current Federal regulations, and NMFS proposes it

would not be appropriate for halibut harvested by these persons to be counted toward the charter halibut fishery harvest. Additionally, halibut harvested by charter operators, guides, and crew are difficult for enforcement agents to distinguish from halibut caught by charter clients.

The Council also recommended, and NMFS proposes, to prohibit individuals who hold both a charter halibut permit and commercial halibut IFQ from fishing for commercial and charter halibut on the same vessel during the same day in Area 2C and Area 3A. This provision would facilitate enforcement, as different regulations apply to charter-caught and commercially caught halibut. This provision would not prevent an individual who holds both a charter halibut permit and commercial halibut IFQ from conducting charter operations and commercial operations on separate vessels on the same day.

NMFS proposes several additional restrictions to facilitate monitoring and enforcement of the CSP. To be consistent with the Council's recommendation to prohibit individuals who hold both a charter halibut permit and commercial halibut IFQ from fishing for commercial and charter halibut on the same vessel during the same day, this proposed rule also would prohibit individuals who hold both a charter halibut permit and a Subsistence Halibut Registration Certificate from using both permits to harvest halibut on the same vessel during the same day in Area 2C and Area 3A. This prohibition would allow enforcement officials and samplers to classify harvest among the charter, subsistence, and commercial halibut fisheries. Allowing multiple types of trips on a vessel in the same day could create uncertainty regarding how to classify and properly account for retained halibut.

To enforce prohibitions on individuals fishing for commercial and charter halibut or for subsistence and charter halibut on the same vessel during the same day in Area 2C and Area 3A, NMFS would require charter vessel operators to indicate the date of a charter vessel fishing trip in the saltwater charter logbook and to complete all of the required fields in the logbook before the halibut are offloaded. These requirements would enable enforcement agents to determine whether that vessel was used on a charter vessel fishing trip that day. Beginning in 2009, charter anglers in

Area 2C were required to sign the saltwater charter logbook to verify the accuracy of the reported catch. This signature requirement was intended to improve the accuracy of charter halibut harvest estimates, and improve the enforceability of a one-fish bag limit (74 FR 21194, May 6, 2009). NMFS proposes to extend the signature requirement to include charter anglers in Area 3A as part of the CSP in the event that additional harvest restrictions are implemented in that area.

#### **IV. Guided Angler Fish (GAF)**

##### *A. Overview of GAF*

The proposed CSP would authorize supplemental individual transfers of commercial halibut IFQ as guided angler fish (GAF) to qualified charter halibut permit holders for harvest by charter vessel anglers in Areas 2C and 3A. Through the GAF program, qualified charter halibut permit holders may offer charter vessel anglers the opportunity to retain halibut up to the limit for unguided anglers when the charter management measure in place would limit charter vessel anglers to a more restrictive harvest limit. In other words, a charter vessel angler may retain a halibut as GAF that exceeds the daily bag limit and length restrictions in place for charter anglers only to the extent that the angler's halibut retained under the charter halibut management measure plus halibut retained as GAF do not exceed daily bag limit and length restrictions imposed on unguided anglers. For example, the daily halibut retention limit for unguided sport anglers in Area 2C and Area 3A is currently two halibut of any size per calendar day. Assuming this same unguided sport angler retention limit, charter vessel anglers would retain GAF only when the charter halibut management measure for that area limits charter halibut anglers to retaining fewer than two fish of any size per calendar day. The Council recommended this restriction on GAF use to maintain parity between guided and unguided sport halibut retention limits.

Table 5 presents examples of the potential uses of GAF by charter vessel anglers in Area 2C and Area 3A under various potential annual management measures, assuming that unguided sport anglers are subject to the current regulations limiting retention to two halibut of any size per calendar day.

TABLE 5—OPTIONS FOR GUIDED ANGLER FISH (GAF) HARVEST UNDER DIFFERENT ANNUAL MANAGEMENT MEASURES, ASSUMING UNGUIDED ANGLERS ARE ALLOWED TO RETAIN TWO FISH OF ANY SIZE PER DAY

If the annual management measure for charter anglers is a daily bag limit of:	then each charter vessel angler could use GAF to retain:
one halibut of a restricted size (e.g., reverse slot limit of U45/O68).	either one halibut meeting the restrictive size requirement under the charter angler restriction plus one GAF halibut of any size or two GAF halibut of any size.
one halibut of any size .....	one halibut of any size under the charter angler restriction plus one GAF halibut of any size.
two halibut, of which only one fish may be larger than a maximum size limit. If a charter vessel angler retains only one halibut in a calendar day, that halibut may be of any length.	one halibut of any size under the charter angler restriction plus one GAF of any size.
two halibut of any size .....	not applicable.

The Council recommended including GAF in the Area 2C and Area 3A CSP to increase operating flexibility for participants in the commercial and charter halibut fisheries. The Council determined, and NMFS agrees, that the GAF program could increase fishing opportunities in the charter fishery for those anglers desiring such an opportunity. The GAF program also would give commercial halibut quota share holders greater flexibility when developing their annual harvest strategies. A person holding halibut QS for an area has harvesting privileges for an amount of halibut (IFQ) that is derived annually from his or her QS holdings in that area and authorized on his or her IFQ permit. The opportunity for annual transfers of IFQ to GAF could benefit some halibut IFQ holders if they receive more revenue from transferring IFQ to GAF than they would receive from harvesting the IFQ themselves. In recommending the CSP preferred alternative, the Council stated its intent to annually review GAF use following implementation. NMFS and the Council intend that the GAF program would allow the charter halibut fishery to increase halibut harvest beyond area annual catch limits specified in the annual management measures up to guided sport catch limits. In addition the GAF program creates a system wherein the charter halibut fishery compensates the commercial halibut fishery for decreases in commercial halibut IFQ harvest.

In this proposed rule, NMFS proposes eligibility criteria, a transfer process, transfer restrictions, and additional reporting requirements to implement the GAF transfer program. These elements are described in the following sections, B through F, respectively.

#### *B. Eligibility Criteria To Transfer Between IFQ and GAF*

An IFQ holder is eligible to transfer halibut IFQ as GAF if he or she holds at least one unit of halibut QS and has

received an annual IFQ permit authorizing harvest of IFQ in either the Area 2C and Area 3A commercial halibut fishery. A charter halibut permit holder is eligible to receive IFQ as GAF if he or she holds one or more charter halibut permits in the management area that corresponds to the IFQ permit area from which the IFQ would be transferred.

Holders of military charter halibut permits would also be eligible to receive IFQ as GAF. Military charter halibut permits are issued to U.S. Military Morale, Welfare, and Recreation programs in Alaska that offer charter halibut fishing to service members harvesting in Area 2C or Area 3A. To operate a charter vessel, the U.S. Military Morale, Welfare, and Recreation program would need to obtain a military charter halibut permit by application to NMFS or could purchase a charter halibut permit on the commercial market (see regulations at § 300.67 for additional detail).

Community Quota Entities (CQEs) holding community charter halibut permits are also eligible to receive IFQ as GAF. Regulations at § 300.67(k)(2) list the communities that are eligible to receive community charter halibut permits from NMFS. In addition to community charter halibut permits, a CQE may acquire non-community charter halibut permits by transfer. The final rule implementing the charter halibut limited access program describes community charter halibut permits and the application and eligibility requirements for CQEs to receive community charter halibut permits (75 FR 554, January 5, 2010).

There are several ways in which a CQE in Area 2C or Area 3A that is eligible to receive community charter halibut permits and holds charter halibut permits could be a party to a GAF transaction. CQEs could receive a transfer of GAF for use on a community charter halibut permit or regular charter halibut permit that it holds. Community

Quota Entities that are eligible to hold charter halibut permits also are authorized to hold IFQ under the IFQ Program under regulations established by Amendment 66 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (69 FR 23681, April 30, 2004). Amendment 66 defined CQEs in the Gulf of Alaska, including in Areas 2C and 3A, and authorized those CQEs to receive transferred halibut or sablefish QS on behalf of the community it represents and to lease the resulting IFQ to fishermen who are residents of that community. Thus, a CQE holding IFQ would be eligible to transfer the IFQ as GAF to a holder of a charter halibut permit, community charter halibut permit, or military charter halibut permit if it meets all other proposed GAF transfer requirements at § 300.65(c)(5).

As proposed in regulations at § 300.65(c)(5)(ii)(D), NMFS would approve an application for transfer of IFQ and GAF between an eligible IFQ holder and an eligible holder of a charter halibut permit, community charter halibut permit, or military charter halibut permit if NMFS determines that (1) the transfer would not cause the GAF holder to exceed use limits specified (see “GAF Transfer Restrictions” section below); (2) there are no fines, civil penalties, sanctions, or other payments due and owing, or outstanding permit sanctions, resulting from Federal fishery violations involving either person or permit; and (3) other pertinent information requested on the application has been supplied. Additionally, in cases where the applicant is both an IFQ and a GAF holder, to approve an application for transfer, NMFS would need to determine that the transfer would not cause the applicant to exceed use limits specified for GAF holders or those for halibut IFQ holders at § 679.42. NMFS would need to make additional determinations to approve a transfer between IFQ and GAF for a CQE. In



addition to the requirements listed above, NMFS would approve the transfer upon making a determination that (1) the CQE applying to transfer IFQ to GAF is eligible to hold and receive IFQ on behalf of a eligible community in Area 2C or Area 3A, as specified at § 300.67(k)(2); (2) the CQE applying to receive GAF from an Area 2C or Area 3A IFQ holder holds one or more community charter halibut permits or charter halibut permits for the corresponding area; and (3) the CQE applying to transfer between IFQ and GAF has submitted a complete annual report(s) to NMFS as required by § 679.5(l)(8).

See the "GAF Transfer Restrictions" section for further discussion on the proposed regulations governing transfers between IFQ and GAF for Community Quota Entities.

### *C. Process To Complete a Transfer Between IFQ and GAF*

#### 1. Application To Transfer Between IFQ and GAF

For transfers between IFQ and GAF, the IFQ holder and charter halibut permit holder receiving GAF would be required to complete, sign, and submit an application to NMFS to transfer halibut in numbers of fish between IFQ and GAF. NMFS would approve the transfer provided that application is complete, both parties are eligible to transfer, and there are no other administrative reasons to disapprove the transfer.

The same application form would be used for transfers of IFQ to GAF and returns of GAF to IFQ. Application forms would be available on the NMFS Alaska Region Web site at <http://alaskafisheries.noaa.gov/>. Applications could be submitted by mail, hand delivery, or facsimile. Electronic submissions other than facsimile would not be acceptable because NMFS would require the original signature of the IFQ holder and the charter halibut permit holder. Additionally, unlike emails, fax transmittals give the applicant proof of receipt and protect the confidentiality of business and personally identifiable information. The applicants also would need to attest under penalty of perjury that legal requirements were met and all statements on the application are true, correct, and complete. Neither party would be required to complete a transfer application for an automatic return of unused GAF to IFQ on or around the automatic GAF return date each year. NMFS would not approve an application for transfer between IFQ and GAF after the automatic GAF return date. NMFS may develop an online

system for transfers between IFQ and GAF at a later date.

#### 2. Conversion of IFQ Pounds to Number of GAF

NMFS would issue GAF in numbers of halibut. NMFS would post the conversion from IFQ pounds to a GAF for Area 2C and Area 3A for each fishing year on the NMFS Alaska Region Web site at <http://alaskafisheries.noaa.gov>. NMFS would post the conversion factor for the current fishing year before the beginning of the commercial halibut fishing season each year. The following paragraphs describe how the conversion factors from pounds of IFQ to number of GAF would be calculated.

NMFS would require that for each GAF transferred from an IFQ holder to a charter halibut permit holder's GAF account, the equivalent number of net pounds of halibut rounded up to the nearest whole net pound would be removed from an IFQ holder's IFQ account. Conversely, CSP regulations would require that for each GAF returned from a charter halibut permit holder's GAF account, the equivalent number of net pounds of halibut IFQ rounded up to the nearest whole net pound would be returned to the IFQ holder's account. The same average net weight would be used for all conversions of IFQ to GAF and returns of GAF to IFQ within a calendar year.

A request for transfer from IFQ to GAF would be made in numbers of fish, or the number of GAF to be transferred to the GAF permit holder. For example, if a charter permit holder requested, and NMFS approved, a transfer of 5 GAF and the conversion factor for that area was 20.7 lb (9.4 kg), then 104 lb (47.2 kg) of IFQ would be debited from the IFQ holder's account for that area as follows: 5 GAF  $\times$  20.7 lb = 103.5 lb (46.9 kg) and rounded up to 104 lb (47.2 kg). In current regulations, NMFS accounts for IFQ in whole net pounds and proposes to continue accounting in whole net pounds for transfers between IFQ and GAF. This method of rounding up to the nearest whole pound results in the fewest conversion errors when GAF are converted back to IFQ, as demonstrated below.

Voluntary and automatic returns of GAF to IFQ would require NMFS to convert unharvested GAF back to net pounds of IFQ. To calculate the number of net pounds of halibut IFQ returned to the IFQ holder, NMFS would multiply the unharvested number of GAF by the conversion factor and round up to the nearest pound. In the example used above, if the parties agreed to a voluntary return of 2 GAF to the IFQ holder, NMFS would return 42 lb (19.1

kg) to the IFQ holder's account (2 GAF  $\times$  20.7 lb = 41.4 lb (18.8 kg) and rounded to 42 lb).

The conversion from IFQ pounds to number of fish for GAF would be based on the average weight of GAF from the previous year as estimated from GAF length data reported to NMFS through the proposed electronic GAF reporting system (see "GAF Reporting Requirements" section of this preamble for additional detail). NMFS anticipates that the average weight of GAF would likely be higher than non-GAF halibut harvested in the charter halibut fishery, particularly if charter halibut fishery management measures include a size restriction. Therefore, NMFS proposes to use average weight estimates for GAF to accurately account for GAF removals. Because average GAF lengths would not be available for the first year of the proposed CSP, NMFS would use the average net weight of a halibut landed in the charter fishery in each area (2C or 3A) during the previous year, if no size limits were in effect, or from the most recent year without a size limit in effect. These average net weights would be based on data collected during ADF&G creel surveys. If no GAF were harvested in a year, the conversion factor would be calculated using this same method as for the first year of the program (i.e., NMFS would use the most recent average weight of charter fish harvested in an area based on ADF&G creel surveys).

#### 3. GAF Permits

Upon completion of the transfer between IFQ and GAF, NMFS would issue a GAF permit to the holder of a charter halibut permit, community charter halibut permit, or military charter halibut permit. The GAF permit would be assigned to the charter halibut permit specified by the GAF permit holder at the time of application. The GAF permit holder could offer GAF for harvest by charter vessel anglers on board the vessel on which the operator's GAF permit and the assigned charter halibut permit are used.

GAF permit holders would be required to hold a sufficient number of GAF for charter vessel anglers to retain halibut in excess of the charter angler limit and up to limits in place for the unguided sport halibut fishery for that area. In other words, charter operators would be required to already possess the GAF prior to the fish being caught, i.e., GAF could not be obtained after harvesting of the fish. The GAF permit holder also would be required to have the GAF permit and the assigned charter halibut permit on board the vessel on which charter vessel anglers retain GAF,

and to present the permits if requested by an authorized enforcement officer. Similar to the requirement that charter halibut permit holders retain their saltwater charter logbooks for two years, GAF permit holders would be required to retain all GAF permits for two years after the date of issuance. GAF permits would need to be available for inspection upon request of an authorized enforcement officer.

At the end of a charter halibut fishing trip in which GAF were retained, the GAF permit holder would be required to electronically report the total number of GAF retained under his or her GAF permit. The GAF permit holder would be required to report on the last day of a multi-day charter halibut fishing trip. NMFS would deduct this number of GAF from the GAF permit holder's account of unused GAF. NMFS proposes to require the GAF permit holder to complete a GAF electronic report by 11:59 p.m. (Alaska local time) upon completion of a charter halibut fishing trip in which GAF were retained to maintain as close to real-time accounting of GAF balances as possible.

On approval of an application for transfer between IFQ and GAF, NMFS would issue a GAF permit to the charter halibut permit holder receiving GAF. A GAF permit would authorize the GAF permit holder to offer GAF to charter vessel anglers and allow charter vessel anglers to retain halibut in excess of the charter halibut harvest restriction, up to the limits on GAF use that are in the proposed regulations at § 300.65(c). GAF could be retained under a GAF permit only if, at the time the GAF are retained, the GAF permit holder's account contained at least the number of retained GAF. All GAF permits would expire at 11:59 p.m. (Alaska local time) on the day prior to the automatic GAF return date. GAF could not be retained by charter vessel anglers after the expiration of GAF permits.

NMFS would issue a revised GAF permit to the GAF permit holder each time during the year that it approved a transfer between IFQ and GAF for that GAF permit. Each GAF permit would be assigned to only one charter halibut permit, community charter halibut permit, or military charter halibut permit in Area 2C or Area 3A. Charter halibut permit holders requesting GAF would be required to specify the charter halibut permit to which the GAF permit would be assigned on the application for transfer between IFQ and GAF. The assignment between a charter halibut permit holder's GAF permit and their specified charter halibut permit, community charter halibut permit, or military charter halibut permit could

not be changed during that year. If charter vessel anglers retain GAF, the GAF permit and the assigned charter halibut permit, community charter halibut permit, or military charter halibut permit would need to be on board the vessel on which the GAF halibut are retained, and available for inspection by an authorized enforcement officer.

The proposed rule also would prohibit GAF, once transferred to a charter halibut permit holder and assigned to their specified charter halibut permit, from being transferred to another charter halibut permit, community charter halibut permit, or military charter halibut permit holder. This prohibition would prevent a charter halibut permit holder from receiving GAF by transfer with the intention of transferring the GAF to another charter halibut permit holder for compensation. The Council and NMFS generally recommend management provisions that encourage holders of harvest privileges to actively participate in the fishery for which they hold the privilege, rather than receiving financial benefits from another person who pays to use those harvest privileges. The Council's recommendation and NMFS' proposal to prohibit GAF permit holders from transferring GAF to another charter halibut permit holder is consistent with this policy objective to require a charter halibut permit holder who receives GAF by transfer to utilize GAF in conjunction with his or her charter halibut permit. In addition, these limitations would ensure that GAF could be accurately debited and tracked, and that GAF is being used only by authorized transferees.

#### 4. Voluntary and Automatic Returns of GAF to IFQ

Returns of unused GAF to the IFQ holder would be authorized using two methods: A voluntary return that could be requested from August 1 through August 31 and that would be completed on or after September 1, and an automatic return 15 days before the end of the commercial halibut fishing season. Based on testimony from commercial and charter fishery participants, the Council recommended a voluntary return of GAF around September 1 to allow the IFQ holder sufficient time to harvest that IFQ before the end of the season (usually in mid-November). NMFS would accept applications for voluntary returns of unused GAF from August 1 through August 31 and NMFS would complete GAF returns on or after September 1. The earliest that NMFS would return

GAF to IFQ is September 1. NMFS would process transfers and returns of IFQ and GAF as soon as possible after the dates stated in Federal regulations. Barring unforeseen circumstances (e.g., computer failure, weather closures, furlough, etc.), NMFS would conduct the transfer on the first business day after the stated transfer date. For example, if September 1 occurred on the Sunday of Labor Day weekend, the transfers would occur the following Tuesday, at the earliest. For this reason, the regulatory text states that transfers would occur "on or after" September 1. This preamble uses the term "return" rather than "transfer" to be consistent with the terminology commonly used by the public during the development of GAF transfer provisions to describe the transfer of GAF to IFQ. Regulations at § 300.65(b)(5) use the term transfer to describe the voluntary and automatic returns of GAF to IFQ. These terms are synonymous.

There would also be an automatic mandatory return of unused GAF 15 days prior to the end of the commercial halibut fishing season. The end of the commercial halibut fishing season is specified in the IPHC annual management measures published by NMFS in the **Federal Register** each year. On and after this automatic return date, unused GAF would no longer be authorized for use in the charter fishery in the current year. Applications for transfer of IFQ to GAF would not be accepted after October 15, to ensure that all GAF transactions are completed before the automatic return date. No application would be required for the automatic return of unused GAF. NMFS would return any remaining unharvested GAF to the IFQ holder from whom it was derived. NMFS recognizes that some GAF permit holders likely would have a balance of unharvested GAF after most charter fishing trips had been completed for the year. Although the charter halibut fishery has typically been open from February 1 through December 31 in recent years, most fishing in the charter fishery occurs from May through August. ADF&G data indicate that approximately 96 percent of charter halibut harvest had occurred by August 31 in either Area 2C or Area 3A. The commercial halibut fishing season typically opens in March and closes in mid-November. Based on this information, NMFS and the Council believe that NMFS should return all remaining unused GAF to the IFQ permit holder 15 days prior to the end of the commercial halibut fishing season because it would not significantly affect charter vessel business operations in

aggregate. Further, this timeline would give the IFQ holder an opportunity to harvest the IFQ before the end of the commercial fishing season for that year. The IFQ holder also may choose to count the IFQ returned from GAF toward an underage for his or her halibut IFQ account for the next fishing year, as specified in regulations at § 679.40(e). On or as soon as possible after the voluntary or automatic GAF return dates, NMFS would convert GAF in number of fish to IFQ in net pounds using the conversion factor for that year and return the converted IFQ to the IFQ holder's account.

#### *D. GAF Transfer Restrictions*

Through the GAF program, the Council intended to provide IFQ holders some flexibility in how they use their IFQ, with limitations. The Council recommended and NMFS proposes restrictions on the amount of IFQ that an IFQ holder could transfer as GAF and on the number of GAF that could be assigned to one GAF permit. The restrictions on transfers of GAF are intended to prevent a particular individual, corporation, or other entity from acquiring an excessive share of halibut fishing privileges as GAF. The restrictions on the amount of IFQ that an IFQ holder may transfer are intended to further the goals of the Council and IFQ program for an owner-onboard fishery. The proposed rule would implement the Council's recommendations for three GAF transfer restrictions.

First, IFQ holders in Area 2C would be limited to transferring up to 1,500 lb (680.4 kg) or 10 percent, whichever is greater, of their initially issued annual halibut IFQ for use as GAF. In Area 3A, IFQ holders could transfer up to 1,500 lb or 15 percent, whichever is greater, of their initially issued annual halibut IFQ for use as GAF. NMFS proposes that IFQ holders in Area 3A would be able to transfer up to 15 percent of the IFQ as GAF because IFQ holdings are generally larger in Area 3A than in Area 2C, and restricting Area 3A IFQ holders to leasing up to 10 percent of their IFQ holdings could limit the amount of IFQ available for lease as GAF (section 2.5.12.2 of the EA/RIR/IRFA). Allowing Area 3A IFQ holders to lease 15 percent of their IFQ holdings as GAF would provide Area 3A IFQ holders more flexibility in determining whether to lease IFQ as GAF and could provide more GAF to the Area 3A charter halibut fishery.

The percentage of an IFQ holder's IFQ that is available for transfer would be based on fishable pounds at the start of the fishing year before any other

transfers of IFQ had occurred. Using the start-of-year balance would provide a fixed value on which to base the transfer limits that would allow NMFS and IFQ holders to accurately track the maximum amount of GAF that could be transferred. Second, under this proposed rule, no more than a total of 400 GAF would be assigned during one year to a GAF permit assigned to a charter halibut permit that is endorsed for six or fewer anglers. And third, no more than a total of 600 GAF would be assigned during one year to a GAF permit assigned to a charter halibut permit endorsed for more than six anglers. A person who holds both halibut IFQ and a CHP and would like to transfer that IFQ to GAF would be subject to the same transfer restrictions. The Council recommended different GAF limits for charter halibut permits to balance the GAF needs of different types of charter operations with its objective to maximize the opportunity for all charter operators to acquire GAF. Because holders of charter halibut permits endorsed for more than six anglers are likely to be larger charter operations, the Council was concerned these larger charter operations would have more financial resources to acquire GAF than smaller operations unless a limit was placed on the number of GAF that could be assigned to a charter halibut permit. NMFS agrees that the proposed limit for assigning GAF to charter halibut permits accommodates the GAF needs of different charter operation types and promotes the Council's objective to offer all charter businesses the opportunity to lease IFQ as GAF.

Commercial halibut IFQ regulations at § 679.42(f)(1)(i) and (ii) also include QS use limits that are intended to prevent a particular individual, corporation, or other entity from acquiring an excessive share of commercial halibut fishing privileges. NMFS determines individual and collective interest in halibut fishing privileges by summing QS used by that person and a portion of any QS used by an entity in which that person has an interest. NMFS considers the person's portion of the QS used by the entity equal to the share of interest the person has in that entity. For example, if an individual uses 50,000 units of Area 2C halibut QS and has a 5 percent interest in a company that uses 750,000 units of Area 2C halibut QS, the amount of Area 2C halibut QS that person would be considered to use for purposes of the limits at § 679.42(f)(1)(i) and (ii) is 50,000 units (his personal holdings) plus 37,500 units (5 percent interest for the 750,000 units in the company using

Area 2C halibut QS). This individual's use of 87,500 units would not exceed the Area 2C QS use limit of 599,799 units.

For purposes of administering the QS use limits at § 679.42(f)(1)(i) and (ii), NMFS proposes to include the QS equivalent of IFQ transferred to GAF in the calculation of a person's QS use. Using the example above, if the QS holder transferred the equivalent of 100 lb (45.4 kg) of IFQ as GAF to a charter halibut permit holder, NMFS would continue to include the QS equivalent of the IFQ transferred to GAF in the calculation of that person's QS use for purposes of the QS use limits at § 679.42(f)(1)(i) and (ii). NMFS proposes this approach because it considers a transfer of IFQ to GAF a use of halibut QS. A transfer of IFQ to GAF would be voluntary, and the halibut QS holder likely would receive a benefit from the transfer according to the terms of the transfer agreement with the charter halibut permit holder receiving GAF. Furthermore, it is possible under the proposed CSP for a person to still use halibut IFQ that was transferred as GAF in the commercial halibut fishery before the end of the commercial fishing season if the GAF were not harvested in the charter fishery, and the IFQ was returned to the QS holder through a voluntary or automatic return as described in the preceding section.

#### *E. Community Quota Entity GAF Transfer Restrictions*

Under existing regulations at § 679.41, Community Quota Entities in Areas 2C and 3A may receive quota share by transfer and lease the resulting IFQ to eligible community residents for use in the commercial fishery. This proposed rule would not modify existing regulations on the use of IFQ by CQEs in the commercial fishery. This proposed rule would allow CQEs to transfer the IFQ derived from QS held by the CQE to be used as GAF. This proposed rule would place limitations on how much IFQ could be transferred as GAF depending on whether the GAF was used by a CQE, an eligible community resident, or by a non-resident. In addition, this proposed rule would allow a CQE to receive GAF by transfer.

Under the proposed rule, a CQE holding halibut IFQ in Area 2C or Area 3A would be authorized to transfer that IFQ as GAF. However, the Council recommended that transfers between IFQ and GAF for CQEs be exempt from the limit on the amount of GAF that can be transferred in certain circumstances. NMFS proposes and the Council recommends that any amount of IFQ

which a CQE holds could be leased as GAF to itself, to eligible community residents of the CQE community, or to other CQEs. For example, if the CQE holds IFQ it could transfer that IFQ to GAF, and then assign the resulting GAF to a community halibut permit or charter halibut permit held by the CQE, to an eligible community resident holding a charter halibut permit, or to another CQE holding community charter halibut permits or charter halibut permits. In these cases, the amount of GAF that could be transferred would not be subject to limitations based on the amount of IFQ initially issued to the CQE (i.e., the entire amount of IFQ held by a CQE could be transferred as GAF and assigned to these entities). NMFS believes that exempting CQEs from GAF transfer restrictions in these circumstances would provide a CQE with more flexibility in determining how to utilize its holdings of IFQ, community charter halibut permits, or charter halibut permits. These exemption provisions allow the CQE to determine how to use halibut fishery privileges to maximize benefits for the CQE community and its residents.

If the CQE is transferring IFQ as GAF and assigning that GAF to an individual that is not an eligible community resident, the CQE would be subject to the same limitations as other halibut quota share holders (i.e., up to 10 percent or 1,500 lb of his or her annual Area 2C IFQ, whichever is greater; and up to 15 percent or 1,500 lb of his or her annual Area 3A IFQ, whichever is greater).

NMFS agrees that CQE transfers between IFQ and GAF should be exempt from GAF transfer restrictions in the instances described in the Regulatory Impact Review (see **ADDRESSES**). Although the Council used the term “eligible community resident” in recommending exemptions to the GAF transfer restrictions for CQEs under the CSP, the term eligible community resident as currently defined at § 679.2 is not directly applicable to the charter halibut limited access program because businesses are expected to hold charter halibut permits, whereas the definition of an eligible community resident refers to an individual. Although a business could consist solely of an individual, it is possible for a business to be a partnership, corporation, or other legal entity. Therefore, NMFS is proposing that “eligible community resident,” for purposes of exempting transfers of IFQ to GAF from a CQE to an eligible community resident from GAF transfer restrictions, means that the charter halibut permit holder receiving GAF

from the Community Quota Entity must operate that business out of the community. Current regulations at § 300.67(k)(5) require that every charter vessel fishing trip authorized by a community charter halibut permit must begin or end within the boundaries of the community represented by the CQE holding the permit. The regulations do not require that an eligible community resident of the CQE community use the community charter halibut permit. NMFS is preparing another proposed rule that would further modify the definition of “eligible community resident,” but the changes proposed in that rule would not affect the changes proposed here.

NMFS proposes to apply the same requirement for using community charter halibut permits currently applicable to CQEs to the definition of eligible community resident for purposes of IFQ to GAF transfers involving CQEs. The proposed rule would revise the definition of eligible community resident for purposes of IFQ to GAF transfers under the Area 2C and Area 3A CSP. A person (either an individual or a non-individual entity) holding a charter halibut permit would need to either begin or end a charter vessel fishing trip authorized by their charter halibut permit within the boundaries of the community represented by the CQE to qualify as an eligible community resident of that CQE for purposes of IFQ to GAF transfers.

This proposed rule would also allow a CQE to receive GAF directly by transfer from either a CQE or other persons holding GAF. Although any GAF a CQE receives by transfer would be exempt from limits on the amount of IFQ that can be transferred as GAF in the circumstances described above, all transfers of IFQ to GAF in which the IFQ is held by a CQE would be limited by an existing halibut IFQ regulation at § 679.42(f)(6). This regulation specifies that “[n]o individual that receives IFQ derived from halibut QS held by a Community Quota Entity may hold, individually or collectively, more than 50,000 lb (22.7 mt) of IFQ halibut derived from any halibut QS source.” As described above, NMFS determines individual and collective ownership interest by summing IFQ held or used by that person and a portion of any IFQ held or used by an entity in which that person has an interest. NMFS considers the person’s portion of the IFQ held or used by the entity equal to the share of interest the person has in that entity. For example, if an individual holds or uses 100 lb (45.4 kg) of IFQ and has a 5 percent interest in a company that holds or uses 100 lb of IFQ that was

derived from halibut QS held by a CQE, the amount of IFQ that person would be considered to hold for the IFQ limit calculation at § 679.42(f)(6) is 100 lb (his personal holdings) plus 5 lb (2.3 kg) (5 percent interest for the 100 lb in the company holding IFQ). In this example, this individual’s holdings of 105 lb (47.6 kg) would not exceed the IFQ limit of 50,000 lb for purposes of § 679.42(f)(6).

The Council recommended, and this rule proposes, to include GAF derived from halibut IFQ held by a CQE in this individual and collective IFQ holding limit. Hence, the proposed rule would limit an individual receiving either IFQ or GAF derived from IFQ held by a CQE to holding individually or collectively, no more than 50,000 lb (22.7 mt) of halibut IFQ and GAF derived from the IFQ, combined. This proposed rule does not modify existing regulations at § 679.42(f)(6), but this discussion provides notice to the public on how the use caps applicable in this regulation would be calculated. Thus, for an individual that holds GAF derived from IFQ held by a CQE, IFQ derived from QS held by a Community Quota Entity, or both, NMFS would calculate that individual’s total halibut IFQ and GAF holdings by (1) multiplying the total number of GAF held individually and collectively by the conversion factor for that year (see “Conversion between IFQ and GAF” section above) to determine the equivalent number of halibut net pounds held, and (2) adding the equivalent number of halibut net pounds held to the total number of IFQ equivalent pounds held individually and collectively by that person.

#### *F. GAF Reporting Requirements*

The proposed rule would implement new recordkeeping and reporting requirements for GAF in the ADF&G saltwater charter logbooks, in addition to saltwater charter logbook reporting requirements currently specified at § 300.65(d). It also would require GAF permit holders to record information on the GAF permit; separately report retained GAF by 11:59 p.m. (Alaska local time) on the last day of the fishing trip in which GAF were retained using a NMFS-approved electronic reporting system; and retain the GAF permits for two years.

The ADF&G Statewide Sport Fishing Charter Trip Logbook is the primary reporting requirement for operators in the charter fisheries for all species harvested in saltwater in Areas 2C and 3A. The ADF&G developed the saltwater charter logbook program in 1998 to provide information on actual participation and harvest by individual vessels and businesses in charter

fisheries for halibut as well as other state-managed species. The saltwater charter logbook data are compiled to show where fishing occurs, the extent of participation, and the species and numbers of fish caught and retained by individual anglers. This information is essential for regulation and management of the charter halibut fisheries in Area 2C and Area 3A. In recent years, ADF&G has added saltwater charter logbook reporting requirements to collect information required to implement and enforce Federal charter halibut regulations, such as the Area 2C one-halibut per day bag limit and the charter halibut limited access program.

This proposed rule would continue to require the ADF&G saltwater charter logbook as the primary reporting method for operators in the charter halibut fishery. The CSP would require the person to whom ADF&G issued a saltwater charter logbook to retain and make available for inspection by authorized enforcement personnel the completed original logbooks for two years following the charter vessel fishing trip. This requirement would be necessary to enforce annual management measures and GAF reporting requirements.

Charter guides would be required to mark retained GAF by removing the tips of the upper and lower lobes of the caudal (tail) fin. Additionally, the charter vessel guide would be required to retain the carcass showing caudal fin clips until the halibut fillets were offloaded so that enforcement could verify the length and that the fish was retained as GAF. These measures would aid in the monitoring and enforcement of GAF provisions.

For each charter vessel fishing trip on which charter vessel anglers retain GAF, charter vessel guides would be required to report on an ADF&G saltwater charter logbook (1) the GAF permit number under which the GAF were retained, and (2) the number of GAF retained by each charter vessel angler during the trip. For charter vessel fishing trips completed on a single day, charter vessel guides would be required by Federal regulations to complete these fields in the saltwater charter logbook before any halibut are offloaded or charter vessel anglers disembark from the vessel. For multi-day charter vessel fishing trips, charter vessel guides would be required to complete the GAF reporting requirements in a saltwater charter logbook on board the vessel by the end of each day of the trip. These saltwater charter logbook reporting requirements would facilitate GAF recordkeeping and enforcement of charter vessel angler daily bag and

possession limits. NMFS also would use the GAF reporting fields in the saltwater charter logbook to verify information reported in the electronic GAF reporting system.

NMFS proposes that for each halibut retained as GAF, charter vessel guides would immediately record on the GAF permit the date and total halibut length in inches. This requirement would facilitate on-the-water enforcement and improve the accuracy of the GAF lengths reported electronically to NMFS.

NMFS would use an electronic GAF reporting system to manage GAF accounts and report GAF lengths. Near real-time reporting of GAF landings, and other GAF account and permit information is essential to support participant access to current account balances for account management and regulatory compliance, and to monitor account transfers and GAF landings history. Management personnel need near real-time account information to manage permit accounts, conduct transfers, and assess fees. Enforcement personnel need real-time account information to monitor transfers between IFQ and GAF and monitor compliance with authorized GAF harvests and other program rules.

In the commercial IFQ program, regulations at § 679.5(e) require that Registered Buyers report fisheries landings electronically using a secure, password-protected Internet-based system approved by NMFS. The final steps of the electronic IFQ reporting process generate a time-stamped receipt displaying landings data. Commercial Registered Buyers must print, and along with the individual IFQ fisherman, must sign copies of the receipt, which must be maintained and made available for a specified time period for inspection by authorized NMFS or enforcement personnel. Printing of this receipt indicates the report sequence is complete and the IFQ account(s) has been properly debited.

Under the CSP GAF program, NMFS would also require secure electronic reporting. Multiple technologies may be needed to provide essential services to a GAF fleet that would be widely distributed throughout remote locations in Area 2C and Area 3A. NMFS is proposing an Internet-based reporting system for GAF electronic reporting because that is likely to be the most efficient and convenient method for charter operators to report GAF, given the prevalence of Internet use among the general public.

Although real-time data are necessary for accurate account management, the data requirements for inseason GAF

account management are relatively minor and simple relative to that required for saltwater charter logbooks. GAF permit holders would be required to complete the GAF electronic report before 11:59 p.m. (Alaska local time) on the last day of a charter vessel fishing trip in which a charter vessel angler retained GAF using a GAF permit.

The GAF permit holder would be required to record the following information in the GAF electronic reporting system: (1) ADF&G saltwater charter logbook number in which GAF were recorded; (2) vessel identification number (State of Alaska issued boat registration number or U.S. Coast Guard documentation number) for the vessel on which GAF were retained; (3) GAF permit number used to retain GAF; (4) ADF&G Sport Fishing Guide license number held by the charter vessel guide who certified the ADF&G saltwater charter logbook sheet on which GAF were recorded; (5) total number of GAF caught and retained under the GAF permit number; and (6) total length in inches of each GAF retained. Charter vessel operators using a GAF permit assigned to a community charter halibut permit for a charter vessel fishing trip on which GAF were retained also would be required to report the community or port where the charter vessel fishing trip began and ended.

Upon receipt of an electronic GAF report from a GAF permit holder, NMFS would respond with a confirmation number as evidence that NMFS received the GAF harvest report and the GAF account was properly debited. The GAF permit holder would be required to record this confirmation number on the corresponding GAF permit.

The Council recommended that GAF permit holders landing GAF on private property be required to allow enforcement personnel access to the point of landing. The Council recognized, and NMFS agrees, that enforcing the harvest restrictions and GAF use restrictions may require enforcement staff to search for or inspect halibut retained by all charter vessel anglers in the charter fishery, including charter vessel anglers landing such halibut on private property. Section 773i(b) of the Halibut Act states that any authorized officer may, "at reasonable times, enter and search or inspect, shoreside facilities in which fish taken subject to this subchapter are processed, packed or held."

The Council also recommended that GAF permit holders be required to allow ADF&G and IPHC scientific sampling personnel access to landed halibut on private property owned by the GAF permit holder, in addition to their

normal access in public areas. The Council recommended this element to facilitate monitoring of charter halibut harvest and the collection of scientific information from halibut, primarily GAF, harvested in the charter fishery. NMFS is uncertain about the potential impacts of requiring such access and is not currently proposing this provision. NMFS is considering how best to implement this proposed aspect of the CSP to provide the Council with the requested information to monitor GAF use, and provide the public with predictability regarding the procedural aspects of this provision. NMFS may propose this requirement after further research and consideration of public comments.

#### *G. Cost Recovery for GAF*

The Magnuson-Stevens Fishery Conservation and Management Act at section 304(d)(2)(A) requires that cost recovery fees be collected for the costs directly related to the management, data collection, and enforcement of any limited access privilege programs. This includes programs such as the commercial halibut IFQ program, under which a dedicated allocation is provided to IFQ permit holders. Fees owed are a percentage, not to exceed 3 percent, of the ex-vessel value of fish landed and debited from IFQ permits. Each year, NMFS sends fee statements to IFQ holders whose annual IFQ was used; and those holders must remit fees by January 31 of the following year. The fee percentage has rarely exceeded 2 percent of the ex-vessel value of sablefish and halibut landings.

NMFS does not expect allocation of additional funds to support the GAF program other than those derived from IFQ cost recovery fees. Therefore, under the proposed rule, commercial IFQ holders would be responsible for all cost recovery fees on IFQ equivalent pounds harvested for their IFQ permit(s) and also for net pounds transferred and harvested as GAF which originated from their IFQ account(s). NMFS would levy IFQ cost recovery fees on all net pounds of halibut harvested as IFQ in the commercial fishery and as GAF in the charter fishery.

The IFQ permit holders who transfer IFQ to GAF would owe cost recovery fees for those GAF retained in the charter fishery. Fees for unharvested GAF converted back to IFQ equivalent pounds and harvested as commercial IFQ pounds would be assessed fees as commercial landings with value estimated as specified in current regulations at § 679.45. IFQ holders might share these costs with GAF users through contractual agreements, but

those contractual arrangements would not be regulated or reviewed under the provisions of this proposed rule. IFQ and GAF that are not harvested during the year would not be subject to the cost recovery fee. Fish harvested in excess of the amount authorized by a GAF permit, or in excess of allowed IFQ permit overages, would not result in cost recovery fees owed because such overages would be handled as enforcement actions.

NMFS establishes commercial cost recovery fee assessments in November each year. To determine cost recovery fee liabilities for IFQ holders, NMFS uses data reported by Registered Buyers to compute annual standard ex-vessel IFQ prices by month and port (or, if confidential, by port group). NMFS publishes these standard prices in the **Federal Register** each year. For example, NMFS published the 2012 standard ex-vessel IFQ prices in the **Federal Register** on December 4, 2012 (77 FR 71783). NMFS uses the standard prices to compute the total annual value of the IFQ fisheries. NMFS determines the fee percentage by dividing actual total management and enforcement costs by total IFQ fishery value. Only those halibut and sablefish holders who had landings on their permits owe cost recovery fees. The fee owed by an IFQ holder is the computed annual fee percentage multiplied by the value of his or her IFQ landings.

NMFS would also apply standard ex-vessel values computed by area for commercial IFQ harvests to harvest of GAF. The proposed regulations specify that the IFQ permit holder may not challenge the standard ex-vessel value applied to GAF landings by NMFS.

Only “incremental” costs, i.e., those incurred as a result of IFQ management that include a GAF component, are assessable as cost recovery fees. Under the proposed rule, NMFS would determine the cost recovery liability for IFQ permit holders based on the value of all landed IFQ and GAF derived from his or her IFQ permits. NMFS would convert landings of GAF in Area 2C or Area 3A to IFQ equivalent pounds as specified in the “Conversion between IFQ and GAF” section above, and multiply the IFQ equivalent pounds by the standard ex-vessel value computed for that area to determine the value of IFQ landed as GAF. The value of IFQ landed as GAF as based on NMFS’ standard prices would be added to the value of the IFQ permit holder’s landed IFQ, and the sum would be multiplied by the IFQ fee percentage to estimate the person’s IFQ fee liability. Additionally, the costs to develop the regulations, accounting, and reporting systems for

the GAF program would be considered incremental and extensions of the IFQ program and would be submitted for cost recovery. Agency costs related to development of the GAF program in previous years have already been included in the IFQ cost recovery fee assessment, and costs associated with developing the GAF portion of this proposed rule would be submitted for cost recovery.

#### **V. Other Regulatory Changes**

This action proposes four additional regulatory changes. These are minor changes that clarify existing regulations, but do not substantively change how the halibut fishery is managed. The first proposed change would clarify the regulations to describe the current process by which the IPHC Area 4 catch sharing plan is promulgated. The Area 4 catch sharing plan was codified in Federal regulations at § 300.65(b) in 1998. The Area 4 catch sharing plan allocates the Area 4 commercial catch limit among Areas 4C, 4D, and 4E. Each year, the Area 4CDE catch sharing plan subarea allocations are applied to the Area 4CDE commercial catch limit recommended by the IPHC and published in the final rule implementing the annual management measures. The proposed regulatory change would clarify the description of this process in § 300.65(b).

The second proposed change would update instructions in regulations at § 679.5(l)(7) for Registered Buyers to complete and submit the IFQ Registered Buyer Ex-vessel Value and Volume Report form. Registered Buyers submit this form to NMFS to report ex-vessel IFQ prices by month and port. These changes would remove unnecessary regulations listing specific information that is already provided on the IFQ Registered Buyer Ex-vessel Value and Volume Report form and IFQ Fee Submission form, and clarify the submission process. NMFS uses data reported by Registered Buyers to compute annual standard ex-vessel IFQ prices to determine cost recovery fee liabilities for IFQ holders.

The third proposed change would clarify regulations at § 679.40 to describe the separate processes for allocating halibut IFQ and sablefish IFQ. The proposed regulations would also clarify that commercial halibut fishery overage adjustments from the previous year will be subtracted from a person’s IFQ, and commercial halibut fishery underage adjustments from the previous year will be added to a person’s IFQ. Current regulations provide for administrative adjustment of IFQ permits as a result of under- and

overfishing the IFQ the prior year. NMFS applies administrative adjustments at the beginning of each fishing year when annual IFQ accounts are created and IFQ pounds are allocated to QS holders.

The fourth proposed change would revise regulations at § 679.45(a)(4) to update instructions for IFQ permit holders for submitting cost recovery fee payments to NMFS. NMFS proposes to update the fee payment form and instructions to incorporate GAF in the calculation of an IFQ permit holder's cost recovery fee liability.

## VI. Classification

Regulations governing the U.S. fisheries for Pacific halibut are developed by the IPHC, the Pacific Fishery Management Council, the North Pacific Fishery Management Council, and the Secretary of Commerce. Section 5 of the Northern Pacific Halibut Act of 1982 (Halibut Act, 16 U.S.C. 773c) allows the Regional Council having authority for a particular geographical area to develop regulations governing fishing for halibut in U.S. Convention waters as long as those regulations do not conflict with IPHC regulations. The Halibut Act at section 773c(a) and (b) provides the Secretary with the general responsibility to carry out the Convention with the authority to, in consultation with the Secretary of the department in which the U.S. Coast Guard is operating, adopt such regulations as may be necessary to carry out the purposes and objectives of the Convention and the Halibut Act. This proposed action is consistent with the North Pacific Halibut Act and other applicable laws.

### *Executive Order 12866*

This proposed rule has been determined to be not significant for purposes of Executive Order 12866. This proposed rule also complies with the Secretary of Commerce's authority under the Halibut Act to implement management measures for the halibut fishery.

### *Regulatory Flexibility Act*

An initial regulatory flexibility analysis (IRFA) was prepared as required by section 603 of the Regulatory Flexibility Act. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action may be found at the beginning of this preamble. A summary of the IRFA follows. Copies of the IRFA are available from the Council or NMFS (see **ADDRESSES**).

The action would establish a CSP for the commercial and charter halibut fisheries in Area 2C and Area 3A. In addition to establishing allocations to each fishery, the Council's preferred alternative (Alternative 3 for Area 2C and Alternative 4 for Area 3A) would establish a new management system for the charter halibut fishery in these areas. Beginning February 1, 2011, operators of vessels with charter vessel anglers on board were required to have on board the vessel a valid charter halibut permit issued by NMFS. Therefore, the universe of regulated entities for the proposed CSP would be the holders of one or more charter halibut permits in Area 2C and Area 3A. In October 2012, NMFS published an implementation report for the charter halibut limited access program after all interim permits had been adjudicated and resolved. This report is available at [http://alaskafisheries.noaa.gov/ram/charter/chp\\_review1012.pdf](http://alaskafisheries.noaa.gov/ram/charter/chp_review1012.pdf). At the time of publication, a total of 972 charter halibut permits had been issued to 356 businesses in Area 2C and 439 businesses in Area 3A. Of these, 372 charter halibut permits in Area 2C and 339 permits in Area 3A are transferable. A charter halibut permit holder may transfer a transferable permit, subject to NMFS approval, to a qualified person at any time. The exact number of businesses that would be regulated by the proposed CSP therefore cannot be determined because some businesses hold CHPs in each regulatory area and may be counted twice, and because permits are continually being transferred, sold, or retired, or additional community charter halibut permits are being issued. As of October 2012, 107 community CHPs had been issued to 20 CQEs, and 7 U.S. Military Morale, Welfare and Recreation Program permits had been issued to 3 permit holders.

The Small Business Administration (SBA) specifies that for marinas and charter or party vessels, a small business is one with annual receipts less than \$7.0 million. The largest of these charter vessel operations, which are lodges, may be considered large entities under SBA standards, but that cannot be confirmed because NMFS does not have or collect economic data on lodges necessary to definitively determine total annual receipts. Thus, all charter vessel operations regulated by the proposed CSP would likely be considered small entities, based on SBA criteria, because they would be expected to have gross revenues of less than \$7.0 million on an annual basis.

Regulations that directly regulate entities representing small, remote

communities in Areas 2C and 3A are included in this action. These regulations would authorize holding community charter halibut permits or regular charter halibut permits to use GAF as proposed under the CSP. GAF would offer charter vessel anglers in Area 2C or Area 3A an opportunity to harvest halibut in addition to the halibut harvested under the charter halibut management measure, up to the harvest limits in place for unguided sport anglers in that area. Eligibility for community charter halibut permits required that the community be represented by a non-profit community quota entity approved by NMFS. Of the 22 CQEs that formed, 11 Area 2C communities were eligible and each received 4 halibut community charter halibut permits and 9 Area 3A communities were eligible and each received 7 halibut community charter halibut permits. A maximum of 18 communities in Area 2C and 14 communities in Area 3A are eligible to form CQEs and apply for charter halibut permits at any time. Therefore, there is a maximum of 32 eligible community entities that could be authorized by the proposed action to use GAF. All of these eligible communities would be considered small entities under the SBA definitions.

An IRFA is required to describe significant alternatives to the proposed rule that accomplish the stated objectives of the Halibut Act and other applicable statutes and that would minimize any significant economic impact of the proposed rule on small entities.

The status quo alternative (Alternative 1) specifies the GHL as a target amount of halibut that anglers in the charter fishery can harvest in Area 2C and Area 3A. However, charter halibut harvests that exceed the GHL may have a de facto allocation effect of reducing the amount of halibut that may be harvested by the commercial fishery in the following year. Additionally, charter halibut fishery harvests beyond the GHL also can undermine overall harvest strategy goals established by the IPHC for the halibut resource, which affects all users. The primary objectives of the CSP are to define an annual process for allocating halibut between the charter and commercial fisheries in Area 2C and Area 3A, establish allocations that balance the differing needs of the charter and commercial fisheries that vary with changing levels of annual halibut abundance, and specify a process for determining harvest restrictions for charter anglers that are intended to limit harvest to the annual charter fishery catch limit.



The Council considered four alternatives to the status quo for the proposed CSP. The Council selected a different preferred allocation alternative for Area 2C (Alternative 3) than Area 3A (Alternative 4). The Council's preferred alternative incorporated analysis, public testimony, and public comment provided on the first proposed rule for a CSP (76 FR 44156, July 22, 2011). The Council determined that Alternatives 3 and 4 were more likely than the status quo to meet its objective to establish a catch sharing plan for the commercial and charter fisheries by managing the charter halibut fishery to ensure that harvests stay within the fishery's allocated range. The Council also considered the charter halibut fishery's need to have a stable in-season regulatory environment. Management of the charter halibut fishery under the preferred alternatives is intended to ensure that it is given advance notice and predictability with respect to application of management tools (e.g., bag limits, size restrictions) and season length. The preferred alternatives would facilitate the recommended process for recommending and implementing annual management measures for the charter halibut fishery prior to the beginning of the fishing season. NMFS agrees that the annual implementation of the CSP allocations and GAF under the preferred alternatives likely would facilitate management of the charter fishery in a way that is timely and responsive to changes in halibut abundance while providing participants in the charter halibut fishery with advance notice of the charter fishery management measures to be effective in the upcoming season. The other alternatives that were considered are described below.

Alternatives 2 through 5 all recommend for Area 2C and Area 3A the implementation of a catch sharing plan with separate accountability by fishery for wastage, and a program to allow charter operators to lease IFQ from participants in the commercial halibut fishery, called the "guided angler fish" or GAF program. All alternatives include fixed allocation percentages to the charter and commercial halibut fisheries. The Council determined that a fixed percentage allocation best met its objectives with the least impact to affected entities. Additionally, a fixed percentage allocation would be equitable because both the commercial and charter halibut fisheries would have allocations that vary with the abundance of the halibut resource. Thus, both the charter and commercial

halibut fisheries would share in the benefits and costs of managing the resource for long-term sustainability under a combined catch limit.

The main differences among Alternatives 2 through 5 are in how the allocation percentages are calculated. Allocation percentages to the charter halibut fishery are the lowest under Alternative 2 and highest under Alternative 5. Alternative 2 is the 2008 preferred alternative for a catch sharing plan. This alternative included allocation percentages that did not include upward adjustments for the switch from the Statewide Harvest Survey to ADF&G saltwater charter logbooks as the primary data source. Alternative 3 increased the allocations to the charter halibut fishery from Alternative 2 by the adjustment required to account for catch using the saltwater charter logbook instead of the SWHS. Alternative 4 would establish allocations for the charter halibut fishery based on the same methodology used in Alternative 2, plus an additional 3.5 percent of the combined catch limit at levels of combined catch limit less than 20 million pounds. At combined catch limits greater than 25 million pounds, the allocation would be the same as in Alternative 2. And finally, Alternative 5 was based on the allocations in Alternative 3, plus an additional 3.5 percent of the combined catch limit. The Council recommended Alternative 3 for Area 2C and Alternative 4 for Area 3A as its preferred alternative. When considering which charter allocation percentages were most appropriate and equitable for each management area, the Council took into account recent charter halibut harvests adjusted for both the logbook correction and crew harvest.

Alternatives 2 through 5 differ in how annual charter halibut harvest restrictions would be implemented. Alternative 2 contains a pre-determined and fixed set of harvest restrictions that would be triggered automatically under the CSP depending on the combined catch limit determined each year by the IPHC. The other alternatives did not prescribe annual charter harvest restrictions as part of this rule and the CSP. Instead, charter harvest restrictions would continue to be set through a separate annual process of Council recommendations to the IPHC that was first used in 2012 and detailed in the "Annual Process for Setting Charter Management Measures" section of this preamble. The fixed management measures proposed under Alternative 2 were determined to be too rigid and did not give managers enough discretion to modify those measures as needed to best

achieve harvest objectives. The process proposed under Alternatives 3 through 5 was considered more flexible, responsive to the most recent information available on halibut removals, and allowed greater stakeholder input in the selection of annual harvest restrictions.

#### *Projected Reporting and Recordkeeping Requirements*

This action would impose new recordkeeping requirements. Applications to transfer between IFQ and GAF would be required to be submitted to and approved by NMFS for each transfer from IFQ to GAF. The application would require information about the IFQ permit holder and the charter halibut permit holder, including each permit holder's contact information, the IFQ permit holder's account from which halibut pounds are to be transferred, and the GAF account to which GAF are to be transferred. NMFS would rely on data already collected through the ADF&G saltwater charter logbooks for additional management and enforcement needs. In addition, CQEs eligible to receive community charter halibut permits would be required to submit information to NMFS (1) on the application for a transfer between IFQ and GAF, and (2) regarding the CQE's activity in an annual report by January 31 of the following year. NMFS would require charter vessel guides to record on the GAF permit the date and length of any GAF halibut caught and kept, immediately upon harvest. NMFS would also require GAF permit holders to report via an online system information about each GAF halibut caught and retained at the end of each fishing trip, and to record the GAF electronic reporting confirmation number on the GAF permit. The proposed recordkeeping and reporting requirements would not likely represent a "significant" economic burden on the small entities operating in this fishery.

#### *Duplicate, Overlapping, or Conflicting Federal Rules*

NMFS has not identified other Federal rules that may duplicate, overlap, or conflict with the proposed rule.

#### *Collection-of-Information*

This proposed rule contains collection-of-information requirements subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). These requirements have been submitted to OMB for approval.



The collections are listed below by OMB control number.

*OMB Control No. 0648-0398*

Public reporting burden per response is estimated to average 2 hours for the IFQ Permit Holder Fee Submission Form, and 2 hours for the IFQ Registered Buyer Ex-Vessel Value and Volume Report.

*OMB Control No. 0648-0575*

Public reporting burden per response is estimated to average 4 minutes for ADF&G Saltwater Charter Logbook entry for vessel guide and submittal; 1 minute per angler for angler signatures of ADF&G Saltwater Sport Fishing Charter Trip Logbook; 1 minute to measure each GAF, 1 minute to record GAF lengths on the GAF permit, 4 minutes to enter data into the GAF electronic reporting system, and 1 minute to record the GAF electronic reporting confirmation number on the GAF permit.

*OMB Control No. 0648-0592*

Public reporting burden per response is estimated to average 1 hour for an Application for Transfer Between IFQ and GAF; and 1 hour for an Application for Transfer Between IFQ and GAF by a Community Quota Entity.

*OMB Control No. 0648-0272*

The IFQ permit is mentioned in this proposed rule; however, the public reporting burden for the IFQ permit in this collection-of-information is not directly affected by this proposed rule.

Public reporting burden includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Public comment is sought regarding whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to NMFS at the above address, and by email to [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov), or fax to 202-395-7285.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

This proposed rule is consistent with Executive Order 12962 as amended September 26, 2008, which required Federal agencies to ensure that recreational fishing is managed as a sustainable activity and is consistent with existing law.

### List of Subjects

#### 50 CFR Part 300

Administrative practice and procedure, Antarctica, Canada, Exports, Fish, Fisheries, Fishing, Imports, Indians, Labeling, Marine resources, Reporting and recordkeeping requirements, Russian Federation, Transportation, Treaties, Wildlife.

#### 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: June 24, 2013.

**Alan D. Risenhoover,**

*Director, Office of Sustainable Fisheries, performing the functions and duties of the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR parts 300 and 679 as follows:

## PART 300—INTERNATIONAL FISHERIES REGULATIONS

### Subpart E—Pacific Halibut Fisheries

■ 1. The authority citation for part 300, subpart E, continues to read as follows:

**Authority:** 16 U.S.C. 773–773k.

■ 2. In § 300.61:

■ a. Add definitions for “Annual combined catch limit”, “Annual commercial catch limit”, “Annual guided sport catch limit”, “Guided Angler Fish (GAF)”, “Guided Angler Fish (GAF) permit”, and “Guided Angler Fish (GAF) permit holder” in alphabetical order;

■ b. Remove the definition for “Guideline harvest level (GHL)”; and

■ c. Revise the definition for “Individual Fishing Quota (IFQ)”.

The additions and revision read as follows:

#### § 300.61 Definitions.

\* \* \* \* \*

*Annual combined catch limit*, for purposes of commercial and sport

fishing in Commission regulatory areas 2C and 3A, means the annual total allowable halibut removals (halibut harvest plus wastage) by persons fishing IFQ and by charter vessel anglers.

*Annual commercial catch limit*, for purposes of commercial fishing in Commission regulatory areas 2C and 3A, means the annual commercial allocation minus an area-specific estimate of commercial halibut wastage.

*Annual guided sport catch limit*, for purposes of sport fishing in Commission regulatory areas 2C and 3A, means the annual guided sport allocation minus an area-specific estimate of guided sport halibut wastage.

\* \* \* \* \*

*Guided Angler Fish (GAF)* means halibut transferred within a year from a Commission regulatory area 2C or 3A IFQ permit holder to a GAF permit that is issued to a person holding a charter halibut permit, community charter halibut permit, or military charter halibut permit for the corresponding area.

*Guided Angler Fish (GAF) permit* means an annual permit issued by the National Marine Fisheries Service pursuant to § 300.65(c)(5)(iii).

*Guided Angler Fish (GAF) permit holder* means the person identified on a GAF permit.

\* \* \* \* \*

*Individual Fishing Quota (IFQ)*, for purposes of this subpart, means the annual catch limit of halibut that may be harvested by a person who is lawfully allocated a harvest privilege for a specific portion of the annual commercial catch limit of halibut.

\* \* \* \* \*

■ 3. In § 300.65, revise paragraphs (b), (c), and (d) to read as follows:

#### § 300.65 Catch sharing plan and domestic management measures in waters in and off Alaska.

\* \* \* \* \*

(b) The catch sharing plan for Commission regulatory area 4 allocates the annual commercial catch limit among Areas 4C, 4D, and 4E and will be adopted by the Commission as annual management measures and published in the **Federal Register** as required in § 300.62.

(c) *Catch sharing plan (CSP) for Commission Regulatory Areas 2C and 3A—(1) General.* The catch sharing plan for Commission regulatory areas 2C and 3A:

(i) Allocates the annual combined catch limit for Commission regulatory areas 2C and 3A in order to establish the annual commercial catch limit and the annual guided sport catch limit for the

halibut commercial fishing and sport fishing seasons, pursuant to paragraphs (c)(3) and (4) of this section; and

(ii) Authorizes the use of Commission regulatory areas 2C and 3A halibut IFQ as guided angler fish (GAF) for harvest by charter vessel anglers in the corresponding area, pursuant to paragraph (c)(5) of this section.

(2) *Implementation.* The Commission regulatory areas 2C and 3A CSP annual allocations and guided sport catch limits are adopted by the Commission as annual management measures and published by NMFS in the **Federal Register** as required in § 300.62.

(3) *Annual commercial catch limits.*

(i) The Commission regulatory areas 2C and 3A annual commercial catch limits are determined by subtracting wastage from the allocations in Tables 1 and 2 of this subpart E, adopted by the Commission as annual management measures, and published in the **Federal Register** as required in § 300.62.

(ii) Commercial fishing in Commission regulatory areas 2C and 3A is governed by the Commission's annual management measures and by regulations at 50 CFR part 679, subparts A, B, D, and E.

(4) *Annual guided sport catch limits.*

(i) The Commission regulatory areas 2C and 3A annual guided sport catch limits are determined by subtracting wastage from the allocations in Tables 3 and 4 of this subpart E, adopted by the Commission as annual management measures, and published in the **Federal Register** as required in § 300.62.

(ii) Sport fishing by charter vessel anglers in Commission regulatory areas 2C and 3A is governed by the Commission's annual management measures and by regulations at 50 CFR part 300, subparts A and E.

(5) *Guided Angler Fish (GAF).* This paragraph (§ 300.65(c)(5)) governs the transfer of Commission regulatory areas 2C and 3A halibut between individual fishing quota (IFQ) and guided angler fish (GAF), the issuance of GAF permits, and GAF use.

(i) *General.* (A) GAF is derived from halibut IFQ that is transferred from a Commission regulatory area 2C or 3A IFQ permit holder's account held by a person who also holds quota share (QS), as defined in § 679.2 of this title, to a GAF permit holder's account for the same regulatory area.

(B) A GAF permit authorizes a charter vessel angler to retain GAF that are caught in the Commission regulatory area specified on a GAF permit:

(1) During the sport halibut fishing season adopted by the Commission as annual management measures and

published in the **Federal Register** as required in § 300.62, and

(2) Subject to the GAF use restrictions at paragraphs (c)(5)(iv)(A) through (K) of this section.

(C) NMFS will return unharvested GAF to the IFQ permit holder's account from which the GAF were derived on or after fifteen calendar days prior to the closing of the commercial halibut fishing season each year, subject to paragraph (c)(5)(ii) of this section and underage provisions at § 679.40(e) of this title.

(ii) *Transfer Between IFQ and GAF—*(A) *General.* A transfer between IFQ and GAF means any transaction in which halibut IFQ passes between an IFQ permit holder and a GAF permit holder as:

(1) A transfer of IFQ to GAF, in which halibut IFQ equivalent pounds, as defined in § 679.2 of this title, are transferred from a Commission regulatory area 2C or 3A IFQ permit account, converted to number(s) of GAF as specified in paragraph (c)(5)(ii)(E) of this section, and assigned to a GAF permit holder's account in the same management area;

(2) A transfer of GAF to IFQ, in which GAF in number(s) of fish are transferred from a GAF permit holder's account in Commission regulatory area 2C or 3A, converted to IFQ equivalent pounds as specified in paragraph (c)(5)(ii)(E) of this section, and assigned to the same IFQ permit holder's account from which the GAF were derived; or

(3) The return of unharvested GAF by NMFS to the IFQ permit holder's account from which it was derived, on or after 15 calendar days prior to the closing of the commercial halibut fishing season.

(B) *Transfer procedure—*(1) *Application for Transfer Between IFQ and GAF.* A transfer between IFQ and GAF requires Regional Administrator review and approval of a complete Application for Transfer Between IFQ and GAF. Both the transferor and the transferee are required to complete and sign the application. Transfers will be conducted via methods approved by NMFS. The Regional Administrator shall provide an Application for Transfer Between IFQ and GAF on the NMFS Alaska Region Web site at <http://alaskafisheries.noaa.gov/ram/default.htm>. An Application for Transfer Between IFQ and GAF is not required for the return of unharvested GAF by NMFS to the IFQ permit holder's account from which it was derived, 15 calendar days prior to the closing of the commercial halibut fishing season for that year.

(2) *Application timing.* The Regional Administrator will not approve any Application for Transfer Between IFQ and GAF before annual IFQ is issued for each year or after October 15. Applications to transfer GAF to IFQ will be accepted from August 1 through August 31 only.

(3) *Transfer due to court order, operation of law, or as part of a security agreement.* NMFS may approve an Application for Transfer Between IFQ and GAF to return GAF to the IFQ permit holder's account from which it derived pursuant to a court order, operation of law, or a security agreement.

(4) *Notification of decision on application.* (i) Persons who submit an Application for Transfer Between IFQ and GAF to the Regional Administrator will receive notification of the Regional Administrator's decision to approve or disapprove the application for transfer.

(ii) If an Application for Transfer Between IFQ and GAF is disapproved, NMFS will provide the reason(s) in writing by mail, posted on the date of that decision.

(iii) Disapproval of an Application for Transfer Between IFQ and GAF may be appealed pursuant to § 679.43 of this title.

(iv) The Regional Administrator will not approve a transfer between IFQ and GAF on an interim basis if an applicant appeals a disapproval of an Application for Transfer Between IFQ and GAF pursuant to § 679.43 of this title.

(5) *IFQ and GAF accounts.* (i) Accounts affected by either a Regional Administrator-approved Application for Transfer Between IFQ and GAF or the return of unharvested GAF to IFQ on or after 15 calendar days prior to the closing of the commercial halibut fishing season for that year will be adjusted on the date of approval or return. Applications for Transfer Between IFQ and GAF that are transfers of GAF to IFQ that have been approved by the Regional Administrator will be completed not earlier than September 1. Any necessary permits will be sent with the notification of the Regional Administrator's decision on the Application for Transfer Between IFQ and GAF.

(ii) Upon approval of an Application for Transfer Between IFQ and GAF for an initial transfer from IFQ to GAF, NMFS will establish a new GAF account for the GAF applicant's account and issue the resulting new GAF and IFQ permits. If a GAF account already exists from a previous transfer from the same IFQ account in the corresponding management area in that year, NMFS will modify the GAF recipient's GAF

account and the IFQ transferor's permit account and issue modified GAF and IFQ permits upon approval of an Application for Transfer Between IFQ and GAF.

(iii) On or after 15 calendar days prior to the closing of the commercial halibut fishing season, NMFS will convert unharvested GAF from a GAF permit holder's account back into IFQ equivalent pounds as specified in paragraph (c)(5)(ii)(E)(2) of this section, and return the resulting IFQ equivalent pounds to the IFQ permit holder's account from which the GAF were derived, unless prevented by regulations at 15 CFR part 904.

(C) *Complete application.* Applicants must submit a completed Application for Transfer Between IFQ and GAF to the Regional Administrator as instructed on the application. NMFS will notify applicants with incomplete applications of the specific information necessary to complete the application.

(D) *Application for Transfer Between IFQ and GAF approval criteria.* An Application for Transfer Between IFQ and GAF will not be approved until the Regional Administrator has determined that:

(1) The person applying to transfer IFQ to GAF or receive IFQ from a transfer of GAF to IFQ:

(i) Possesses at least one unit of halibut quota share (QS), as defined in § 679.2 of this title, in the applicable Commission regulatory area, either Area 2C or Area 3A, for which the transfer of IFQ to GAF is requested;

(ii) Has been issued an annual IFQ Permit, as defined in § 679.4(d)(1) of this title, for the Commission regulatory area corresponding to the person's QS holding, either Area 2C or Area 3A, resulting from that halibut QS; and

(iii) Has an IFQ permit holder's account with an IFQ amount equal to or greater than amount of IFQ to be transferred in the Commission regulatory area, either Area 2C or Area 3A, for which the transfer of IFQ to GAF is requested.

(2) The person applying to receive or transfer GAF possesses a valid charter halibut permit, community charter halibut permit, or military charter halibut permit in the Commission regulatory area (Area 2C or Area 3A) that corresponds to the IFQ permit area from or to which the IFQ will be transferred.

(3) For a transfer of IFQ to GAF:

(i) The transfer between IFQ and GAF must not cause the GAF permit issued to exceed the GAF use limits in paragraphs (c)(5)(iv)(H)(1) and (2) of this section;

(ii) The transfer must not cause the person applying to transfer IFQ to exceed the GAF use limit in paragraph (c)(5)(iv)(H)(3) of this section; and

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

(4) If a Community Quota Entity (CQE), as defined in § 679.2 of this title, submits a "Community Quota Entity Application for Transfer Between Individual Fishing Quota (IFQ) and Guided Angler Fish (GAF)," the application will not be approved until the Regional Administrator has determined that:

(i) The CQE applying to transfer IFQ to GAF is eligible to hold IFQ on behalf of the eligible community in Commission regulatory area 2C or 3A designated in Table 21 to 50 CFR part 679;

(ii) The CQE applying to transfer IFQ to GAF has received notification of approval of eligibility to receive IFQ for that community as described in paragraph § 679.41(d)(1) of this title;

(iii) The CQE applying to receive GAF from a Commission regulatory area 2C or 3A IFQ permit holder holds one or more charter halibut permits or community charter halibut permits for the corresponding area; and

(iv) The CQE applying to transfer between IFQ and GAF has submitted a complete annual report(s) as required by § 679.5(l)(8) of this title.

(E) *Conversion between IFQ and GAF—(1) General.* An annual conversion factor will be calculated to convert between net pounds (whole number, no decimal points) of halibut IFQ and number(s) of GAF (whole number, no decimal points) for Area 2C and Area 3A. This conversion factor will be posted on the NMFS Alaska Region Web site before the beginning of each commercial halibut fishing season.

(2) *Conversion calculation.* The net pounds of IFQ transferred to or from an IFQ permit holder in Commission regulatory area 2C or 3A will be equal to the number(s) of GAF transferred to or from the GAF account of a GAF permit holder in the corresponding area, multiplied by the estimated average net weight determined as follows. For the first calendar year after the effective date of this rule, the average net weight will be estimated for all halibut harvested by charter vessel anglers during the most recent year without a size limit in effect. After the first calendar year after the effective date of this rule, the average net weight will be estimated from the average length of

GAF retained in that area during the previous year as reported to RAM via the GAF electronic reporting system. If no GAF were harvested in a year, the conversion factor would be calculated using the same method as for the first calendar year after the effective date of this rule. NMFS will round up to the nearest whole number (no decimals) when transferring IFQ to GAF and when transferring GAF to IFQ. Expressed algebraically, the conversion formula is: IFQ net pounds = (number of GAF × average net weight)

(3) The total number of net pounds converted from unharvested GAF and transferred to the IFQ permit holder's account from which it derived cannot exceed the total number of net pounds NMFS transferred from the IFQ permit holder's account to the GAF permit holder's account for that area in the current year.

(iii) *Guided Angler Fish (GAF) permit—(A) General.* (1) A GAF permit authorizes a charter vessel angler to catch and retain GAF in the specified Commission regulatory area, subject to the limits in paragraphs (c)(5)(iv)(A) through (K) of this section, during a charter vessel fishing trip authorized by the charter halibut permit, community charter halibut permit, or military charter halibut permit that designated on the GAF permit.

(2) A GAF permit authorizes a charter vessel angler to catch and retain GAF in the specified Commission regulatory area from the time of permit issuance until any of the following occurs:

(i) The amount of GAF in the GAF permit holder's account is zero;

(ii) The permit expires at 11:59 p.m. (Alaska local time) on the day prior to 15 days prior to the end of the commercial halibut fishing season for that year;

(iii) NMFS replaces the GAF permit with a modified GAF permit following NMFS approval of an Application for Transfer Between IFQ and GAF; or

(iv) The GAF permit is revoked or suspended under 15 CFR part 904.

(3) A GAF permit is issued for use in a Commission regulatory area (2C or 3A) to the person who holds a valid charter halibut permit, community charter halibut permit, or military charter halibut permit in the corresponding Commission regulatory area. Regulations governing issuance, transfer, and use of charter halibut permits are located in § 300.67.

(4) A GAF permit is assigned to only one charter halibut permit, community charter halibut permit, or military charter halibut permit held by the GAF permit holder in the corresponding Commission regulatory area (2C or 3A).

(5) A legible copy of a GAF permit and the assigned charter halibut permit, community charter halibut permit, or military charter halibut permit appropriate for the Commission regulatory area (2C or 3A) must be carried on board the vessel used to harvest GAF at all times that such fish are retained on board and must be presented for inspection on request of any authorized officer.

(6) No person may alter, erase, mutilate, or forge a GAF permit or document issued under this section (§ 300.65(c)(5)(iii)). Any such permit or document that has been intentionally altered, erased, mutilated, or forged is invalid.

(7) GAF permit holders must retain GAF permit(s) for two years after the end of the fishing year for which the GAF permit(s) was issued and make the GAF permit available for inspection upon the request of an authorized officer (as defined in Commission regulations).

(B) *Issuance.* The Regional Administrator will issue a GAF permit upon approval of an Application to Transfer Between IFQ and GAF.

(C) *Transfer.* GAF authorized by a GAF permit under this section (§ 300.65(c)(5)(iii)) are not transferable to another GAF permit, except as provided under paragraph (c)(5)(ii) of this section.

(iv) *GAF use restrictions.* (A) A charter vessel angler may harvest GAF only on board a vessel on which the operator has on board a valid GAF permit and the valid charter halibut permit, community charter halibut permit, or military charter halibut permit assigned to the GAF permit for the area of harvest.

(B) The total number of GAF on board a vessel cannot exceed the number of unharvested GAF in the GAF permit holder's GAF account at the time of harvest.

(C) The total number of halibut retained by a charter vessel angler harvesting GAF cannot exceed the sport fishing daily bag limit in effect for unguided sport anglers at the time of harvest adopted by the Commission as annual management measures and published in the **Federal Register** as required in § 300.62.

(D) Retained GAF are not subject to any length limit implemented by the Commission's annual management measures and published in the **Federal Register** as required in § 300.62, if applicable.

(E) Each charter vessel angler retaining GAF must comply with the halibut possession requirements adopted by the Commission as annual

management measures and published in the **Federal Register** as required in § 300.62.

(F) The charter vessel guide must ensure that each charter vessel angler complies with (c)(5)(iv)(A) through (E) of this section.

(G) The charter vessel guide must immediately remove the tips of the upper and lower lobes of the caudal (tail) fin to mark all halibut caught and retained as GAF.

(H) Except as provided in paragraph (c)(5)(iv)(I) of this section, during the halibut sport fishing season adopted by the Commission as annual management measures and published in the **Federal Register** as required in § 300.62, the following GAF use and IFQ transfer limits shall apply:

(1) no more than 400 GAF may be assigned to a GAF permit that is assigned to a charter halibut permit or community charter halibut permit endorsed for six (6) or fewer charter vessel anglers in a year,

(2) no more than 600 GAF may be assigned to a GAF permit that is assigned to a charter halibut permit endorsed for more than six (6) charter vessel anglers in a year; and

(3) In Commission regulatory area 2C, a maximum of 1,500 pounds or ten (10) percent, whichever is greater, of the start year fishable IFQ pounds for an IFQ permit, may be transferred from IFQ to GAF. In Commission regulatory area 3A, a maximum of 1,500 pounds or fifteen (15) percent, whichever is greater, of the start year fishable IFQ pounds for an IFQ permit, may be transferred from IFQ to GAF. Start year fishable pounds is the sum of IFQ equivalent pounds, as defined in § 679.2 of this title, for an area, derived from QS held, plus or minus adjustments made to that amount pursuant to § 679.40(d) and (e) of this title.

(I) The halibut QS equivalent of net pounds of halibut IFQ that is transferred to GAF is included in the computation of halibut QS use caps in § 679.42(f)(1)(i) and (ii) of this title.

(J) A CHP holder receiving GAF from a CQE is subject to § 679.42(f)(6) of this title. For a CHP holder who receives GAF from a CQE, the net poundage equivalent of all halibut IFQ received as GAF is included in the computation of that person's IFQ halibut holdings in § 679.42(f)(6) of this title.

(K) Applicability of GAF use restrictions to CQEs. The GAF use restrictions in paragraph (c)(5)(iv)(H) of this section do not apply if:

(1) A CQE transfers IFQ as GAF to a GAF permit that is assigned to one or more charter halibut permits held by

that CQE or community charter halibut permits held by that CQE;

(2) A CQE transfers IFQ as GAF to another CQE holding one or more charter halibut permits or community charter halibut permits; or

(3) A CQE transfers IFQ as GAF to a GAF permit that is assigned to a charter halibut permit held by an eligible community resident (as defined at § 679.2) of that CQE community, as defined for purposes of the Catch Sharing Plan for Commission regulatory areas 2C and 3A in § 679.2 of this title, holding one or more charter halibut permits.

(d) *Charter vessels in Commission regulatory area 2C and 3A*—(1) *General requirements*—(i) *Logbook submission.* For a charter vessel fishing trip during which halibut were caught and retained on or after the first Monday in April and on or before December 31, Alaska Department of Fish and Game (ADF&G) Saltwater Sport Fishing Charter Trip Logbook data sheets must be submitted to the ADF&G and postmarked or received no later than 14 calendar days after the Monday of the fishing week (as defined in 50 CFR 300.61) in which the halibut were caught and retained. Logbook sheets for a charter vessel fishing trip during which halibut were caught and retained on January 1 through the first Sunday in April, must be submitted to the ADF&G and postmarked or received no later than the second Monday in April.

(ii) The charter vessel guide is responsible for complying with the reporting requirements of this paragraph (d). The person to whom the Alaska Department of Fish and Game issues the Saltwater Sport Fishing Charter Trip Logbook is responsible for ensuring that the charter vessel guide complies with the reporting requirements of this paragraph (d).

(2) *Retention and inspection of logbook.* The person to whom the Alaska Department of Fish and Game issues the Saltwater Sport Fishing Charter Trip Logbook and who retains halibut is required to:

(i) Retain the logbook for 2 years after the end of the fishing year for which the logbook was issued, and

(ii) Make the logbook available for inspection upon the request of an authorized officer (as defined in Commission regulations).

(3) *Charter vessel guide and crew restriction in Commission regulatory areas 2C and 3A.* A charter vessel guide, charter vessel operator, or crew member may not catch and retain halibut during a charter vessel fishing trip in Commission regulatory area 2C or 3A

while on a vessel with charter vessel anglers on board.

(4) *Recordkeeping and reporting requirements in Commission regulatory area 2C and 3A*—(i) *General requirements*. Each charter vessel angler and charter vessel guide on board a vessel in Commission regulatory area 2C or 3A must comply with the following recordkeeping and reporting requirements, except as specified in paragraph (d)(4)(ii)(C) of this section, by the end of the calendar day or by the end of the charter vessel fishing trip, whichever comes first, unless otherwise specified:

(ii) *Logbook reporting requirements*—(A) *Charter vessel angler signature requirement*. Each charter vessel angler who retains halibut caught in Commission regulatory area 2C or 3A must acknowledge that his or her name, license number (if required), and number of halibut retained (kept) are recorded correctly by signing the Alaska Department of Fish and Game Saltwater Charter Logbook data sheet on the line that corresponds to the angler's information.

(B) *Charter vessel guide requirements*. If halibut were caught and retained in Commission regulatory area 2C or 3A, the charter vessel guide must record the following information (see paragraphs (d)(4)(ii)(B)(1) through (10) of this section) in the Alaska Department of Fish and Game Saltwater Charter Logbook:

(1) *Guide license number*. The Alaska Department of Fish and Game sport fishing guide license number held by the charter vessel guide who certified the logbook data sheet.

(2) *Date*. Month and day for each charter vessel fishing trip taken. A separate logbook data sheet is required for each charter vessel fishing trip if two or more trips were taken on the same day. A separate logbook data sheet is required for each calendar day that halibut are caught and retained during a multi-day trip. A separate logbook sheet is also required if more than one charter halibut permit is used on a trip.

(3) *Charter halibut permit (CHP) number*. The NMFS CHP number(s) authorizing charter vessel anglers on board the vessel to catch and retain halibut.

(4) *Guided Angler Fish (GAF) permit number*. The NMFS GAF permit number(s) authorizing charter vessel anglers on board the vessel to harvest GAF.

(5) *Statistical area*. The primary Alaska Department of Fish and Game six-digit statistical area code in which halibut were caught and retained.

(6) *Angler sport fishing license number and printed name*. Before a charter vessel fishing trip begins, record for the first and last name of each paying or non-paying charter vessel angler on board that will fish for halibut. For each angler required to be licensed, record the Alaska Sport Fishing License number for the current year, resident permanent license number, or disabled veteran license number. For youth anglers not required to be licensed, record the word "youth" in place of the license number.

(7) *Number of halibut retained*. For each charter vessel angler, record the total number of non-GAF halibut caught and kept.

(8) *Number of GAF retained*. For each charter vessel angler, record the total number of GAF kept.

(9) *Guide signature*. The charter vessel guide acknowledges that the recorded information is correct by signing the logbook data sheet.

(10) *Angler signature*. The charter vessel guide is responsible for ensuring that charter vessel anglers that retain halibut comply with the signature requirements at paragraph (d)(4)(ii)(A) of this section.

(iii) *GAF reporting requirements*—(A) *General*. (1) Upon retention of a GAF halibut, the charter vessel guide must immediately record on the GAF permit the date that the fish was caught and retained and the total length of that fish as described in paragraph (d)(4)(iii)(D)(6) of this section.

(2) In addition to the recordkeeping and reporting requirements in paragraphs (d)(4)(i) and (ii) of this section, a GAF permit holder must use the NMFS-approved electronic reporting system on the Alaska Region Web site at <http://alaskafisheries.noaa.gov/> to submit a GAF landings report.

(3) A GAF permit holder must submit a GAF landings report by 11:59 p.m. (Alaska local time) on the last calendar day of a fishing trip for each day on which a charter vessel angler retained GAF authorized by the GAF permit held by that permit holder.

(4) If a GAF permit holder is unable to submit a GAF landings report due to hardware, software, or Internet failure for a period longer than the required reporting time, or a correction must be made to information already submitted, the GAF permit holder must contact NOAA Office of Law Enforcement, Juneau, AK, at 800–304–4846 (Select Option 1).

(B) *Electronic Reporting of GAF*. A GAF permit holder must obtain, at his or her own expense, the technology to submit GAF landing reports to the

NMFS-approved reporting system for GAF landings.

(C) *NMFS-Approved Electronic Reporting System*. The GAF permit holder agrees to the following terms (see paragraphs (d)(4)(iii)(C)(1) through (3) of this section):

(1) To use any NMFS online service or reporting system only for authorized purposes;

(2) To safeguard the NMFS Person Identification Number and password to prevent their use by unauthorized persons; and

(3) To accept the responsibility of and acknowledge compliance with § 300.4(a) and (b), § 300.65(d), and § 300.66(p) and (q).

(D) *Information entered for each GAF caught and retained*. The GAF permit holder must enter the following information for each GAF retained under the authorization of the permit holder's GAF permit into the NMFS-approved electronic reporting system (see paragraphs (d)(4)(iii)(D)(1) through (8) of this section) by 11:59 p.m. (Alaska local time) on the last day of a charter fishing trip in which a charter vessel angler retained GAF:

(1) Logbook number from the Alaska Department of Fish and Game Saltwater Sport Fishing Charter Trip Logbook.

(2) Vessel identification number for vessel on which GAF were caught and retained:

(i) State of Alaska issued boat registration (AK number), or

(ii) U.S. Coast Guard documentation number.

(3) GAF permit number under which GAF were caught and retained.

(4) Alaska Department of Fish and Game sport fishing guide license number held by the charter vessel guide who certified the logbook data sheet.

(5) Number of GAF caught and retained.

(6) Lengths of GAF caught and retained. Halibut lengths are measured in inches in a straight line from the anterior-most tip of the lower jaw with the mouth closed to the extreme end of the middle of the tail.

(7) Community charter halibut permit only: Community or Port where the charter vessel fishing trip began (i.e., where charter vessel anglers boarded the vessel).

(8) Community charter halibut permit only: Community or Port where the charter vessel fishing trip ended (i.e., where charter vessel anglers or fish were offloaded from the vessel).

(E) *Properly reported landing*. (1) All GAF harvested on board a vessel must be debited from the GAF permit holder's account under which the GAF were retained.

(2) A GAF landing confirmation number issued by the NMFS-approved electronic reporting system and recorded on the GAF permit used to record the dates and lengths of retained GAF, as required in paragraph (d)(4)(iii)(A)(1) of this section, constitutes confirmation that the GAF permit holder's GAF landing is properly reported and the GAF permit holder's account is properly debited.

\* \* \* \* \*

■ 4. In § 300.66:

■ a. Redesignate paragraphs (i) through (v) as paragraphs (j) through (w), respectively;

■ b. Revise paragraph (h) introductory text;

■ c. Add new paragraph (i); and

■ d. Revise newly redesignated paragraphs (n) and (s) through (w).

The revisions and addition read as follows:

**§ 300.66 Prohibitions.**

\* \* \* \* \*

(h) Conduct subsistence fishing for halibut and commercial fishing for halibut from the same vessel on the same calendar day, or possess on board a vessel, halibut harvested while subsistence fishing with halibut harvested while commercial fishing or sport fishing, as defined in § 300.61, except that persons authorized to conduct subsistence fishing under § 300.65(g), and who land their total annual harvest of halibut:

\* \* \* \* \*

(i) Conduct commercial and sport fishing for halibut, as defined in § 300.61, from the same vessel on the same calendar day.

\* \* \* \* \*

(n) Exceed any of the harvest or gear limitations specified at § 300.65(c)(5) or adopted by the Commission as annual management measures and published in the **Federal Register** as required in § 300.62.

\* \* \* \* \*

(s) Be an operator of a vessel in Commission regulatory area 2C or 3A without an original valid charter halibut permit for the regulatory area in which the vessel is operating when one or more charter vessel anglers are on board that are catching and retaining halibut.

(t) Be an operator of a vessel in Commission regulatory area 2C or 3A with more charter vessel anglers on board catching and retaining halibut than the total angler endorsement number specified on the charter halibut permit or permits on board the vessel.

(u) Be an operator of a vessel in Commission regulatory area 2C or 3A with more charter vessel anglers on board catching and retaining halibut than the angler endorsement number specified on the community charter halibut permit or permits on board the vessel.

(v) Be an operator of a vessel on which one or more charter vessel anglers on board are catching and retaining halibut in Commission regulatory areas 2C and 3A during one charter vessel fishing trip.

(w) Be an operator of a vessel in Commission regulatory area 2C or 3A with one or more charter vessel anglers on board that are catching and retaining halibut without having on board the vessel a State of Alaska Department of Fish and Game Saltwater Charter Logbook that specifies the following:

(1) The person named on the charter halibut permit or permits being used on board the vessel;

(2) The charter halibut permit or permits number(s) being used on board the vessel; and

(3) The name and State issued boat registration (AK number) or U.S. Coast Guard documentation number of the vessel.

■ 5. In § 300.67:

■ a. Redesignate paragraphs (i)(2)(v) and (vi) as paragraphs (i)(2)(vi) and (vii), respectively; and

■ b. Add new paragraph (i)(2)(v) to read as follows:

**§ 300.67 Charter halibut limited access program.**

\* \* \* \* \*

(i) \* \* \*

(2) \* \* \*

(v) The GAF permit is not assigned to a charter halibut permit for which the GAF account contains unharvested GAF, pursuant to § 300.65 (c)(5)(iii)(A)(3) and (4);

\* \* \* \* \*

■ 6. Add Tables 1 through 4 to subpart E of part 300 to read as follows:

**TABLE 1—TO SUBPART E OF PART 300—DETERMINATION OF COMMISSION REGULATORY AREA 2C ANNUAL COMMERCIAL ALLOCATION FROM THE ANNUAL COMBINED CATCH LIMIT FOR HALIBUT**

If the Area 2C annual combined catch limit (CCL) in net pounds is:	then the Area 2C annual commercial allocation is:
<5,000,000 lb .....	81.7% of the Area 2C CCL.
≥5,000,000 and ≤5,755,000 lb .....	the Area 2C CCL minus a fixed 915,000 lb allocation to the charter halibut fishery.
>5,755,000 lb .....	84.1% of the Area 2C CCL.

**TABLE 2—TO SUBPART E OF PART 300—DETERMINATION OF COMMISSION REGULATORY AREA 3A ANNUAL COMMERCIAL ALLOCATION FROM THE ANNUAL COMBINED CATCH LIMIT FOR HALIBUT**

If the Area 3A annual combined catch limit (CCL) in net pounds is:	then the Area 3A annual commercial allocation is:
<10,000,000 lb .....	81.1% of the Area 3A CCL.
≥10,000,000 and ≤10,800,000 lb .....	the Area 3A CCL minus a fixed 1,890,000 lb allocation to the charter halibut fishery.
>10,800,000 and ≤20,000,000 lb .....	82.5% of the Area 3A CCL.
>20,000,000 and ≤25,000,000 lb .....	the Area 3A CCL minus a fixed 3,500,000 lb allocation to the charter halibut fishery.
>25,000,000 lb .....	86.0% of the Area 3A CCL.

**TABLE 3—TO SUBPART E OF PART 300—DETERMINATION OF COMMISSION REGULATORY AREA 2C ANNUAL CHARTER HALIBUT ALLOCATION FROM THE ANNUAL COMBINED CATCH LIMIT**

If the Area 2C annual combined catch limit for halibut in net pounds is:	then the Area 2C annual charter allocation is:
<5,000,000 lb .....	18.3% of the Area 2C CCL.

TABLE 3—TO SUBPART E OF PART 300—DETERMINATION OF COMMISSION REGULATORY AREA 2C ANNUAL CHARTER HALIBUT ALLOCATION FROM THE ANNUAL COMBINED CATCH LIMIT—Continued

If the Area 2C annual combined catch limit for halibut in net pounds is:	then the Area 2C annual charter allocation is:
≥5,000,000 and ≤5,755,000 lb .....	915,000 lb.
>5,755,000 lb .....	15.9% of the Area 2C CCL.

TABLE 4—TO SUBPART E OF PART 300—DETERMINATION OF COMMISSION REGULATORY AREA 3A ANNUAL CHARTER HALIBUT ALLOCATION FROM THE ANNUAL COMBINED CATCH LIMIT

If the Area 3A annual combined catch limit (CCL) for halibut in net pounds is:	then the Area 3A annual charter allocation is:
<10,000,000 lb .....	18.9% of the Area 3A annual combined catch limit.
≥10,000,000 and ≤10,800,000 lb .....	1,890,000 lb.
>10,800,000 and ≤20,000,000 lb .....	17.5% of the Area 3A annual combined catch limit.
>20,000,000 and ≤25,000,000 lb .....	3,500,000 lb.
>25,000,000 lb .....	14.0% of the Area 3A annual combined catch limit.

## PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 7. The authority citation for part 679 continues to read as follows:

**Authority:** 16 U.S.C. 773 *et seq.*; 1801 *et seq.*; 3631 *et seq.*; Pub. L. 108–447.

■ 8. In § 679.2, revise the definitions of “Eligible community resident”, “IFQ equivalent pound(s)”, “IFQ fee liability”, and “IFQ standard ex-vessel value” to read as follows:

### § 679.2 Definitions.

\* \* \* \* \*

*Eligible community resident* means:

(1) For purposes of the IFQ Program, any individual who:

- (i) Is a citizen of the United States;
- (ii) Has maintained a domicile in a rural community listed in Table 21 to this part for the 12 consecutive months immediately preceding the time when the assertion of residence is made, and who is not claiming residency in another community, state, territory, or country, except that residents of the Village of Seldovia shall be considered to be eligible community residents of the City of Seldovia for the purposes of eligibility to lease IFQ from a CQE; and
- (iii) Is an IFQ crew member.

(2) For purposes of the Area 2C and Area 3A catch sharing plan (CSP) in

§ 300.65(c) of this title, means any individual or non-individual entity who:

(i) Holds a charter halibut permit as defined in § 300.61 of this title;

(ii) Has been approved by the Regional Administrator to receive GAF, as defined in § 300.61 of this title, from a CQE in a transfer between IFQ and GAF pursuant to § 300.65(c)(5)(ii) of this title; and

(iii) Begins or ends every charter vessel fishing trip, as defined in § 300.61 of this title, authorized by the charter halibut permit issued to that person, and on which halibut are retained, at a location(s) within the boundaries of the community represented by the CQE from which the GAF were received. The geographic boundaries of the eligible community will be those defined by the United States Census Bureau.

\* \* \* \* \*

*IFQ equivalent pound(s)* means the weight amount, recorded in pounds and calculated as round weight for sablefish and headed and gutted weight for halibut for an IFQ landing or for estimation of the fee liability of halibut landed as guided angler fish (GAF), as defined in § 300.61 of this title. Landed GAF are converted to IFQ equivalent

pounds as specified in § 300.65(c) of this title.

*IFQ fee liability* means that amount of money for IFQ cost recovery, in U.S. dollars, owed to NMFS by an IFQ permit holder as determined by multiplying the appropriate standard ex-vessel value or, for non-GAF landings, the actual ex-vessel value of his or her IFQ halibut or IFQ sablefish landing(s), by the appropriate IFQ fee percentage and the appropriate standard ex-vessel value of landed GAF derived from his or her IFQ by the appropriate IFQ fee percentage.

\* \* \* \* \*

*IFQ standard ex-vessel value* means the total U.S. dollar amount of IFQ halibut or IFQ sablefish landings as calculated by multiplying the number of landed IFQ equivalent pounds plus landed GAF in IFQ equivalent pounds by the appropriate IFQ standard price determined by the Regional Administrator.

\* \* \* \* \*

■ 9. In § 679.4, add paragraph (a)(1)(xv) and revise paragraph (a)(2) to read as follows:

### § 679.4 Permits.

(a) \* \* \*

(1) \* \* \*

If program permit type is:	Permit is in effect from issue date through the end of:	For more information, see * * *
(xv) Guided sport halibut fishery permits:		
(A) Charter halibut permit .....	Indefinite .....	§ 300.67 of this title.
(B) Community charter halibut permit .....	Indefinite .....	§ 300.67 of this title.
(C) Military charter halibut permit .....	Indefinite .....	§ 300.67 of this title.
(D) Guided Angler Fish (GAF) permit .....	Until expiration date shown on permit .....	§ 300.65 of this title.



(2) *Permit and logbook required by participant and fishery.* For the various types of permits issued, refer to § 679.5 for recordkeeping and reporting requirements. For subsistence and GAF permits, refer to § 300.65 of this title for recordkeeping and reporting requirements.

\* \* \* \* \*

■ 10. In § 679.5, revise paragraphs (l)(7)(i) and (ii) to read as follows:

**§ 679.5 Recordkeeping and reporting (R&R).**

\* \* \* \* \*

(l) \* \* \*  
(7) \* \* \*

(i) *IFQ Registered Buyer Ex-vessel Value and Volume Report*—(A) *Requirement.* An IFQ Registered Buyer that also operates as a shoreside processor and receives and purchases IFQ landings of sablefish or halibut must submit annually to NMFS a complete IFQ Registered Buyer Ex-vessel Value and Volume Report as described in this paragraph (l) and as provided by NMFS for each reporting period, as described at paragraph (1)(7)(i)(E), in which the Registered Buyer receives IFQ fish.

(B) *Due date.* A complete IFQ Registered Buyer Ex-vessel Value and Volume Report must be postmarked or received by the Regional Administrator by October 15 following the reporting period in which the IFQ Registered Buyer receives the IFQ fish.

(C) *Completed application.* NMFS will process an IFQ Registered Buyer Ex-vessel Value and Volume Report provided that a paper or electronic report is completed by the Registered Buyer, with all applicable fields accurately filled in, and all required additional documentation is attached.

(1) *Certification, Electronic submittal.* NMFS ID and password of the IFQ Registered Buyer; or

(2) *Certification, Non-electronic submittal.* Printed name and signature of the individual submitting the IFQ Registered Buyer Ex-vessel Value and Volume Report on behalf of the IFQ Registered Buyer, and date of signature.

(D) *Submission address.* The IFQ Registered Buyer must complete an IFQ Registered Buyer Ex-vessel Value and Volume Report and submit by mail to: Administrator, Alaska Region, NMFS, Attn: RAM Program, P.O. Box 21668, Juneau, AK 99802–1668; by fax to: (907) 586–7354; or electronically at <http://alaskafisheries.noaa.gov>. Report forms are available on the NMFS Alaska Region Web site at <http://alaskafisheries.noaa.gov>, or by contacting NMFS at (800) 304–4846, Option 2.

(E) *Reporting period.* The reporting period of the IFQ Registered Buyer Ex-vessel Value and Volume Report shall extend from October 1 through September 30 of the following year, inclusive.

(ii) *IFQ Permit Holder Fee Submission Form*—(A) *Applicability.* An IFQ permit holder who holds an IFQ permit against which a landing was made must submit to NMFS a complete IFQ Permit Holder Fee Submission Form provided by NMFS.

(B) *Due date and submittal.* A complete IFQ Permit Holder Fee Submission Form must be postmarked or received by the Regional Administrator not later than January 31 following the calendar year in which any IFQ landing was made.

(C) *Completed application.* NMFS will process an IFQ Permit Holder Fee Submission Form provided that a paper or electronic form is completed by the permit holder, with all applicable fields accurately filled in, and all required additional documentation is attached.

(D) *IFQ landing summary and estimated fee liability.* NMFS will provide to an IFQ permit holder an IFQ Landing and Estimated Fee Liability page as required by § 679.45(a)(2). The IFQ permit holder must either accept the accuracy of the NMFS estimated fee liability associated with his or her IFQ landings for each IFQ permit, or calculate a revised IFQ fee liability in accordance with paragraph (l)(7)(ii)(E) of this section. The IFQ permit holder may calculate a revised fee liability for all or part of his or her IFQ landings.

(E) *Revised fee liability calculation.* To calculate a revised fee liability, an IFQ permit holder must multiply the IFQ percentage in effect by either the IFQ actual ex-vessel value or the IFQ standard ex-vessel of the IFQ landing. If parts of the landing have different values, the permit holder must apply the appropriate values to the different parts of the landings.

(F) *Documentation.* If NMFS requests in writing that a permit holder submit documentation establishing the factual basis for a revised IFQ fee liability, the permit holder must submit adequate documentation by the 30th day after the date of such request. Examples of such documentation regarding initial sales transactions of IFQ landings include valid fish tickets, sales receipts, or check stubs that clearly identify the IFQ landing amount, species, date, time, and ex-vessel value or price.

(G) *Reporting period.* The reporting period of the IFQ Permit Holder Fee Submission Form shall extend from

January 1 to December 31 of the year prior to the January 31 due date.

\* \* \* \* \*

■ 11. In § 679.40, revise the introductory text and paragraph (c)(1) to read as follows:

**§ 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.

\* \* \* \* \*

(c) *Calculation of annual IFQ allocation*—(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:

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

\* \* \* \* \*

■ 12. In § 679.41, add paragraph (a)(3) to read as follows:



**§ 679.41 Transfer of quota shares and IFQ.**

(a) \* \* \*

(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.

\* \* \* \* \*

■ 13. In § 679.42 revise paragraphs (f)(1)(i) and (ii) and (f)(6) to read as follows:

**§ 679.42 Limitations on use of QS and IFQ.**

\* \* \* \* \*

(f) \* \* \*

(1) \* \* \*

(i) *IFQ regulatory Area 2C.* 599,799 units of halibut QS, including halibut QS issued as IFQ and transferred to GAF, as defined in § 300.61 of this title.

(ii) *IFQ regulatory area 2C, 3A, and 3B.* 1,502,823 units of halibut QS, including halibut QS issued as IFQ and transferred to GAF, as defined in § 300.61 of this title.

\* \* \* \* \*

(6) No individual that receives IFQ derived from halibut QS held by a CQE, including GAF as defined in § 300.61 of this title, may hold, individually or collectively, more than 50,000 pounds (22.7 mt) of IFQ halibut, including IFQ halibut received as GAF, derived from any halibut QS source.

\* \* \* \* \*

■ 14. In § 679.45:

■ a. Revise paragraphs (a)(1) through (3), (a)(4)(i) through (iii), and (b);

■ b. Remove and reserve paragraph (c); and

■ c. Revise the paragraph (d)(2) heading and paragraphs (d)(2)(i)(A) through (C), (d)(2)(ii), (d)(3)(i), (d)(4), (e), and (f).

The revisions read as follows:

**§ 679.45 IFQ cost recovery program.**

(a) \* \* \*

(1) *Responsibility.* An IFQ permit holder is responsible for cost recovery fees for landings of his or her IFQ halibut and sablefish, including any halibut landed as guided angler fish (GAF), as defined in § 300.61 of this title, derived from his or her IFQ accounts. An IFQ permit holder must comply with the requirements of this section.

(2) *IFQ Fee Liability Determination—*(i) *General.* IFQ fee liability means a cost recovery liability based on the value of all landed IFQ and GAF derived from the permit holder's IFQ permit(s).

(A) Each year, the Regional Administrator will issue each IFQ permit holder a summary of his or her IFQ equivalent pounds landed as IFQ and GAF as part of the IFQ Landing and

Estimated Fee Liability page described at § 679.5(l)(7)(ii)(D).

(B) The summary will include information on IFQ and GAF landings and an estimated IFQ fee liability using the IFQ standard ex-vessel value for IFQ and GAF landings. For fee purposes:

(1) Landings of GAF in IFQ regulatory area 2C or 3A are converted to IFQ equivalent pounds and assessed at the IFQ regulatory area 2C or 3A IFQ standard ex-vessel value.

(2) GAF that is returned to the IFQ permit holder's account pursuant to § 300.65(c) of this title, and subsequently landed as IFQ during the IFQ fishing year, is included in the IFQ fee liability and subject to fee assessment as IFQ equivalent pounds.

(C) The IFQ permit holder must either accept NMFS' estimate of the IFQ fee liability or revise NMFS' estimate of the IFQ fee liability using the IFQ Permit Holder Fee Submission Form described at § 679.5(l)(7)(ii), except that the standard ex-vessel value used to determine the fee liability for GAF is not subject to challenge. If the IFQ permit holder revises NMFS' estimate of his or her IFQ fee liability, NMFS may request in writing that the permit holder submit documentation establishing the factual basis for the revised calculation. If the IFQ permit holder fails to provide adequate documentation on or by the 30th day after the date of such request, NMFS will determine the IFQ permit holder's IFQ fee liability based on standard ex-vessel values.

(ii) *Value assigned to GAF.* The IFQ fee liability is computed from all net pounds allocated to the IFQ permit holder that are landed, including IFQ landed as GAF.

(A) NMFS will determine the IFQ equivalent pounds of GAF landed in IFQ regulatory area 2C or 3A that are derived from the IFQ permit holder's account.

(B) The IFQ equivalent pounds of GAF landed in IFQ regulatory area 2C or 3A are multiplied by the standard ex-vessel value computed for that area to determine the value of IFQ landed as GAF.

(iii) The value of IFQ landed as GAF is added to the value of the IFQ permit holder's landed IFQ, and the sum is multiplied by the annual IFQ fee percentage to estimate the IFQ permit holder's IFQ fee liability.

(3) *Fee Collection.* An IFQ permit holder with IFQ and/or GAF landings is responsible for collecting his or her own fee during the calendar year in which the IFQ fish and/or GAF are landed.

(4) \* \* \*

(i) *Payment due date.* An IFQ permit holder must submit his or her IFQ fee

liability payment(s) to NMFS at the address provided at paragraph (a)(4)(iii) of this section not later than January 31 of the year following the calendar year in which the IFQ and/or GAF landings were made.

(ii) *Payment recipient.* Make payment payable to IFQ Fee Coordinator, OMI.

(iii) *Payment address.* Mail payment and related documents to: Administrator, Alaska Region, NMFS, Attn: IFQ Fee Coordinator, Office of Operations, Management, and Information, P.O. Box 21668, Juneau, AK 99802-1668; submit by fax to (907) 586-7354; or submit electronically through the NMFS Alaska Region Home Page at <http://alaskafisheries.noaa.gov>. If paying by credit card, ensure that all requested card information is provided.

\* \* \* \* \*

(b) *IFQ ex-vessel value determination and use—*(1) *General.* An IFQ permit holder must use either the IFQ actual ex-vessel value or the IFQ standard ex-vessel value when determining the IFQ fee liability based on ex-vessel value, except that landed GAF are assessed at the standard values derived by NMFS. An IFQ permit holder must base all IFQ fee liability calculations on the ex-vessel value that correlates to the landed IFQ in IFQ equivalent pounds.

(2) *IFQ actual ex-vessel value.* An IFQ permit holder that uses actual ex-vessel value, as defined in § 679.2, to determine IFQ fee liability for landed IFQ must document actual ex-vessel value for each IFQ permit. The actual ex-vessel value cannot be used to assign value to halibut landed as GAF.

(3) *IFQ standard ex-vessel value—*(i) *Use of standard price.* An IFQ permit holder that uses standard ex-vessel value to determine the IFQ fee liability, as part of a revised IFQ fee liability submission, must use the corresponding standard price(s) as published in the **Federal Register**.

(ii) All landed GAF must be valued using the standard ex-vessel value for the year and for the IFQ regulatory area of harvest—Area 2C or Area 3A.

(iii) *Duty to publish list.* Each year the Regional Administrator will publish a list of IFQ standard prices in the **Federal Register** during the last quarter of the calendar year. The IFQ standard prices will be described in U.S. dollars per IFQ equivalent pound, for IFQ halibut and sablefish landings made during the current calendar year.

(iv) *Effective duration.* The IFQ standard prices will remain in effect until revised by the Regional Administrator by notification in the **Federal Register** based upon new information of the type set forth in this

section. IFQ standard prices published in the **Federal Register** by NMFS shall apply to all landings made in the same calendar year as the IFQ standard price publication and shall replace any IFQ standard prices previously provided by NMFS that may have been in effect for that same calendar year.

(v) *Determination.* NMFS will apply the standard price, aggregated IFQ regulatory area 2C or 3A, to GAF landings. NMFS will calculate the IFQ standard prices to reflect, as closely as possible by month and port or port-group, the variations in the actual ex-vessel values of IFQ halibut and IFQ sablefish landings based on information provided in the IFQ Registered Buyer Ex-Vessel Value and Volume Report as described in § 679.5(l)(7)(i). The Regional Administrator will base IFQ standard prices on the following types of information:

- (A) Landed net pounds by IFQ species, port-group, and month;
- (B) Total ex-vessel value by IFQ species, port-group, and month; and
- (C) Price adjustments, including IFQ retro-payments.

\* \* \* \* \*

(d) \* \* \*

(2) *Calculating the fee percentage.*

\* \* \*

(i) \* \* \*

- (A) The IFQ and GAF landings to which the IFQ fee will apply;
- (B) The ex-vessel value of that landed IFQ and GAF; and

(C) The costs directly related to the management and enforcement of the IFQ program, which include GAF costs.

(ii) *Methodology.* NMFS must use the following equation to determine the fee percentage:

$$100 \times (\text{DPC}/\text{V})$$

Where:

“DPC” is the direct program costs for the IFQ fishery for the previous fiscal year, and

“V” is the ex-vessel value determined for IFQ landed as commercial catch or as GAF subject to the IFQ fee liability for the current year.

(3) \* \* \*

(i) *General.* During or before the last quarter of each calendar year, NMFS shall publish the IFQ fee percentage in the **Federal Register**. NMFS shall base any IFQ fee liability calculations on the factors and methodology in paragraph (d)(2) of this section.

\* \* \* \* \*

(4) *Applicable percentage.* The IFQ permit holder must use the IFQ fee percentage in effect for the year in

which the IFQ and GAF landings are made to calculate his or her fee liability for such landed IFQ and GAF. The IFQ permit holder must use the IFQ fee percentage in effect at the time an IFQ retro-payment is received by the IFQ permit holder to calculate his or her IFQ fee liability for the IFQ retro-payment.

(e) *Non-payment of fee.* (1) If an IFQ permit holder does not submit a complete IFQ Permit Holder Fee Submission Form and corresponding payment by the due date described in § 679.45(a)(4), the Regional Administrator will:

(i) *Send Initial Administrative Determination (IAD).* Send an IAD to the IFQ permit holder stating that the IFQ permit holder's estimated fee liability, as calculated by the Regional Administrator and sent to the IFQ permit holder pursuant to § 679.45(a)(2), is the amount of IFQ fee liability due from the IFQ permit holder. An IFQ permit holder who receives an IAD may appeal the IAD, as described in paragraph (h) of this section.

(ii) *Disapprove transfer.* Disapprove any transfer of GAF, IFQ, or QS to or from the IFQ permit holder in accordance with § 300.65(c) of this title and § 679.41(c), until the IFQ fee liability is reconciled, except that NMFS may return unused GAF to the IFQ permit holder's account from which it was derived on or after the automatic GAF return date.

(2) Upon final agency action determining that an IFQ permit holder has not paid his or her IFQ fee liability, as described in paragraph (f) of this section, any IFQ fishing permit held by the IFQ permit holder is not valid until all IFQ fee liabilities are paid.

(3) If payment is not received on or before the 30th day after the final agency action, the matter will be referred to the appropriate authorities for purposes of collection.

(f) *Underpayment of IFQ fee.* (1) When an IFQ permit holder has incurred a fee liability and made a timely payment to NMFS of an amount less than the NMFS estimated IFQ fee liability, the Regional Administrator will review the IFQ Permit Holder Fee Submission Form and related documentation submitted by the IFQ permit holder. If the Regional Administrator determines that the IFQ permit holder has not paid a sufficient amount, the Regional Administrator will:

(i) *Disapprove transfer.* Disapprove any transfer of GAF, IFQ, or QS to or from the IFQ permit holder in

accordance with § 300.65(c) of this title and § 679.41(c), until the IFQ fee liability is reconciled, except that NMFS may return unused GAF to the IFQ permit holder's account from which it was derived 15 days prior to the closing of the commercial halibut fishing season each year.

(ii) *Notify permit holder.* Notify the IFQ permit holder by letter that an insufficient amount has been paid and that the IFQ permit holder has 30 days from the date of the letter to either pay the amount determined to be due or provide additional documentation to prove that the amount paid was the correct amount.

(2) After the expiration of the 30-day period, the Regional Administrator will evaluate any additional documentation submitted by an IFQ permit holder in support of his or her payment. If the Regional Administrator determines that the additional documentation does not meet the IFQ permit holder's burden of proving his or her payment is correct, the Regional Administrator will send the permit holder an IAD indicating that the permit holder did not meet the burden of proof to change the IFQ fee liability as calculated by the Regional Administrator based upon the IFQ standard ex-vessel value. The IAD will set out the facts and indicate the deficiencies in the documentation submitted by the permit holder. An IFQ permit holder who receives an IAD may appeal the IAD, as described in paragraph (h) of this section.

(3) If the permit holder fails to file an appeal of the IAD pursuant to § 679.43, the IAD will become the final agency action.

(4) If the IAD is appealed and the final agency action is a determination that additional sums are due from the IFQ permit holder, the IFQ permit holder must pay any IFQ fee amount determined to be due not later than 30 days from the issuance of the final agency action.

(5) Upon final agency action determining that an IFQ permit holder has not paid his or her IFQ fee liability, any IFQ fishing permit held by the IFQ permit holder is not valid until all IFQ fee liabilities are paid.

(6) If payment is not received on or before the 30th day after the final agency action, the matter will be referred to the appropriate authorities for purposes of collection.

\* \* \* \* \*

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