Federal Register

Tuesday,
January 5, 2010

Part III

Department of Commerce

National Oceanic and Atmospheric Administration

15 CFR Part 902; 50 CFR Parts 300 and 679

Pacific Halibut Fisheries; Limited Access for Guided Sport Charter Vessels in Alaska; Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Parts 300 and 679

[Docket No. 080630798–91430–02]

RIN 0648–AW92

Pacific Halibut Fisheries; Limited Access for Guided Sport Charter Vessels in Alaska

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

ACTION: Final rule.

SUMMARY: NMFS issues regulations creating a limited access system for charter vessels in the guided sport fishery for Pacific halibut in waters of International Pacific Halibut Commission Regulatory Areas 2C (Southeast Alaska) and 3A (Central Gulf of Alaska). This limited access system limits the number of charter vessels that may participate in the guided sport fishery for halibut in these areas. NMFS will issue a charter halibut permit to a licensed charter fishing business owner based on his or her past participation in the charter halibut fishery and to a Community Quota Entity representing specific rural communities. All charter halibut permit holders are subject to limits on the number of permits they may hold and on the number of charter vessel anglers who may catch and retain halibut on permitted charter vessels. This action is necessary to achieve the approved halibut fishery management goals of the North Pacific Fishery Management Council. The intended effect is to curtail growth of fishing capacity in the guided sport fishery for halibut.

DATES: February 4, 2010, except for § 300.66(b), (i), and (o), and § 300.66(r) through (v), and § 300.67(a), which will be effective on February 1, 2011.

ADDRESSES: Electronic copies of the Environmental Assessment (EA), Regulatory Impact Review (RIR), and Final Regulatory Flexibility Analysis (FRFA) (collectively, Analysis) prepared for this action may be obtained from *http://www.Regulations.gov* or from the Alaska Region, NMFS on the Alaska Region Web site at *http://www.alaskafisheries.noaa.gov*.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted by mail to NMFS, Alaska Region, P.O. Box 21668, Juneau, AK, 99802–1668, Attn: Ellen Sebastian, Records Officer; in person at NMFS, Alaska Region, 709 West 9th Street, Room 420A, Juneau, AK; and by e-mail to *David_Rostker@omb.eop.gov* or fax to 202–395–7285.

FOR FURTHER INFORMATION CONTACT: Rachel Baker, 907–586–7228.

SUPPLEMENTARY INFORMATION: The International Pacific Halibut Commission (IPHC) and National Marine Fisheries Service (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 promulgates 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). Regulations developed by the IPHC are subject to approval by the Secretary of State with concurrence from the Secretary of Commerce (Secretary). After approval by the Secretary of State and the Secretary, the IPHC regulations are published in the **Federal Register** as annual management measures pursuant to 50 CFR 300.62. The most recent IPHC regulations were published March 19, 2009, at 74 FR 11681. IPHC regulations affecting sport fishing for halibut and charter vessels in Areas 2C (Southeast Alaska) and 3A (Central Gulf of Alaska) may be found in sections 3, 25, and 28 (74 FR 11681, March 19, 2009).

The Halibut Act, at sections 773c(a) and (b), provides the Secretary 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 is directed to consult with the Secretary of the department in which the U.S. Coast Guard (USCG) is operating.

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. Such Council-developed regulations may be implemented by NMFS only after approval by the Secretary. The Council has exercised this authority most notably in the development of its Individual Fishing Quota (IFQ) Program, codified at 50 CFR part 679, and subsistence halibut fishery management measures, codified at 50 CFR 300.65. The Council also has been developing a regulatory program to manage the guided sport charter vessel fishery for halibut. This action is a step in the development of that regulatory program and has been approved by the Secretary pursuant to section 773c(c).

Background and Need for Action

A comprehensive history of management of the guided sport fishery for halibut was presented in the proposed rule for this action published April 21, 2009 (74 FR 18178). This description focused on the history and rationale leading to the Council's development of limited access management for the charter vessel fishery and its recommendation of this limited access system in 2007. In brief, the principal concern was overcrowding of productive halibut grounds due to the growth of the charter vessel sector. The Council found that the charter vessel sector was the only halibut harvesting sector that was exhibiting growth in IPHC Areas 2C and 3A. Other harvesting sectors have specified catch limits that cause fishery closures when reached or are relatively stable over time. The Council recommended this limited access system to provide stability for the guided sport halibut fishery and decrease the need for regulatory adjustments affecting charter vessel anglers while the Council continues to develop a long-term policy of allocation between the commercial and charter vessel sectors.

The Council adopted its limited access policy on March 31, 2007, and submitted it for review to the Secretary pursuant to section 773c(c). By publishing this rule, NMFS announces Secretarial approval of this Council recommendation. A proposed rule for the recommended limited access system was published April 21, 2009 (74 FR 18178) soliciting public comments on the proposal until June 5, 2009. All comments received during this comment period are summarized and responded to below. Some changes from the proposed rule are made as a logical outgrowth from the proposed rule. These changes also are described below.

Following is a summary description of the charter halibut limited access system and how it is designed to operate. A more thorough description of the action is presented in the preamble to the proposed rule published April 21, 2009 (74 FR 18178). Additional detail is presented in responses to comments below.

Charter Halibut Limited Access System—Operational Aspects

General

This action limits the entry of charter vessels into the guided sport fishery for halibut in waters of IPHC Regulatory Areas 2C (Southeast Alaska) and 3A (Central Gulf of Alaska). After the effective date of this rule (*see* **DATES**), any person operating a charter vessel engaged in halibut fishing in Areas 2C or 3A is required to have on board the vessel a charter halibut permit designated for that area. Qualifications for a charter halibut permit in each area are determined independently. A charter halibut permit can be either transferable or non-transferable depending on the qualifications of permit applicants. Each permit will have an angler endorsement that specifies the maximum number of anglers authorized to catch and retain halibut under the authority of the permit under which the vessel is operating. In addition, this action provides for two special permits—a community charter halibut permit and a military charter halibut permit.

Qualifications for Charter Halibut Permit

To receive an initial allocation of a charter halibut permit, an applicant must demonstrate participation in the charter halibut fishery during an historic qualifying period and during a recent participation period. The historic qualifying period is the sport fishing season established by the IPHC in 2004 and 2005. The sport fishing season in both of those years was February 1 through December 31. Minimum participation criteria need be met in only one of these years—2004 or 2005. The recent participation period is the sport fishing season established by the IPHC in 2008. This year was selected as the recent participation period because it is the most recent year for which NMFS has a complete record of saltwater charter vessel logbook data from the State of Alaska Department of Fish and Game (ADF&G).

The minimum participation qualifications include documentation of at least five logbook fishing trips during one of the qualifying years—2004 or 2005—and at least five logbook fishing trips during 2008. Meeting these minimum participation qualifications could qualify an applicant for a non-transferable charter halibut permit. The minimum participation qualifications for a transferable charter halibut permit include at least 15 logbook fishing trips during one of the qualifying years—2004 or 2005—and at least 15 logbook fishing trips during 2008.

The basic unit of participation for receiving a charter halibut permit will be a logbook fishing trip. A ''logbook fishing trip'' is a bottomfish logbook fishing trip during the qualifying years, 2004 and 2005, and as a halibut logbook fishing trip in 2008. A logbook fishing trip is an event that was reported to ADF&G in a logbook in accordance with the time limit required for reporting such a trip that was in effect at the time of the trip.

Number of Permits

If an applicant for a charter halibut permit meets the minimum participation requirements during a qualifying year and the recent participation year, NMFS will determine how many permits the applicant will receive and how many of those, if any, will be transferable permits. If an applicant qualifies for any permits, NMFS will issue to the applicant the number of permits equal to (a) the applicant's total number of bottomfish logbook fishing trips in a qualifying year, divided by 5, or (b) the number of vessels that made those trips, whichever number is lower. The applicant will select which year in the qualifying period—2004 or 2005—NMFS will use in making this calculation.

For example, an applicant in its selected qualifying year reported 23 logbook trips using three vessels. One vessel made 16 trips, another vessel made five trips, and another vessel made only two trips. Under the rule, NMFS will calculate $23 \div 5 = 4.6$ which will be rounded down to four. But this number of permits will be limited by the number of vessels that made all the logbook trips in the applicant-selected year which was three. Hence, the applicant will be awarded three permits.

Transferable Permits

After determining the total number of permits, NMFS will determine which permits are transferable and which are nontransferable. An applicant will receive a transferable permit for each vessel that made at least 15 trips in the applicant-selected year (2004 or 2005) and at least 15 trips in the recent participation year (2008). The same vessel must have made all the trips within a year; however, the same vessel did not have to be used in the qualifying year and the recent participation year. The rest of the applicant's permits, if any, will be non-transferable permits. Applicants that do not have the minimum of 15 logbook fishing trips from the same vessel in each period but qualify for one or more permit(s) with a minimum of five logbook fishing trips, will receive only non-transferable permit(s). Hence, in the example above of an applicant with 23 logbook trips using three vessels, that applicant will receive three permits. Based on the 15-trip minimum criterion, however, this applicant will receive only one transferable permit and the other two permits will be non-transferable.

Angler Endorsements

Each charter halibut permit will have an angler endorsement number. The angler endorsement number on the permit is the maximum number of charter vessel anglers that may catch and retain halibut on board the vessel. The angler endorsement does not limit the number of passengers that an operator may carry, only the number that may catch and retain halibut. The angler endorsement will be equal to the highest number of anglers that the applicant reported on any logbook fishing trip in 2004 or 2005, subject to a minimum endorsement of four.

The term ''charter vessel angler'' is defined by this action to include all persons, paying or non-paying, who use the services of the charter vessel guide. The charter halibut permit, once issued with its angler endorsement, will limit the number of charter vessel anglers authorized to catch and retain halibut on the permitted vessel.

A vessel operator will be able to stack permits to increase the number of charter vessel anglers on board. For example, if a vessel operator has two charter permits on board, one with an angler endorsement of four and one with an endorsement of six, then the vessel operator can have a maximum of 10 charter vessel anglers on board who are catching and retaining halibut if the operator is otherwise authorized to carry 10 passengers. If other provisions of law, such as safety regulations or for-hire operation regulations, prevent 10 anglers from being on board the vessel, the charter halibut permits will not authorize the vessel operator to violate those provisions of law.

Initial Allocation Process

Several basic standards are required to initially receive a charter halibut permit. These standards include (1) timely application for a permit, (2) documentation of participation in the charter vessel fishery during the qualifying and recent participation periods by ADF&G logbooks, and (3) ownership of a business that was licensed by the State of Alaska to conduct the guided sport fishing reported in the logbooks.

Timely application. To be an initial recipient of a charter halibut permit, an applicant must apply for the permit during the application period. An application period of no less than 60 days will be announced in the **Federal Register.** Applications submitted by mail, hand delivery, or facsimile will be accepted if postmarked, hand delivered, or received by fax no later than the last day of the application period. Electronic submissions other than facsimile will not be acceptable. A finite application period of reasonable length is necessary to resolve potential claims for permits by two or more persons for the same logbook fishing trip history. NMFS will not credit the same logbook fishing trip to more than one applicant and will not allow the participation history of one business owner to support issuance of a permit(s) to more than one applicant.

Application forms will be available through ADF&G and NMFS offices and on the NMFS, Alaska Region, Web site at *http://www.alaskafisheries.noaa.gov/*. Electronic submission of the application will not be acceptable, however, because a signature on the application will be required. The application form will include a statement that, by signature, the applicant attests that legal requirements were met and all statements on the application are correct under penalty of perjury.

Documentation of participation. The principal documentation necessary to prove qualifying participation in the charter halibut fishery will be limited to saltwater charter vessel logbooks issued by the ADF&G. There are several reasons for relying only on the ADF&G charter vessel logbook database. First, ADF&G has regulated saltwater charter fishing in the State of Alaska through registrations, licenses, and logbooks since 1998. These requirements apply to all charter fishing, including vessels targeting halibut. Second, ADF&G supplied aggregated charter vessel logbook data to the Council to assist it in its analysis of past participation in the charter halibut fishery in Areas 2C and 3A. Third, the Council relied on these data in part to make its decision to recommend limiting entry into this fishery and NMFS, in turn, has relied on the Council's Analysis of alternatives and on subsequent ADF&G charter vessel logbook data to approve this action.

As stated above, the basic unit of participation for receiving a charter halibut permit will be a logbook fishing trip, which is a trip that was reported to ADF&G in a saltwater charter logbook in accordance with the time limit required for reporting such a trip that was in effect at the time of the trip. If a trip was not reported within those time limits, NMFS will not consider it a logbook fishing trip for purposes of a charter halibut permit application.

NMFS will use the same method of counting logbook fishing trips that was used by the Council in developing its recommendation for this action. Each trip in a multi-trip day will count as one logbook fishing trip, and each day on a multi-day trip will count as one logbook fishing trip. For example, if an operator documented two trips in one day, NMFS will consider that as two logbook fishing trips. Another operator that documented a trip that lasted two days also will be considered to have made two logbook fishing trips. This accounting of trips deviates from the ADF&G method of counting logbook trips when fishing continues over multiple days. The same issue does not exist for half-day trips. Consistent with ADF&G logbook data and the Council's Analysis, NMFS will consider a half day trip as one trip.

A halibut logbook fishing trip also can be a logbook fishing trip where the business owner, within ADF&G time limits, reported ''boat hours that the vessel engaged in bottomfish fishing.'' An applicant may use such a report as one way to document a halibut logbook fishing trip. The logbook data for ''boat hours'' that a business had to report in 2007 and 2008 was ''No. of Boat Hours Fished this Trip'' with bottomfish as a targeted species. ADF&G instructions for the 2007 and 2008 logbooks state that bottomfish include halibut. Documentation of boat hours fishing for bottomfish would capture trips where charter vessel anglers were targeting halibut but did not catch any. Hence, this action defines a halibut logbook fishing trip as a logbook fishing trip in which the applicant reported the number of halibut kept or released or the boat hours that the vessel engaged in bottomfish fishing.

Documentation of participation will be recorded in the official record of charter vessel participation in Areas 2C and 3A during the qualifying and recent participation years. The official record will be based on data from ADF&G and will link each logbook fishing trip to an ADF&G Business Owner License and to the person—individual, corporation, partnership, or other entity—that obtained the license. Thus, the official record will include information from ADF&G on the persons that obtained ADF&G Business Owner Licenses in the qualifying period and the recent participation period; the logbook fishing trips in those years that met the State of Alaska's legal requirements; the Business Owner License that authorized each logbook fishing trip; and the vessel that made each logbook fishing trip.

NMFS will compare all timely applications to the official record. If an applicant submits a claim that is not consistent with the official record, NMFS will allow the applicant to submit documentation or further evidence in support of the claim during a 30-day evidentiary period. If NMFS accepts the applicant's documentation as sufficient to change the official record, NMFS will change the official record and issue charter halibut permit(s) accordingly. If NMFS does not agree that the further evidence supports the applicant's claim, NMFS will issue an initial administrative determination (IAD). The IAD will describe why NMFS is initially denying some or all of an applicant's claim and will provide instructions on how to appeal the IAD.

An applicant may appeal the IAD to the Office of Administrative Appeals (OAA) pursuant to 50 CFR 679.43. NMFS will issue interim permits to applicants that filed timely applications and whose appeal is accepted by OAA. NMFS will limit interim permits on appeal to applicants who applied for charter halibut permits within the application period specified in the **Federal Register.** This means that an applicant that is denied a permit because its application was late would not receive an interim permit. All permits issued during an appeal will be interim, non-transferable permits. Until NMFS makes a final decision on the appeal, the permit holder will not be able to transfer any permits.

Licensed business owners. Charter halibut permits will be issued to persons that were the ADF&G licensed business owners that met the minimum qualifications. The term ''person'' includes an individual, corporation, firm, or association (50 CFR 300.61). Hence, on successful application, NMFS will issue a charter halibut permit to the entity—individual, corporation, partnership, or other entity—that held the ADF&G Business Owner License that authorized the logbook fishing trips that met the participation requirements. NMFS has no obligation to determine the owners of a corporation or members of a partnership that successfully applied for a permit. NMFS will follow the form of ownership—individual or otherwise—that the business used to obtain legal authorization from the State of Alaska for its past participation in the charter halibut fishery.

Generally, the entity that applies for one or more charter halibut permits will be the same entity that held the ADF&G Business Owner License that authorized the trips that met the participation

requirements in the qualifying period and in the recent participation period. The only exception to this requirement is if the entity that held these licenses is an individual who has died, or a non-individual entity, such as a corporation or partnership, that has dissolved.

NMFS will not determine percentage of ownership of a dissolved partnership or corporation. If a dispute exists among former partners or shareholders as to how they should share ownership of a permit or permits, that dispute is properly resolved as a civil matter by a court.

NMFS will apply a guiding principle in evaluating applications for charter halibut permits; the logbook fishing trip activity of one person that is used for permit qualification cannot lead to more than one person receiving a charter halibut permit. The only possible exception is when NMFS might award a permit to successors-in-interest to a dissolved entity. Even then, NMFS will not issue a permit to each successor-in-interest, but will issue the number of permits for which the dissolved entity qualified in the names of all successors-in-interest. Subject to that exception, this guiding principle prohibits NMFS from crediting more than one applicant for the same logbook fishing trip, from crediting more than one applicant for logbook fishing trips made pursuant to the same ADF&G Business Owners License, and from issuing permits to more than one applicant for participation by one person in the charter halibut fishing business.

Unavoidable circumstances. NMFS recognizes that certain unavoidable circumstances could have prevented an applicant from participating in either the qualifying period or recent participation period despite the applicant's intention. In developing a limited exception to allow for unavoidable circumstances, NMFS was guided in part by the unavoidable circumstance provisions in the License Limitation Program for groundfish and crab fisheries at 50 CFR 679.4(k). Basically, an applicant must demonstrate that—

- It participated during either the qualifying period or the recent participation period;
- It had a specific intent to participate in the period, either the qualifying period or the recent participation period, that the applicant missed;
- The circumstance that thwarted the intended participation was (a) unavoidable, (b) unique to the applicant, (c) unforeseen and unforeseeable;
- The applicant took all reasonable steps to overcome the problem; and
- The unavoidable circumstance actually occurred.

The unavoidable circumstance exception will be limited to persons that will be excluded from the fishery entirely unless their unavoidable circumstance is recognized. The unavoidable circumstance exception is not intended to upgrade the number or type of permits an applicant could receive. For example, NMFS will not accept an unavoidable circumstance claim to upgrade a non-transferable permit to a transferable permit based on an anticipated 15 logbook trips in 2005 that did not occur. NMFS intends a narrow interpretation of the unavoidable circumstance exception, and that, if an applicant can get any charter halibut permit based on the applicant's actual participation, then the applicant will be limited to that permit.

This rule also recognizes a particular type of unavoidable circumstance, military service. The military exemption is designed to benefit persons that will otherwise be completely excluded from receiving any charter halibut permits despite their intention to meet the participation requirement during the qualifying period. If a military exemption applicant can receive any permits based on the applicant's actual participation in the qualifying period, the applicant will be limited to that number and type of permits and cannot use the military exemption. An applicant may not claim a military exemption to excuse lack of participation in the qualifying period and an unavoidable circumstance to excuse a lack of participation in the recent participation period. The successful military exemption applicant will receive one non-transferable permit with an angler endorsement of six unless the applicant can demonstrate that it likely would have met participation requirements for a transferable permit or a higher angler endorsement.

Transfers

A person holding a transferable charter halibut permit may transfer the permit to another person (individual or non-individual entity) with certain limitations. Non-transferable charter halibut permits may not be transferred. Transferability of permits will allow limited new entry into the charter halibut fishery while preventing an uncontrolled expansion of the charter halibut fishery.

NMFS expects consolidation in the charter halibut fishery as holders of non-transferable permits leave the fishery and as charter halibut operators acquire multiple permits by transfer. Excessive consolidation will be prevented by imposing an excessive share limit of five charter halibut permits.

Two important exceptions to this excessive share limit, however, will allow a person to hold more than five permits. First, a person that is the initial recipient of more than five permits will be able to continue to hold all of the permits for which the person initially qualified. Such a person will be prevented from receiving transfers of additional permits. This exception will not apply if an individual permit holder dies or a corporate permit holder dissolves or changes its ownership by adding one or more new owner(s) or partner(s). In this event, NMFS will consider a successor-in-interest or a changed corporate structure to be a different entity from the one that was the initial recipient of the permits and the exception to the excessive share limit will not apply to the new entity. Upon notification of a change, NMFS would (1) invalidate transferable charter halibut permits held by the permit holder and provide notification that the permit holder must divest themselves of the permit; and (2) revoke non-transferable charter halibut permits held by the permit holder.

The second exception will allow a transfer that results in the person receiving the transfer holding more than five permits if the person meets the following three conditions:

- The existing permit holder that holds more than five permits under the first exception will be transferring all of the transferable permits that were initially issued;
- The existing permit holder will be transferring all assets—such as vessels owned by the business, lodges, and fishing equipment—of its charter vessel fishing business along with the permits; and
- The person that will receive the permits in excess of the excessive share limit does not hold any permits at the time of the proposed transfer.

Although no citizenship standards will apply to the initial allocation of charter halibut permits, a person receiving a charter halibut permit by transfer must be a United States (U.S.) citizen. Issuance of charter halibut permits to non-U.S. citizens is not authorized by section 773c(c) of the Halibut Act. The Secretary, however, has general responsibility and authority to adopt regulations as may be necessary under section 773c(a) and (b) of the Halibut Act. Therefore, the Secretary is exercising this authority in not applying citizenship standards for the initial allocation of charter halibut permits. A

transfer to an individual will be approved only if the individual is a U.S. citizen, and a transfer to a corporate entity will be approved only if it is a U.S. business with at least 75 percent U.S. citizen ownership of the business. This rule adopts the 75 percent U.S. ownership criterion for a U.S. business from the American Fisheries Act (111 Stat. 2681, Oct. 21, 1998), which is a key piece of Federal legislation designed to Americanize the fleet fishing off American waters.

A nontransferable permit cannot be transferred from the name of the individual once the individual dies. A nontransferable permit cannot be transferred from a non-individual permit holder (a corporation, partnership, or other entity) if the non-individual permit holder dissolves or changes. This rule incorporates the definition of ''change'' in a corporation or partnership from the IFQ program at 50 CFR 679.42(j)(4)(i). This paragraph in the IFQ regulations defines ''a change'' for corporations, partnerships, or other non-individual entity to mean ''the addition of any new shareholder(s) or partner(s), except that a court appointed trustee to act on behalf of a shareholder or partner who becomes incapacitated is not a change in the corporation, partnership, association, or other non-individual entity.''

These limitations on the transfer of charter halibut permits will be made effective by a requirement for NMFS approval for all transfers. No transfer of a permit will be effective unless it is first approved by NMFS. A transfer application provided by NMFS is required to be completed by the person transferring and the person receiving the transferred permit. Completion of the transfer application and examination of it by NMFS will assure that the excessive share and citizenship requirements of this rule are maintained, and that non-transferable permits are dissolved on the death or change of the permit holder and will not be transferred to a new entity.

Special Permits

Two types of special permits are provided by this action for limited guided sport fishing for halibut outside of the requirements for charter halibut permits. First, community charter halibut permits are intended to allow development of a charter vessel fishery in certain rural communities that do not have a developed charter vessel industry. Second, a military charter halibut permit will exempt from this limited access system charter vessels operated by the U.S. Military's Morale, Welfare and Recreation (MWR) programs for recreational use by service members.

Community charter halibut permit. One or more community charter halibut permits may be issued to Community Quota Entities (CQEs) representing specified communities that do not currently have a fully developed charter halibut fleet. The CQE concept was developed by the Council originally to help rural communities become more involved in the commercial fisheries for halibut and sablefish (84 FR 23681, April 30, 2004). CQEs are defined in existing regulations at 50 CFR 679.2.

A CQE representing a community or communities in Area 2C can receive a maximum of four community charter halibut permits for each eligible community the CQE represents. A CQE representing a community or communities in Area 3A can receive a maximum of seven community charter halibut permits for each eligible community it represents. The larger number of community permits allowed in Area 3A reflects the larger resource base in that area. A community charter halibut permit will have an angler endorsement of six and will be non-transferable.

In addition to community charter halibut permits, a CQE may acquire charter halibut permits by transfer. A unique excessive share limit will apply to each CQE in Area 2C of a maximum of four charter halibut permits for each eligible community the CQE represents in that area. The combined permit limit for a CQE in Area 2C is four community charter halibut permits plus four charter halibut permits for an overall limit of eight permits per eligible community. Similarly, the excessive share limit for a CQE in Area 3A is a combined permit limit of seven community charter halibut permits plus seven charter halibut permits for an overall limit of 14 permits per eligible community.

A charter vessel fishing trip for halibut that is authorized by a community charter halibut permit is required to either begin or end within the community designated on the community charter halibut permit. This requirement will apply only to community charter halibut permits and not to any additional charter halibut permits that a CQE may acquire by transfer.

The Council intended to limit the benefits of community charter halibut permits to rural communities that have an emerging but not a fully developed charter vessel fleet. Instead of listing in regulations the criteria used by the Council in selecting community eligibility, this rule simply specifies those communities in Areas 2C and 3A (*see* Table 21 to part 679) that meet the Council's criteria and will qualify for community charter halibut permits issued to CQE(s) representing them. To add or subtract a community from the proposed list will require separate Council action and a regulatory amendment.

Military charter halibut permit. This action provides for special permits for charter vessels operated by any U.S. Military MWR program in Alaska. The only MWR program in Alaska that currently offers recreational charter halibut fishing to service members is the Seward Resort based at Fort Richardson in Anchorage, Alaska. To operate a charter vessel, the MWR program must obtain a military charter halibut permit by application to NMFS. Each military charter halibut permit will be non-transferable and valid only in the regulatory area designated on the permit. NMFS reserves the right to limit the number of these permits.

Consistency With Halibut Act

As described at the beginning of this preamble, this action is authorized by the Halibut Act at section 773c. Section 773c(c) specifically authorizes the Council to develop and the Secretary to approve limited access regulations applicable to nationals or vessels of the United States or both. Such regulations are required by this section of the Halibut Act to be consistent with four basic standards. The following discussion summarizes these statutory standards and the rationale used by the Secretary in approving the Council's recommendation and this rule implementing a limited access system for charter vessels in the guided sport fishery for halibut in IPHC regulatory Areas 2C and 3A.

Section 773c(c) of the Halibut Act requires limited access regulations to be—

- In addition to and not in conflict with regulations adopted by the IPHC;
- Non-discriminatory between residents of different States;
- Consistent with the limited entry criteria set forth in 16 U.S.C 1853(b); and
- Fair and equitable to all fishermen, based on the rights and obligations in Federal law, reasonably calculated to promote conservation, and carried out in such a manner that no particular individual, corporation, or other entity acquires an excessive share of halibut fishing privileges.

No Conflict With IPHC Regulations

Regulations governing halibut fisheries that are recommended by the IPHC are accepted or rejected on behalf

of the United States by the Secretary of State, with the concurrence of the Secretary, pursuant to section 773b of the Halibut Act. Accepted IPHC regulations are published as annual management measures pursuant to 50 CFR 300.62. The current annual management measures were published in the **Federal Register** on March 19, 2009 (74 FR 11681). IPHC regulations affecting sport fishing for halibut and charter vessels in Areas 2C and 3A may be found in sections 3, 25, and 28 of the IPHC regulations (74 FR 11681, March 19, 2009).

The IPHC regulations at section 3 of the annual management measures include definitions of terms, some of which are related to this action, such as ''charter vessel'' and ''sport fishing.'' This action removes a different definition of ''charter vessel'' from 50 CFR 300.61 that could have raised a conflict question. The definition of the term ''charter vessel'' at 50 CFR 300.61 resulted from a final rule published September 24, 2008 (73 FR 54932), for purposes of a prohibition against using a charter vessel for subsistence fishing for halibut. This action integrates the definition into the prohibition language to which it directly applies at 50 CFR 300.66(i) to clarify that the definition does not apply universally. The universal definition of ''charter vessel'' will continue to be that used by the IPHC and appearing in the annual management measures. Hence, no conflict is found between this action and the IPHC regulations concerning this definition.

The IPHC regulations at section 25 of the annual management measures specify the legal gear for sport fishing for halibut, specify which halibut count toward the daily bag limit, and prohibit possession of halibut on board a vessel while fishing in a closed area and when other fish or shellfish on board the vessel are intended for commercial use. Section 25 also prohibits halibut caught by sport fishing from being offered for sale, sold, traded, or bartered. Finally, section 25 makes an operator of a charter vessel liable for any violation of the IPHC regulations by a passenger on board the vessel. Regulations in this action are in addition to, and not in conflict with, the IPHC regulations at section 25.

The IPHC regulations at section 28 of the annual management measures establish sport fishing rules specific to Convention waters in and off of Alaska. Specifically, these regulations specify the sport fishing season, daily bag limit of halibut per person, the possession limit, and a prohibition against filleting halibut to support enforcement of the daily bag and possession limits. Exceptions to the filleting prohibition also are provided at section 28. Regulations in this action are in addition to, and not in conflict with, the IPHC regulations at section 28.

No Discrimination Between Residents of Different States

Regulations in this action do not discriminate between residents of different states. All charter business owners are treated the same regardless of their residency with respect to their eligibility to receive an initial allocation of a charter halibut permit or a transfer of a charter halibut permit. Likewise, neither the community charter halibut permit nor the military charter halibut permit is restricted in terms of the State of residency of the person who will use the permit. Charter vessel anglers who receive sport fishing guide services from businesses affected by this rule also are not discriminated against in terms of the State of their residence. Such anglers will have the same opportunity to contract with businesses that possess charter halibut permits regardless of the location of the angler's residence.

Consistency With Limited Entry Criteria

The limited entry criteria referred to in section 773c(c) of the Halibut Act appear at section 303(b)(6) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.*). These criteria appear under the heading of discretionary provisions for the Council and Secretary, and they read, and are discussed in turn, as follows:)

(b) Discretionary provisions. [The Council or Secretary] with respect to any fishery, may—

(6) Establish a limited access system for the fishery in order to achieve optimum yield if, in developing such a system, the Council and the Secretary take into account—

(A) Present participation in the fishery;

(B) Historical fishing practices in, and dependence on, the fishery;

(C) The economics of the fishery;

(D) The cultural and social framework relevant to the fishery and any affected fishing communities;

(F) The fair and equitable distribution of access privileges in the fishery; and

(G) Any other relevant considerations.

Optimum yield. This term is defined in the Magnuson-Stevens Act at section 3(33) in terms of providing the greatest overall benefit to the Nation, and prescribed on the basis of maximum sustainable yield as reduced by any relevant economic, social, or ecological factor. Also, at section 301(a)(1), the Magnuson-Stevens Act states that conservation and management measures must prevent overfishing while achieving optimum yield. This is one of ten national standards established by the Magnuson-Stevens Act with which any fishery management plan (FMP) or regulation implementing an FMP must be consistent.

The U.S. halibut fisheries are not managed under an FMP because the halibut fisheries are governed under the authority of the Halibut Act, not the Magnuson-Stevens Act. The Halibut Act does not require the U.S. halibut fisheries to be managed under an FMP. Therefore, specification of optimum yield for halibut is not required by statute and has not been determined. Nevertheless, the IPHC takes a conservative approach in setting the commercial fishery catch limits for the areas in and off Alaska while leaving economic and social balance questions to the Council. In essence, IPHC biologists determine a biologically acceptable level of harvest from all sources of halibut mortality, estimate the anticipated harvest from all non-commercial sources of fishing mortality, subtract the latter from the former, and set a commercial fishery catch limit based on the remainder. The overall harvest rate targeted by the IPHC is 20 percent of the exploitable biomass. The realized rate in recent years, however, has been substantially above the targeted harvest rate. Therefore, to the extent that the limited access system established by this rule can stabilize the halibut harvest by the charter halibut fishery, it will contribute to the achievement of the overall target harvest rate of halibut.

Present participation. The Council took into account present participation in the charter halibut fisheries as it considered alternative participation criteria. The Council took its action to recommend this rule to the Secretary on March 31, 2007. At that time, the most recent information on participation in these fisheries was from 2004 and 2005 ADF&G saltwater charter vessel logbooks. Logbook data from participation in 2006 was not yet available for the Council's Analysis (*see* **ADDRESSES**). In addition, the ADF&G logbook data were not specific to charter vessel fishing trips targeting halibut, *per se,* but indicated ''bottomfish'' fishing instead. However, the predominate bottomfish targeted in Alaska saltwater sport fisheries is halibut. Hence, bottomfish was assumed to be a reasonable proxy for halibut fishing. Further, the Council chose to accept any ADF&G saltwater logbook entry indicating a bottomfish statistical area, rods, or boat hours as evidence of participation during 2004 and 2005. The

Council was aware that this would result in a liberal estimate of participation in the charter halibut fisheries, but this decision was reasonably based on the best available information. With this understanding, the Council proceeded to consider alternative levels of participation, in terms of numbers of logbook fishing trips ranging from 1 to 20 trips or more, as an indication of participation during 2004 and 2005.

The Council has recommended, and the Secretary has approved, several other limited access systems before this action, and the Council knew that two or three years could pass before its recommendation for this limited access system was fully reviewed, approved, and implemented. In developing this limited access system, the Council addressed the potential of a rush of new entrants into the charter halibut fishery during the period of time the Council and the Secretary worked to develop and implement the system by specifying a minimum participation criterion in a recent participation period. The Council referred to this recent participation period as the ''year prior to implementation.'' In 2007, the year of Council action, the year prior to implementation was an unknown year in the future. In the proposed rule (April 21, 2009, 74 FR 18178), NMFS interpreted the ''year prior to implementation'' for practical purposes to mean the most recent year for which participation data are available. The most recent year for which ADF&G saltwater log book data are available now is 2008. Therefore, the Council's original Analysis of participation patterns was supplemented with 2008 logbook data indicating participation in the most recent year. This is currently the best information available on present participation in the charter halibut fisheries in IPHC Areas 2C and 3A.

The Council's policy recommendation to grant charter halibut permits based in part on participation in at least two years—one of the qualifying years, 2004 or 2005, and the recent participation year, 2008—served several purposes. One was to comply with the Magnuson-Stevens Act 303(b)(6) criteria of taking into account present and historical participation.

The second purpose was to stabilize growth in the charter halibut fisheries, a long-term objective of this limited access system. Due to the length of time needed to develop a limited access policy, conduct analyses of alternative policies, consider public comments, review and approve (or disapprove) a Council recommendation, and (if approved) implement the recommendation with Federal regulations, the entry of new charter halibut fishing effort during this time could significantly change the halibut harvesting capacity from when the Council's policy decision was made in March 2007. Specifying minimum participation criteria in a recent participation year in addition to a qualifying year served the purpose of discouraging new entry into the affected charter halibut fisheries during the intervening years.

The Council and the Secretary provided further public notice to discourage prospective new entry into the charter halibut fisheries when the Council acted to establish a control date of December 9, 2005. The Council determined that anyone entering the charter halibut fishery in and off Alaska after this date would not be assured of future access to that fishery if a limited access system of management was developed and implemented under authority of the Halibut Act. In addition to public announcement of this action at its meeting in December 2005, the Council also published this date in its December 2005 and February 2006 newsletters (*http://www.alaskafisheries.noaa.gov/npfmc/newsletters/newsletters.htm*). The Secretary also published a notice of this date in the **Federal Register** on February 8, 2006 (71 FR 6442).

The third purpose served by the Council's choice of present and historical participation years to qualify for an initial allocation of a charter halibut permit is to establish an objective and measurable indicator of dependence on the fishery. The Council reasoned in developing this and several other limited access systems that participation is a good indication of dependence on the fishery. Fishermen with a relatively greater participation in a fishery likely have a relatively greater dependence on the fishery for their livelihood than do other fishermen with relatively less participation. The difficult policy choice for the Council and Secretary is to determine where on the range, from little to large amount of participation, a decision should be made affecting future participation in the fishery. The Analysis of the potential effects of alternative decisions supports the ultimate policy choice (*see* **ADDRESSES**).

For commercial fisheries, participation is often measured in pounds of the targeted fish species landed. Charter vessel businesses, however, primarily market a sport fishing experience rather than pounds of fish caught. Logbook fishing trips are a better measure of participation in the charter halibut fisheries than are pounds of halibut caught and retained. Hence, the Council used logbook fishing trips as a measure of participation in the charter halibut fisheries.

Further, the Council determined the level of minimum participation in both years—the historical, 2004 or 2005, and present participation, 2008—indicated a reasonable dependence on the charter halibut fishery. Using participation in a past and a recent year together demonstrates dependence on the fishery to a greater extent than using only one year of participation as a qualifying criterion. A charter halibut business with a record of at least minimal participation in both years likely participated also in the intervening years, and likely continues to participate now. Therefore, these are the businesses that the Council decided should receive an initial allocation of charter halibut permits. On the other hand, charter halibut businesses that participated only in the historical period but not in the recent participation period likely exited the charter halibut industry before the recent participation period and, therefore, are no longer dependent on the fishery. Conversely, charter halibut businesses that participated only in the recent period but not in the historical period likely entered the fishery after the control date. These businesses comprise a group of charter halibut participants that the Council and Secretary specifically discouraged from entry by announcing that their participation would not necessarily be recognized (71 FR 6442, February 8, 2006).

The Secretary has approved and adopted this rational basis for taking into account present participation.

Historical fishing practices. The Analysis took into account historical fishing practices in and dependence on the charter halibut fisheries (*see* **ADDRESSES**). The Council examined the potential effects of several alternative minimum qualifying logbook trips during this period before making its recommendation. As explained above, the choice of minimum qualifying logbook trips during this historical participation period in combination with those during the recent participation period (2008) was critical to a determination of dependence on the charter halibut fishery. Those charter halibut businesses that met the minimum logbook trip criteria were determined to be sufficiently dependent on the charter halibut industry to warrant them receiving an initial allocation of one or more charter halibut

permits. The Secretary has approved and adopted the Council's rational basis for taking into account historical fishing practices in and dependence on the charter halibut fisheries.

Economics. The Council and the Secretary have taken into account the economics of the charter halibut fishery. The Analysis prepared by the Council and supplemented and approved by the Secretary includes a Regulatory Impact Review (RIR) and Final Regulatory Flexibility Analysis (FRFA) (*see* **ADDRESSES**). These documents respectively include analysis of potential costs and benefits and analysis of potential impacts on small entities as defined by the Regulatory Flexibility Act. This Analysis contains information describing the principal sectors that fish for halibut and incorporates earlier descriptions by reference. Each of the components of the preferred alternative is analyzed separately in the RIR. The impacts of the preferred alternative, and two other significant alternatives, on user industry and consumer groups in the commercial and charter halibut fisheries are compared in the RIR. A FRFA provides an analysis of the impacts of the preferred alternative on small entities. The Council accepted testimony from the public, much of which addressed economic concerns. NMFS has supplemented the Analysis, prepared for the Council's decision-making and to accompany the publication of the proposed rule, with an updated analysis of the impacts of the preferred alternative in light of specification of the recent participation period (*see* **ADDRESSES**). This information was not previously available. NMFS accepted and evaluated comments on the proposed rule, many of which raised economic issues. The summary of public comments and NMFS's responses to them may be found below.

Capability to engage in other fisheries. The Council and the Secretary have taken into account the capability of vessels used in the guided sport fishery for halibut to engage in other fisheries. The Analysis prepared by the Council, supplemented and approved by the Secretary, includes a description of the affected fleet and industry. In brief, the charter halibut industry provides marine transportation and sport fishing guide services to anglers wishing to catch halibut. Charter vessel businesses provide these services also to anglers wishing to catch salmon, rockfish, lingcod, and other bottomfish. In addition, charter vessel businesses may provide marine transportation for bird watching, whale watching, and general sightseeing. Passengers using these services may be independent tourists, guests at lodges, or travelers on cruise ships. Charter vessel businesses may focus their business plan on sport anglers wishing to catch halibut, but other business plans are possible given the variety of reasons why an individual may want to engage the services of a charter vessel.

Cultural and social framework. The Council and the Secretary have taken into account the cultural and social framework relevant to the charter halibut fishery and affected fishing communities. The Council received substantial public testimony during the early development of this rule which influenced the design of elements included for Secretarial consideration. The Secretary in turn has received public comments on cultural and socioeconomic aspects of this rule, has considered these comments and responded to them below. The Analysis of alternatives (*see* **ADDRESSES**) reflects this consideration by finding numerous communities with little charter vessel activity while a few communities have a well-established charter vessel industry, as indicated by the numbers of vessels that terminated charter vessel trips in coastal communities during the qualifying years. Hence, this action supports limited development of a charter halibut fishery in specific rural communities through a special community charter halibut permit program.

Community charter halibut permits will be issued under this rule at no cost to CQEs representing communities that do not currently have a fully developed charter halibut fleet. The CQE provision was previously developed by the Council for the IFQ program to help certain rural communities become more involved in the commercial fisheries for halibut and sablefish. In this action, the CQE provision serves the same purpose for the development of the charter vessel industry based in any of 18 rural communities in Area 2C and 14 rural communities in Area 3A. The purpose and design of the CQE provision is more fully described in the proposed rule published April 21, 2009 (74 FR 18178).

The Council also recommended, and the Secretary approved, another special permit for military recreation purposes. This took into account the existence of morale, welfare, and recreation (MWR) programs operated by the U.S. military and their importance to the recreational opportunities afforded to military services.

The Council and Secretary also have taken into account unique social and cultural aspects of the charter halibut fishery by providing for certain hardships or unavoidable circumstances in qualifying for a charter halibut permit. The design and conditions for a charter halibut permit based on unavoidable circumstances are fully described in the proposed rule published April 21, 2009 (74 FR 18178).

Fair and equitable distribution of access privileges. The Council and the Secretary have taken into account the fair and equitable distribution of access privileges to the halibut resource. Although this action may cause some restructuring within the charter vessel industry, no individual sport angler will be prevented from having access to the halibut resource for sport fishing. Sport fishermen wishing to fish for halibut on a charter vessel likely will be able to hire an operator or guide with a charter halibut permit as easily after the implementation of this rule as was done before that time.

Further, persons wishing to enter the charter vessel industry will be able to do so. This rule does not prevent any person from entering the charter vessel industry or becoming an operator of a charter vessel. An operator or business with a halibut fishing clientele, but that does not qualify for an initial allocation of one or more charter halibut permits, would have to obtain a transferable charter halibut permit by transfer. Alternatively, a charter vessel business that had such minimal participation that it does not qualify for a charter halibut permit under the Council's qualification criteria could change its business model to one that does not involve fishing for halibut. Although this rule does not prevent most persons from entering the charter halibut fishery, those persons that receive an initial allocation of charter halibut permits will have a competitive advantage over those that will have to pay for transfer of these permits. The rationale for making a distinction between these two groups is to end the opportunities for unlimited growth in charter vessel operations that may fish for halibut by establishing a finite number of charter vessels authorized for guided sport halibut fishing based on the historical and present participation criteria outlined above. This action is intended to support the Council's approved policy of allocating the halibut resource among all fishing sectors and providing continued participation by those operations most dependent on the halibut resource.

Other relevant considerations. The Council and the Secretary have taken into account other factors to allow limited additional participation in the charter halibut fisheries than would otherwise be allowed without certain

exceptions to the qualifying criteria. First, an initial allocation of non-transferable charter halibut permits will be allocated to persons with a low level of participation. The minimum number of logbook fishing trips in one of the qualifying years—2004 or 2005—and in the recent participation year—2008—is five. Dependence on the halibut resource will be difficult to demonstrate for charter vessel businesses that made only 5 to 14 logbook fishing trips, relative to those businesses that made 15 or more trips. These low-participation charter businesses likely are small and operate part time, but together they supply a significant market for charter vessel anglers. Excluding the low-participation charter businesses from initial allocation of charter halibut permits could have constrained charter vessel angler opportunities. Allowing low-participation charter businesses to qualify for transferable charter halibut permits, however, would have created a large latent capacity to expand charter vessel angler opportunities. Hence, these low-participation charter businesses are allowed to qualify for non-transferable charter halibut permits to continue their current operations but not provide a source for significant expansion of charter halibut fishing in the future.

Second, consideration of unavoidable circumstances is specifically recognized by the Council and the Secretary. Such circumstances must have been unique to a particular person, unforeseen and unavoidable, and must have prevented a potential participant in the charter halibut fishery from participation as intended during either the qualifying or recent participation years. This hardship provision allows for an appeals process that may result in the potential allocation of non-transferable or transferable charter halibut permits that would otherwise be denied. A special military service hardship provision was included for a charter halibut permit applicant that meets the participation requirement during the recent participation period but not during the qualifying period due to U.S. military service.

Finally, the Council and Secretary allowed an exemption for charter vessels operated by any U.S. Military MWR program in Alaska. A special non-transferable military charter halibut permit will be issued to a MWR program without regard for previous participation in the charter halibut fisheries. NMFS reserves the right to limit the number of these permits.

Fair and Equitable, Promotes Conservation, and Avoids Excessive Share

The Halibut Act at 16 U.S.C. 773c(c) states the following:

> If it becomes necessary to allocate or assign halibut fishing privileges among various United States fishermen, such allocation shall be fair and equitable to all such fishermen, based upon the rights and obligations in Federal law, reasonably calculated to promote conservation, and carried out in such a manner that no particular individual, corporation, or other entity acquires an excessive share of halibut fishing privileges.

The following discusses the consistency of this action with each of these three standards.

Fair and equitable. The ''fair and equitable'' requirement in the Halibut Act quoted above is substantially the same as the ''fair and equitable'' requirement found at 16 U.S.C. 1851(a)(4), *i.e.,* National Standard 4 of the Magnuson-Stevens Act. The only difference is the addition of the word ''halibut'' before ''fishing privileges'' in the provision in 16 U.S.C. 773c(c). Because of this similarity, the National Standard 4 guidelines promulgated by NMFS help to illustrate why this action, even though it is taken under the Halibut Act and not the Magnuson-Stevens Act, meets the statutory requirement. An allocation of fishing privileges should be rationally connected to the achievement of optimum yield or the furtherance of a legitimate fishery management objective under the guidelines to National Standard 4 (50 CFR 600.325(c)(3)(i)(A)). The Council and NMFS have articulated a legitimate objective for this action, that is, to be a step toward establishing a comprehensive program of allocating the halibut resource among the various halibut fisheries (guided and unguided recreational, commercial, and subsistence). To accomplish this objective, the Council and NMFS found a need to stabilize growth in the charter halibut sector.

Further, the guidelines to National Standard 4 acknowledge that inherent in an allocation is the advantaging of one group to the detriment of another. The motive for taking a particular allocation should be justified in terms of fishery management objectives; otherwise, the disadvantaged user groups or individuals will suffer without cause (50 CFR 600.325(c)(3)(i)(A)). The fishery management objective of this action has been articulated by the Council and NMFS, starting with the 1995 problem statement by the Council and continuing through this final rule (cf., history of charter vessel fishery management concerns and limited access development published on February 8, 2006 [71 FR 6442], and April 29, 2009 [74 FR 18178]). These statements demonstrate that the Council was concerned about overcrowding of productive halibut grounds due to the growth of the charter vessel sector and that expansion of this sector may affect ''the Council's ability to maintain the stability, economic viability, and diversity of the halibut industry, the quality of the recreational experience, the access of subsistence users, and the socioeconomic well-being of the coastal communities dependent on the halibut resource.''

Finally, the guidelines to National Standard 4 state that an allocation may impose a hardship on one group if it is outweighed by the total benefits received by another group or groups. ''An allocation need not preserve the status quo in the fishery to qualify as 'fair and equitable,' if a restructuring of fishing privileges would maximize overall benefits'' (50 CFR 600.325(c)(3)(i)(B)). In this action, the Council and NMFS found that the total benefits to the charter halibut fishery will be increased relative to the status quo. The hardship of not qualifying for an initial allocation of a charter halibut permit will be borne by those who entered the charter halibut fishery after 2005 despite the Council's control date notice that such persons would not be assured of future access to this fishery if a limited access system is implemented (71 FR 6442, February 8, 2006). Overall benefits of this rule, however, will accrue to those businesses in the charter halibut fishery that were established and participating during the qualifying and recent participation years.

Promotes conservation. Although biological conservation of the halibut resource is not the principal purpose of this rule, it will promote conservation by fostering a more easily managed charter halibut fishery. When any fishery resource is fully subscribed among the various fishery sectors using it, the uncontrolled growth in one sector will disadvantage the other sectors. The Analysis (*see* **ADDRESSES**) indicates that the charter sector is the second largest (after the commercial fishery) of all the sectors using the halibut resource in the two IPHC regulatory areas to which this rule applies. Whereas growth of the commercial fishery sector is constrained by the IFQ program and catch limits stipulated by the IPHC, growth in the non-commercial sectors is not similarly constrained. This presents no fishery management problem provided that all

of the non-commercial sectors exhibit relatively static growth over time such that year-to-year assumptions about their harvest prove to be correct. The charter halibut fishery has grown in recent years, however, depending on the demand for halibut by charter vessel anglers. Although this rule is not designed primarily to limit the harvest by the charter halibut fisheries, it will make existing and future harvest restrictions more effective because conservation gains from individual harvest restrictions will not be eroded by unlimited growth in the fleet of charter vessels fishing for halibut. In this manner, this rule will contribute to the achievement of the overall target harvest rate of halibut established by the IPHC.

Avoids excessive share. An excessive share of halibut fishing privilege is not defined in either the Halibut Act or in the National Standard 4 guidelines. The latter states simply that an allocation must deter any entity from acquiring an excessive share of fishing privileges, and avoid creating conditions that foster inordinate control by buyers and sellers (50 CFR 600.325(c)(3)(iii)).

This rule sets an excessive share standard of five charter halibut permits. Existing businesses that initially qualify for more than five permits will be able to continue business at levels above this excessive share standard; however, they will be prevented from acquiring more permits than their initial allocation. Transfers of a permit or permits that will result in the person, business, or other entity receiving the permit(s) holding more than five permits will not be approved by NMFS with limited exception.

Some consolidation of charter halibut permits may occur under this rule, but will be limited by the five-permit excessive share standard. Further, the number of businesses that are allowed an initial allocation of permits in excess of this standard will not increase. A 10 percent ownership criterion will apply to prevent a corporation from exceeding the excessive share standard by owning or controlling subsidiary businesses each holding the maximum number of permits. The 10 percent ownership criterion is the same as that used for implementing the American Fisheries Act and defined at 50 CFR 679.2. Under this definition, two entities are considered the same entity if one owns or controls 10 percent or more of the other. Hence, an excessive share of privileges to operate charter vessels fishing for halibut is prevented and the dominance of any businesses in the charter halibut fishery will not be allowed to increase any more than it is at the time of initial allocation of permits.

Comments and Responses

This action was published as a proposed rule on April 21, 2009 (74 FR 18178), and public comments on it were solicited until June 5, 2009. NMFS received 166 comment submissions containing 157 unique comments. These comments were reviewed, organized into seven topical categories, and responded to as follows:

Fairness and Legal Authority

Comment 1: The proposed rule does not meet the National Standards for Fishery Conservation and Management as defined in the Magnuson-Stevens Act (16 U.S.C. 1851(a)(4)).

Response: This action is authorized by the Halibut Act at section 773c, not the Magnuson-Stevens Act. Section 773c(c) of the Halibut Act provides the requirements that must be met by the Council and the Secretary when developing and implementing regulations for halibut. The Secretary has found this rule to be consistent with this requirement of the Halibut Act as explained above under the heading ''Consistency with Halibut Act.''

Comment 2: The Halibut Act of 1982, (at section 773c(c)) states that rules shall be fair and equitable and they shall not discriminate among participants.

Response: The Halibut Act at the section cited actually prohibits discrimination between residents of different States. This rule does not discriminate between residents of different States as the criteria for an initial allocation of charter halibut permits applies to all applicants regardless of the State in which they reside. This action complies with the requirements of the Halibut Act, as discussed in the ''Consistency with Halibut Act'' section above.

Comment 3: Several comments stated that the proposed rule is not fair and equitable because it requires applicants to demonstrate participation in the halibut charter fisheries in 2004 or 2005 (historical participation period). The comments note that the historical participation requirement illegally discriminates against businesses that are currently in operation because:

- The proposed rule would impose *ex post facto* regulations, contrary to the Constitution of the United States;
- The Magnuson-Stevens Act at 16 U.S.C. 1853(b)(6) states that when implementing a limited entry program, present participation and historical practices must be considered. It does not say anything about historical participation on which NMFS is basing this rule;
- While obtaining all relevant licenses and permits to operate a charter business, there was no notification by the licensing agencies that rules were being made that would retroactively disallow charter operators from continuing to operate their businesses;
- Many small business owners will not have the right to appeal under the unavoidable circumstances provision as the proposed rule states that an applicant must demonstrate that it had a specific intent to participate in the qualifying period; and
- The proposed rule clearly shows the Council's intention to act favorably towards the charter vessels that operated during 2004 and 2005 by excluding charter businesses that started operating between 2006 and 2009.

Response: This rule is not illegal or contrary to the U.S. Constitution. An *ex post facto* law is a law passed after the occurrence of an event or action which retrospectively changes the legal consequences of the event or action. That is not the case with this rule. This rule does not make charter halibut fishing that was legally performed after 2005 and before the effective date of this rule illegal, but instead establishes specific eligibility criteria for receiving a harvest privilege. Hence, this rule does not change the legal consequences of past participation in the charter halibut fishery. Persons who entered the fishery after 2005, however, had constructive notice, published February 8, 2006 (71 FR 6442), that they were not assured of future access to the charter halibut fishery if a management regime, such as the one implemented by this rule, were implemented.

The Council and the Secretary considered historical practices in the charter halibut fisheries in Areas 2C and 3A by looking at the number of charter vessel businesses and vessels participating in these fisheries, the range in the number of logbook fishing trips made, and the number and distribution of communities in which these fishing trips terminated in 2004 and 2005. These factors are reasonable measures of dependence on the charter halibut fisheries. *See also* the discussion of historical fishing practices above under the heading ''Consistency with Halibut Act.''

Prior to this rule, NMFS has not implemented any licensing requirements for operators of vessels with one or more charter anglers onboard. However, the Council has a long history of developing management measures for the charter halibut fishery, as described in the preamble to the

proposed rule (74 FR 18178, April 21, 2009), and the control date notice published February 8, 2006 (71 FR 6442). Persons entering the charter halibut fishery for the first time after 2005 were on notice that their future access to that fishery was not assured.

Regarding an appeal, all charter halibut permit applicants have a right to an appeal under § 300.67(h)(6) of this rule. However, if a charter vessel business was not started until 2006 or later and cannot demonstrate that it intended to participate in prior years, it will not be able to meet the criteria for the unavoidable circumstance exception. *See* the response to Comment 109 for a discussion of the unavoidable circumstances exception to the charter halibut permit qualification requirements.

The Council selected 2004 and 2005 as the qualifying years because those were the most recent years for which the Council had information on participation in the charter halibut fishery when it acted in early 2007. The Council did not select a larger number of qualifying years because the normal entry and exit from the charter halibut fishery from year to year could result in more charter halibut permits than vessels participating in any one year with a qualifying period of too many years. The choice of combining minimum participation during a qualifying year and the recent participation year further serves the purpose of limiting charter halibut permits to those businesses that have demonstrated a long-term commitment to the charter halibut fishery and gives consideration to present participation and historical dependence, factors that must be considered pursuant to the Halibut Act.

Before developing eligibility criteria for the charter halibut limited access system, the Council announced a control date of December 9, 2005, to provide notice to any person contemplating entry into the charter halibut fishery after that date. A control date notice published in the **Federal Register** on February 8, 2006 (71 FR 6442), further indicated that future access to the charter halibut fishery was not necessarily assured to persons entering the fishery for the first time after that date.

Comment 4: One commenter proposed changes to the moratorium to make it fair, equitable, and non-discriminatory. These changes included revising the charter halibut permit qualification criteria to require participation only in more recent years and making all charter halibut permits transferable to allow established businesses to grow by purchasing permits.

Response: Although alternative programs might be found to be fair and equitable and non-discriminatory, as required by the Halibut Act, this rule was developed by the Council to meet its stated objectives. The Council intended to recognize historical and recent participation by granting permits to charter businesses that demonstrate consistent participation in and dependence on the charter halibut fisheries. The Council also recommended a higher participation requirement for transferable permits than for non-transferable permits to balance its objective to reduce fishing effort and its objective to minimize disruption to the charter fishing industry. The Council's recommended qualifying criteria for transferable charter halibut permits will allow businesses to grow by purchasing additional permits up to the excessive share limit of five charter halibut permits, which is consistent with the commenter's suggestion. NMFS finds that this rule meets the requirements of the Halibut Act (*see* discussion above under the heading ''Consistency with Halibut Act'').

Comment 5: The Council does not have the authority to ban charter businesses that began operating between 2006 and 2009 from operating a guided halibut fishing business, or to include rules that merely allocate the harvest level among users rather than reduce the harvest level as required by agency goals.

Response: The Halibut Act, at section 773c(c), provides authority to the Council and the Secretary to ''develop regulations governing the United States portion of Convention waters, including limited access regulations, applicable to nationals or vessels of the United States or both'' The Halibut Act, at 16 U.S.C. 773c(a) and (b), also provides the Secretary with general responsibility to carry out the Convention, the Halibut Act, and to adopt such regulations as may be necessary. In reviewing this rule, the Secretary has found that the Council's recommendation for this limited access system is consistent with the Halibut Act (*see* the discussion above under the heading ''Consistency with Halibut Act'').

Fishery management generally, and management of the halibut fisheries in particular, is not necessarily limited to the direct control of harvests. Allocation of fishing privileges also is specifically authorized by the Halibut Act if the regulations that allocate fishing privileges meet certain criteria. *See* the ''Consistency with Halibut Act'' section above for further discussion of how this rule is consistent with all Halibut Act requirements.

Comment 6: A limited access program on charter vessels is not a conservation measure to protect the halibut but an attempt to limit individuals from the resource. Since halibut is a resource that belongs to all citizens, it is only reasonable that they should have the first opportunity to harvest what is rightfully theirs. Charter operators afford citizens a reasonable opportunity to catch fish. The people should have the first opportunity to gather, and the remains of the annual surplus can then be opened to commercial harvesting. Citizens should not be limited from harvesting their resource until there is a conservation concern.

Response: This rule is reasonably calculated to promote conservation as described above under the heading ''Consistency with Halibut Act.'' NMFS agrees that halibut are a public resource; however, the limited access system established by this rule does not limit individual anglers from opportunities to access the halibut resource. This rule limits the number of charter vessels in the guided sport fishery for halibut in only two of the 10 IPHC regulatory areas. The Analysis prepared for this action (*see* **ADDRESSES**) estimates that charter vessel capacity will be sufficient to meet the demand for the number of anglers who took guided charter vessel trips in 2008 in Areas 2C and 3A (*see* also response to Comments 21 and 43).

Although charter vessels provide an important means of access to the halibut resource, they are not the only way that the public can access the resource. The commercial fishery provides access to halibut to those who prefer to purchase it in grocery stores or restaurants. The subsistence fishery provides access to the halibut resource by those who qualify to conduct subsistence halibut fishing. Non-guided recreational fishing also is a source of public access to the halibut resource. This rule does not constrain or limit any of these other means of public access to the halibut resource. In fact, the catch limits specified annually for the commercial halibut fishery by the IPHC for areas in and off of Alaska are set after estimated harvests by all other non-commercial removals are subtracted from the constant exploitation yield (*see* discussion under ''Management of the Halibut Fisheries'' in the preamble to the proposed rule (74 FR 18178, April 21, 2009).

Comment 7: Commenter urged you to pass the proposed rule for the guided halibut fishery. All businesses need stable, predictable regulation to plan

and prosper. To foster socioeconomic stability in our coastal communities and for the benefit of all Americans and the resource, I urge you to proceed forward now with implementation of a long-term, market-based solution that will put commercial setline and charter sectors on the same playing field with equitable rules.

Response: NMFS agrees that this action establishing a limited access system for the charter halibut fisheries in Areas 2C and 3A will contribute to stabilizing these charter halibut fisheries and communities with charter vessel activity. NMFS supports long-term market based solutions to allocation problems, such as this program.

Comment 8: The Council should develop an FMP for halibut and NMFS should explain the legal basis behind the absence of an FMP for halibut. An FMP would assist the Council in recognizing the differences among user groups and treating all user groups equally.

Response: The legal basis for not having an FMP for Pacific halibut fisheries is that Pacific halibut fisheries are managed under the Halibut Act and the Halibut Act does not require the Council to develop an FMP. The comment correctly points out that section 773c(c) of the Halibut Act also provides authority to develop regulations to the regional fishery management councils, but that this is limited to regulations ''which are in addition to and not in conflict with regulations adopted by the [IPHC].'' Hence, the Halibut Act speaks only to the development of regulations, and not to the development of an FMP. NMFS agrees that the Halibut Act's reference to the limited entry criteria at 16 U.S.C. 1853(b)(6) applies to all halibut fishery regulations developed by the Council and approved by the Secretary under authority of the Halibut Act. These criteria are essential when contemplating any regulatory scheme that would allocate a fishery resource among competing users. However, an FMP is not required to make these criteria effective in the regulatory process.

An FMP is not needed to recognize differences among user groups and to treat all those groups fairly and equitably. Regardless of an FMP, halibut fishery regulations must have a rational basis for their effects. In developing this rule, the Council and the Secretary provided a rational basis which in part is summarized as follows.

First, this rule recognizes that, although there are communities with highly developed charter halibut fisheries, there are also communities with unrealized development potential and has provided for special community charter halibut permits. These special permits are intended for start-up charter vessel operations in communities that do not have highly developed charter fisheries and do not have the same participation criteria as transferable and non-transferable charter halibut permits. Hence, this rule recognizes variations in charter halibut fishing effort among communities and provides for communities with potential for charter industry growth.

Second, this rule focuses on the guided charter halibut fisheries in Areas 2C and 3A instead of the non-guided sport fisheries in these areas because the harvests of the former have been persistently greater and growing over time relative to the latter. However, recreational anglers remain free to choose between guided and unguided sport fishing. *See also* the response to Comments 6, 21, and 43.

Comment 9: Several comments noted that a limited entry program being promulgated under the Halibut Act must meet the section 303(b)(6) standards of the Magnuson-Stevens Act. To ensure that the standards are met, the comments recommended that NMFS explicitly address each standard and explain how each standard is met in the final rule.

Response: NMFS agrees and addresses each standard as part of the discussion above under the heading ''Consistency with Halibut Act.''

Comment 10: There is a commercial bias in the IPHC and the Council. The IPHC and Council have supported the commercial sector to the detriment of the charter fleet. This creates concerns about the impartiality of the Council and raises questions as to whether the Council is making decisions solely to benefit the commercial sector. The commercial sector has so many representatives on the Council that it is impossible for guided charter operators to get the Council to acknowledge their suggestions, comments, or proposals to work with the commercial sector. Only the commercial sector is in favor of the moratorium for the guided charter sector.

Response: This action is being taken by NMFS based on a recommendation by the Council. Actions by the IPHC are evaluated and approved under a different process. The process for selecting Council members is set in statute and employs mechanisms to assure representation of the various States represented on the Council and fair and balanced apportionment to the extent practicable. The Council makes decisions through a public process, and in a manner that is consistent with the requirements of the relevant statutes. The Council has the authority to develop regulations to address allocation issues among different domestic sector users of halibut in and off the waters of Alaska, including the commercial and guided sport fisheries.

This final rule does not unfairly favor the commercial sector. In December 2005 the Council appointed a Charter Halibut Stakeholder Committee to address alternatives for long-term management of the charter halibut fishery. The committee had representation from the sport guided, unguided, and commercial sectors. The Council recommended a charter halibut permit program that was based, in large part, on recommendations from the Charter Halibut Stakeholder Committee. Additionally, the draft EA/RIR/IRFA prepared for the charter halibut moratorium (*see* **ADDRESSES** was available for public review throughout program development and Council meetings are open to the public. The Council received oral and written testimony on the charter halibut moratorium. Some of the testimony in support of the charter halibut moratorium came from charter operators. Furthermore, NMFS reviewed the Council's recommendations for consistency with the Halibut Act, the Convention, and other applicable law and found the current program to be consistent with those requirements.

Comment 11: An IFQ or quota for halibut charter fishing is not an appropriate management solution.

Response: This rule does not implement an IFQ program for halibut charter fishing nor does it establish a quota allocation for the guided charter vessel sector or individual charter operators. This action establishes a limited access system that limits the number of persons engaged in the charter halibut fishery in Area 2C and Area 3A.

Comment 12: The allocation of halibut between the commercial and charter sectors is not fair and equitable. The percentage allocation of the halibut guideline harvest level (GHL) to the recreational fisherman in Alaska is grossly unfair. If this percentage were increased there would not be a need for a limited charter fleet.

Response: Adjustments to the GHL are outside the scope of this action. *See* the response to Comments 34 and 35. This rule is fair and equitable as required by the Halibut Act (*see* discussion above under heading ''Consistency with Halibut Act''). Also, harvest amounts by all sectors do not have to be equal for

regulations to meet the fair and equitable standard.

Comment 13: NMFS should limit commercial halibut catch instead of limiting the number of charter operators. According to the Council's problem statement, ''overcrowding of productive halibut grounds [is] due to the growth of the charter vessel sector.'' However, a majority of the productive halibut grounds in Areas 2C and 3A are currently open to commercial halibut harvesting. A 15 percent reduction in the commercial catch limit within 12 miles of shore could relieve the Council's concerns with overharvest. Instead of focusing on limiting the sport/charter industry, get the commercial boats that set miles of gear offshore where they belong and restrict the large IFQ longliners from fishing near coastal Alaska communities so they don't deplete near-shore halibut stocks that subsistence and sport users depend on.

Response: This rule is intended to curtail growth of fishing capacity in the guided sport fishery for halibut, which is consistent with the Council's problem statement. Limited access systems are commonly used to limit the capacity of fishing fleets that are in need of management to meet conservation and socioeconomic objectives as determined by the Council.

Further restrictions on the commercial halibut fishery are outside the scope of this action. The problem statement referenced in the comment refers to a problem statement adopted by the Council that guided its decision making during the 1995 through 2000 period. The statement was provided in the proposed rule for this action to demonstrate that the Council has discussed and considered the expansion of the guided sport charter vessel fishery for halibut since 1995. The problem statement adopted by the Council that led to this action can be found in the executive summary of the Analysis (**ADDRESSES**) and speaks to stabilizing the growth in the charter sector and addressing allocation issues; it does not mention overcrowding of productive halibut grounds.

Comment 14: Several comments noted that this action is an allocation, and the Halibut Act requires that allocations of fishing privileges must be fair and equitable. The comments assert that the proposed rule would limit the number of halibut charter operators in order to benefit the commercial sector by reducing the amount of halibut taken by the charter sector. This is in direct conflict with the fair and equitable standard applicable to the allocation of fishing privileges.

Response: NMFS agrees that this rule has an allocation effect which the Council and the Secretary see as necessary and which is authorized by the Halibut Act at section 773c(c). According to the proposed rule (at 74 FR 18178, April, 21, 2009), the intended effect of this rule is to ''curtail growth of fishing capacity in the guided sport fishery for halibut.'' NMFS does not expect growth curtailment to result in harvest curtailment, at least in the short term. Any reduction in the harvest by the charter halibut sector during the short term more likely will result from direct harvest controls, such as the daily bag limit reduction for charter vessel anglers in Area 2C this year (74 FR 21194, May 6, 2009). Hence, increasing the halibut harvest by the commercial setline fishery is not the intent or expected outcome of this rule.

The Council's Charter Halibut Stakeholder Committee developed most elements of the charter vessel moratorium program and recommended it to Council. These elements were designed to respond to the Council's problem statement. The Council developed the program further after hearing public testimony on the subject. The Council subsequently recommended it to the Secretary under its Halibut Act authority to do so.

Comment 15: Charter boats should be limited in Southeast Alaska. Too many vessels and operations are not owned by Alaskans and these operations grew quickly while fishing opportunities were available. This is particularly true for operations with six to 30 vessels (large operations) rather than small operations with one to three vessels. The large operations have no regard for the resource and hire help from down south and pay low wages. As most of their captains are from down south as well, and I question whether they are qualified to be guiding in a very unforgiving environment. Why are we rewarding this behavior by giving them ''forever'' rights and exclusivity to the fishery?

Response: Sport fishing lodge operations with a large number of charter vessels are as legitimately in business as are operations with a small number of charter vessels. Both types of charter vessel operations provide a recreational service. The growth in operations referred to by the comment may have been associated with growth in tourism and cruise ship visits to Southeast Alaska; however, NMFS does not have information that identifies the specific reasons for growth in charter vessel operations.

The assertion that many charter vessel operations are not owned by Alaskans or that some operations hire non-Alaska residents is not relevant to this final rule. The Halibut Act prohibits the Secretary from approving halibut regulations that discriminate between residents of different States. This rule applies to all applicants for charter halibut permits and permit holders, regardless of their place of residence. Wages paid to the staff of charter vessel operations and the required qualifications for operators of vessels with one or more charter anglers onboard are outside the scope of this action.

Finally, this rule does not create permanent exclusive rights to operate in the charter halibut fishery. A permit is a privilege that can be revoked if the permit holder violates specified conditions of the law. In addition, holders of transferable charter halibut permits are expected to transfer some permits to new entrants to the charter halibut fisheries. NMFS expects that over time, transferable permits will migrate to those operators and areas where they will be most efficiently used. Non-transferable permits may be used by the business owner(s) to whom they are initially issued but may not be transferred to another business or operator. These permits will expire when an individual permit holder dies. If the permit holder is a non-individual entity, non-transferable permits issued to the business will expire when the business changes as defined in regulation at § 679.42(j)(4)(i).

Comment 16: The proposed halibut charter moratorium is unfair to the charter boat captains and to the clients that spend money to come to Alaska and fish. The prices of charters have gone up significantly in the past two years because of high fuel prices. Now the government will collect money for the proposed halibut charter moratorium permit. I am a small operator trying to make a living taking people out fishing. The limited entry permit for halibut charter operators is just another way for the government to collect money.

Response: This rule does not establish any fee on halibut charter businesses or operators to participate in the charter halibut moratorium program. Under this action applicants for a charter halibut permit are not required to submit a fee with their application nor will a fee be charged to issue or transfer a charter halibut permit. If such fees are charged in the future, they will be established by a separate regulatory action.

This rule, however, does not affect the requirements for permits or other certifications by other State or Federal agencies that charter halibut businesses must obtain to operate in Areas 2C or

3A and for which fees may be charged. NMFS does not have information to estimate the number of charter business owners that may purchase charter halibut permits, a private transaction. Also, NMFS does not have information to estimate the cost of such transactions, or the effect of those costs on the prices the charter operators will charge for their services (*see also* Section 2.8 of the Analysis at **ADDRESSES**).

Comment 17: The moratorium is legally vulnerable.

Response: As indicated above, NMFS finds this rule to be consistent with applicable law (*see* discussion above under the heading ''Consistency with Halibut Act''). This rule was developed through a public process used by the Council and NMFS to formulate and implement fishery management policy. In doing so, the Council and NMFS heard from members of the public, including representatives of the charter vessel sector. Some members of the public were in favor of this action, others were not. NMFS respectfully understands that some charter business owners are opposed to this rule.

Comment 18: The Analysis states on page 153, paragraph 2 that ''[t]he moratorium is not expected to limit the number of halibut charter trips in the near future.'' Wasn't the ''growing number of charter fleets'' the main reason this moratorium was being pushed by the Council and NOAA?

Response: As stated in the Analysis (*see* **ADDRESSES**), NMFS does not expect the limited access system established by this rule, by itself, to limit the growth in charter halibut trips, charter halibut harvest, or charter vessel anglers over the short term. Instead, this rule is expected to stabilize the charter halibut sector by curtailing the growth in numbers of charter vessels in Areas 2C and 3A and thereby improve the effectiveness of other management measures, now and in the future, to control the rate of halibut harvest.

Comment 19: The Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) states on page 58,

> ''It is possible that commercial IFQ halibut fishermen could also benefit, if the constraint slows the growth in charter catches in the future. However, given the excess capacity that is likely to exist in the fleet after implementation of the moratorium, this outcome is unlikely, all else equal.''

If the Council is attempting to limit the fleets then how could this scenario be unlikely? If the Council is attempting to limit the fleets then why do they anticipate excess capacity in charter fleets after the implementation of the proposed rule? If this proposed rule is not expected to constrain harvests, why is it being proposed?

Response: It is not possible to determine the optimal amount of capacity in the charter vessel sector with available data. The intended effect of this action is to curtail growth in capacity. Although limited entry on the number of vessels is a commonly used fishery management tool to limit capacity growth, it is an imprecise tool because individual operators can increase capacity to increase effort over historical levels. For example, charter vessels operating under this rule may increase the number of fishing trips they make, increase the average number of anglers they carry, or improve their ability to find halibut. All of these outcomes and others are possible under this limited access system, in which case the actual harvest of halibut by the charter vessel sector may actually increase over current levels.

Limited entry provides a basis for the development of a long-term comprehensive effort limitation program for the charter halibut fishery, if it is determined that such a program is needed in the future. The RIR (at page 46) prepared for this action determined that limited entry could serve to better stabilize fishing effort than the status quo, because only permitted vessels would be capable of increased effort. Further, a reduction in fishing capacity will occur as non-transferable permits are eliminated as their holders leave the fishery.

Comment 20: The Federal Government has a duty to not discriminate. The summary of costs and benefits table in the EA/RIR/IRFA presents the reasons why the Council chose Alternative 2. However, this table is extremely biased. For example, in columns 3 and 4, the table states, ''Limiting the number of vessels that may operate would help limit competition. * * *'' Why limit competition, especially if that may lead to business failure for some operations?

Response: NMFS has a duty to not discriminate based on constitutional and statutory rights. The response to Comment 2 describes why this action is not discrimination against charter operators that do not receive a charter halibut permit on initial allocation.

The quote from Table 42 on page 156 of the EA/RIR/IRFA (*see* **ADDRESSES**) presented in the comment is incomplete. The complete sentence reads, ''Limiting the number of vessels that may operate would help limit competition from new entrants in the fishery, but competition from existing permit holders is expected to keep businesses from earning above normal profits.'' The statement makes clear that although the charter halibut permit program will reduce competition from new entrants, the program is not expected to prevent competition within the charter halibut sector. As discussed in the response to Comments 21 and 43, NMFS anticipates that permit holders will have sufficient opportunities to ensure that capacity meets demand for halibut charters in Areas 2C and 3A.

Comment 21: The rule unfairly restricts guided access to the resource while not considering unguided access. The Halibut Act requires that ''if it becomes necessary to allocate or assign halibut fishing privileges among various U.S. fishermen, such allocation shall be fair and equitable to all such fishermen.'' Many anglers require guided services for financial, health, safety, or other practical reasons. This restriction violates the ''fair and equitable'' provisions of the Halibut Act because guided recreational anglers are being restricted while there is no such limitation proposed for unguided recreational anglers.

Response: This rule is consistent with the fair and equitable requirement of the Halibut Act (*see* discussion above under the heading ''Consistency with Halibut Act''). The fair and equitable requirement of the Halibut Act does not require that different sectors of the halibut fisheries be managed using the same tools or restrictions. In Areas 2C and 3A, the charter halibut fishery is the second largest, in terms of volume of halibut, after the commercial setline fishery. The non-guided sport fishery has the third largest harvest in both areas. Of these three harvesting sectors, the charter halibut fishery has demonstrated growth in participation over time while the commercial and non-guided recreational sectors have declined or remained relatively steady. This information was in the Analysis (*see* **ADDRESSES**) considered by the Council and the Secretary when taking this action.

This rule will not unreasonably restrict guided angler access to the halibut resource. NMFS estimates that 502 charter halibut permits will be issued to charter businesses operating in Area 2C, of which 347 (or 69.1 percent) will be transferable, and 418 charter halibut permits will be issued to charter businesses operating in Area 3A, of which 319 (or 76.3 percent) will be transferable. In Area 2C, the estimated total (for transferable and non-transferable permits combined) angler endorsements on all charter halibut permits is 3,028 of which 2,152 will be associated with transferable permits. In Area 3A, the estimated total angler

endorsement on all charter halibut permits is 3,577 of which 2,834 will be associated with transferable permits.

Available data indicate that charter vessels in the guided sport fishery for halibut in 2008 averaged 36 trips per season in Area 2C and 38 trips per season in Area 3A. Using all endorsements prior to the expiration of non-transferable permits, charter vessels under this rule would have to average 52 trips in Area 2C and 56 trips in Area 3A to supply the aggregate number of fishing trips supplied in 2008. This estimate does not include the potential supply from the community charter halibut permits and endorsements associated with the CQE program. In Area 2C, a potential total of 72 permits and 432 angler endorsements may be added, and in Area 3A, a potential total of 98 permits and 588 angler endorsements may be added under the CQE program. These figures indicate that the charter halibut industry will be able to meet recent charter vessel angler demand levels with the number of permits expected to be issued under this rule. Hence, no restriction in guided angler access to the halibut resource is expected under this rule.

Comment 22: Two of my charter vessel captains will come up a year short of the 2004–2005 qualification period. I truly feel my history in this business is long enough to warrant receiving a moratorium permit.

Response: The limited access system established by this rule allocates charter halibut permits to the person that meets the eligibility requirements during the qualifying and recent participation years. If a sport fishing business meets the eligibility requirements, then it likely would receive one or more charter halibut permits and could continue to hire charter vessel captains as it has in the past. Hence, charter vessel captains who do not meet these requirements would not be eligible for an initial allocation of a charter halibut permit although the businesses that they worked for may be eligible for a permit(s). Nevertheless, persons not eligible for an initial allocation of a charter halibut permit(s), may be eligible to receive a transfer of a charter halibut permit from a person with a transferable permit.

Conservation

Comment 23: The Alaska charter fleet has become overcapitalized in the last decade and is rapidly expanding. The fleet should not be allowed to grow and negatively impact current users and endanger the sustainability of the fishery by exceeding the GHL. Charter operators must become a part of the conservation effort and regulations limiting access are long overdue. NMFS should limit the number of participants in the commercial sport halibut industry and reduce the number of fish they catch. Too many charter businesses are competing for too few customers, which results in overcrowding, a lower quality Alaskan experience for travelers, and increased pressure on local halibut populations.

Response: This rule limits the number of charter vessels that may participate in the charter halibut fishery and the number of charter vessel anglers that may catch and retain halibut on charter vessels. This rule is not intended, by itself, to reduce the charter harvest of halibut or the number of fish each angler may catch and retain.

The IPHC takes into account halibut removals by all user groups in establishing the constant exploitation yield (CEY). Past increases in charter halibut harvests have created conservation and allocation concerns that the Council and NMFS have taken steps to address, but the halibut resource in Area 2C and 3A is being managed in a sustainable manner. NMFS does not have information to verify or refute the claims that charter businesses are competing for too few customers, that halibut fishing grounds are overcrowded, or that charter vessel anglers are experiencing low quality charter fishing trips. Finally, NMFS does not have scientific information to discern local depletion or attribute it to any particular user group.

Comment 24: Near-shore depletion of halibut and gear conflicts have increased since the implementation of the IFQ program for commercial setline fishermen. Before the IFQ program, large commercial vessels fished farther from shore than they do today. Now, under the IFQ program, commercial fishermen do not have to go as far offshore to fish for halibut and there is always some form of gear in our near shore areas off Sitka. Protection of halibut would be improved with short specified open seasons for commercial halibut fishing. Charter fishing is not the problem.

Response: Further restrictions on the commercial fishery would not achieve the objective of this action and are outside the scope of this rule. NMFS does not have sufficient scientific information to discern localized depletion of halibut or, if it exists, to attribute it to a particular user group in Area 2C or 3A.

Comment 25: This rule has nothing to do with conservation or management of the resource and concerns allocation only. Page 18191 of the proposed rule states that, ''the NMFS Assistant Administrator has determined that this proposed rule is necessary for the conservation and management of the halibut fishery.'' The rule places no direct restrictions on guided anglers or their overall harvest, only limits on the number of boats available to transport guided anglers to the fishing grounds. The Environmental Assessment states, ''[t]he proposed action addresses access to the Pacific Halibut resource. There are no expected impacts on the halibut subsistence, personal use, or unguided sport fisheries because these takes are not limited and are not affected by any allocation decisions in other sectors * * * [t]here are no significant impacts on the halibut stock expected from the proposed action.'' National Standard 5 states that ''Conservation and management measures shall, where practicable, consider efficiency in the utilization of fishery resources; except that no such measure shall have economic allocation as its sole purpose.'' How does this action meet National Standard 5?

Response: The National Standards in the Magnuson-Stevens Act (section 301) do not apply directly to this rule because it is authorized under the Halibut Act. Two connections exist between the Halibut Act and the Magnuson-Stevens Act, however. First, the Halibut Act references section 303(b)(6) of the Magnuson-Stevens Act, and second, the Halibut Act uses virtually the same language as National Standard 4 (section 301(a)(4)) of the Magnuson-Stevens Act. The language at National Standard 4 is particularly relevant to this comment in that it requires conservation and management measures that allocate or assign fishing privileges (as this action does) to be ''reasonably calculated to promote conservation'' among other things. The discussion above under the heading ''Consistency with Halibut Act'' describes how this rule meets this conservation standard. In brief, this action is intended to stabilize the charter vessel industry, which will enhance the effectiveness of existing and potential future harvest restrictions. This will assist the IPHC to meet its overall harvest rate targets.

The EA finds that the action will not have significant environmental impacts. The purpose of the EA is to determine whether the action will have a significant impact on the human environment, and whether an environmental impact statement is necessary. The Analysis for this action evaluated the environmental impacts of the action and found that it would not have a significant environmental

impact. This conclusion is not inconsistent with the statement that this action is generally necessary for conservation and management purposes.

Comment 26: NMFS inaccurately implies that this is a conservation measure in the proposed rule. It simply is not. American sportsmen and women have one of the best records when it comes to conservation. Reducing recreational angler access will not increase conservation or reduce the total allowable catch. Those available fish will only be reallocated and harvested by other sectors, primarily the commercial sector.

Response: As discussed above under the heading ''Consistency with Halibut Act,'' this action is reasonably calculated to promote conservation, as required by the Halibut Act. Although biological conservation is not its principal purpose, the effectiveness of other biological conservation measures will be enhanced over time by this action. Conservation and allocation management measures often are inextricably linked. Hence, although the intent of this action is not to directly reduce the halibut harvest by charter vessel anglers in Areas 2C and 3A in the short term, it will enhance conservation of the halibut resource in the long term. *Also see* the response to Comments 21 and 43.

Comment 27: The proposal for the charter limited entry program has been written to specifically list numbers relating to the charter GHL yet leaves out that the longliners receive a larger amount of the halibut quota than charter and private anglers. These numbers would show the imbalance between the charter fleet and the commercial fleet and highlight that limiting the charter fleet is not about conservation.

Response: The IPHC is generally responsible for the conservation of the halibut resource. In Area 2C, the IPHC preliminary estimate of the halibut harvest in 2008 was that the commercial setline fishery harvested 59 percent of the total removals by all sectors (IPHC 2009 Annual Meeting ''bluebook'' Table 1). The second largest harvest in Area 2C in 2008 was made by the sport fishery (guided charter and non-guided combined) at 30 percent of the total halibut removals. Of that 30 percent, over half is harvested by charter vessel anglers. Hence, in Area 2C, about 89 percent of the total halibut removals can be attributed to the combined commercial and sport sectors. By comparison, in Area 3A, the commercial setline fishery for halibut in 2008 was estimated to harvest 70 percent and the combined sport fishery was estimated to harvest 16 percent of the total halibut removals. These fisheries account for about 86 percent of the total halibut removals in Area 3A. Hence, the regulatory burden justifiably falls mostly on the commercial and sport (charter vessel) harvesting sectors. The commercial setline sector has been managed under a limited access system since 1995. Although it is less than the commercial setline fishery, the combined sport harvest (comprised predominately by the charter vessel sector) is not trivial in Areas 2C and 3A.

Comment 28: There is no mention of the amount of wastage and incidental bycatch of halibut caused by the commercial fleet. The issue of bycatch in the commercial setline fishery is important also because the numbers of yelloweye rockfish and lingcod that are pulled off a single commercial set significantly exceed the numbers taken by charter or private anglers, who are only allowed two per person.

Response: The comment raises several different bycatch issues. One is the bycatch of rockfish and lingcod in the commercial setline fishery directed at halibut. The commercial setline fishery is managed under the IFQ program. Regulations implementing this program generally prohibit the discard of rockfish and Pacific cod when IFQ halibut or IFQ sablefish are on board the vessel (§ 679.7(f)(8)). These regulations create an incentive for commercial setline fishermen to avoid areas of high rockfish bycatch. Although bycatch of lingcod is not addressed by the IFQ regulations, a similar incentive exists unless an IFQ fisherman has a market for lingcod. Ideally the bycatch of these species should be adequately controlled by economic incentives. However, this issue is beyond the scope of this rule.

The second issue raised is waste of halibut in the commercial setline fishery for halibut. The preliminary estimate of wastage in 2008 in Areas 2C and 3A amounts to about two percent and three percent, respectively, of the total halibut removals in each area. Wasted halibut have no value to the commercial halibut fishery, which already has a strong economic incentive to minimize this source of halibut mortality.

The third issue concerns the incidental removals of halibut in commercial fisheries targeting other species. The bycatch of halibut in Area 2C fisheries for other species is estimated to account for only three percent of the total removals from that area, and in Area 3A, bycatch was estimated to account for about nine percent of the total removals from that area.

Comment 29: Four comments support the charter halibut moratorium, but suggest that further restrictions are needed to limit charter angler harvest in Southeast Alaska to address localized depletion.

Response: NMFS notes the support for the charter halibut permit program. NMFS does not have sufficient scientific information to discern localized depletion of halibut or, if it exists, to attribute it to a particular user group in Area 2C or 3A. This rule is not designed primarily to limit the harvest by the charter halibut fisheries, but it will make existing and future harvest restrictions more effective because harvest restrictions in other regulations will not be eroded by unlimited growth in the fleet of charter vessels fishing for halibut. In this manner, this rule will contribute to the achievement of the overall target harvest rate of halibut established by the IPHC.

Comment 30: I support limited access as it will help limit over-fishing in the charter sector. The proposed limited entry program provides part of the sustainable management equation. As the proposed rule indicates, the charter sector has exceeded its guideline harvest level in Area 2C for the past 5 years and in Area 3A for the past 3 years. Charter overharvest is contributing to resource declines at both the local and the area-wide level, yet charter operators object that their businesses will be unsustainable if conservation measures are implemented. This downward spiral can only result in resource depletion unless both capacity and effort are curtailed.

Response: This action is not intended to limit charter angler harvest to the GHL in Areas 2C and 3A. By stabilizing growth in the charter industry, however, this rule will enable other harvest control regulations to be more effective.

Comment 31: Charter sport fishing is a very effective form of commercial fishing. The charter sector continues to overfish its quota every year, which is hurting the stocks and is unfair to all halibut fishermen. It is irresponsible resource management to allow this fishery to continue to grow while the commercial setline fishery is limited. Southeast Alaska commercial setline halibut fishermen have seen quotas cut in half the past four years. The annual excessive harvest by the charter sector reduces future harvests of both the commercial setline fishery and of local residents doing sport or subsistence fishing for halibut to feed their families. The charter fishermen should acknowledge their responsibility for conservation. If both the commercial

and charter fleets do not work together, the future of halibut fishing in Southeast Alaska is in jeopardy.

Response: NMFS agrees that cooperation among all fishermen and management agencies is essential to assure sustainable fisheries. The charter industry does not have a catch limit quota as does the commercial setline industry. Instead, the GHL serves as a benchmark for monitoring the charter vessel fishery's harvests of Pacific halibut in Areas 2C and 3A. By itself, the GHL does not limit harvests by charter vessel anglers.

This rule is designed to limit the number of charter vessels that may participate in the charter halibut fishery. Although this rule is not designed primarily to limit the harvest of the charter halibut fisheries, it will make existing and future harvest restrictions more effective because conservation gains from individual harvest restrictions will not be eroded by unlimited growth in the fleet of charter vessels fishing for halibut.

Comment 32: The charter halibut fishermen are fishing during the summer for the most part, a time when the large female halibut (males seldom reach a size over 30 pounds) are in shallow water. Instead of harvesting a cross-section of the biomass as the commercial fleet does, the charter halibut fleet targets the large females that are the future of this resource. This causes great concern for the health of halibut stocks. The biologists have noted the truncated age class structure and lack of large females in the Southeast Alaska halibut stocks.

Response: This comment presumes that large halibut generally are females that contribute disproportionately to the reproductive potential of the stock, and that harvest of these females will substantially decrease future juvenile halibut abundance. To test this presumption in 1999, the IPHC reviewed options for a maximum size limit of 60 inches (150 cm) in the commercial setline fishery and concluded, based on the research at the time, that preservation of large halibut in the setline fishery did not add substantial production to the stock. Applying the limit to the sport fishery would have an even smaller benefit (if any) because the sport fishery harvest is smaller than commercial harvest. Suggestions for a maximum size limit in both fisheries, commercial and sport, could be considered again by the IPHC but are beyond the scope of this rule.

Comment 33: Virtually every fishery in Alaska is sustainably managed under a State ''limited entry'' program. All are viable and allow for new entrants as others choose to leave the fishery. Long term stability in these fisheries has been achieved since the inception of this management plan by Alaska in the 1970s, and world-class fisheries have resulted from the ability of fishery managers to exercise conservation measures through the State's limited entry program. It is inconceivable that any fishery can be efficiently or sustainably managed without all user groups exercising restraint to avoid over-utilization of its resource. There are numerous examples worldwide of fisheries, which can be shown to exemplify the depletion of fish stocks because of over-harvesting practices.

Response: NMFS acknowledges the comment and notes that limited entry has been used as a fishery management tool in Alaska since 1973. Pacific halibut fisheries, however, are not managed by the State of Alaska. The Halibut Act authorizes the Council, with respect to halibut fisheries in and off Alaska, to develop limited access regulations and for the Secretary to approve and implement them, as is done by this action.

Comment 34: We oppose the proposed limited access system to cap the number of halibut charter boats and anglers. Instead, we support an increase in the GHL for the charter fleet in IPHC Areas 2C and 3A.

Response: Changes to the GHL in Areas 2C and 3A are not within the scope of this action and would not achieve the objective of this rule. Changes to the GHL should be suggested to the Council for potential recommendation to the Secretary.

Comment 35: The proposed rule indicates that the Council's policy is that the charter vessel fisheries should not exceed the GHLs; however, no constraints were initially recommended by the Council or imposed on the charter vessel fisheries for exceeding a GHL. Examination of the GHL final rule reveals that the GHL is advisory in nature, requiring no action by the Council, NMFS, or the Secretary other than its annual publication in the **Federal Register**. Since the GHL is not an allocation, there has never been analysis by NMFS or subsequent determination by the Secretary of the fairness and equity of the GHL as an allocation. Until an allocation has been set in compliance with the requirements of the Halibut Act, the limited access program described in the proposed rule is premature and contrary to the law.

Response: The GHLs developed by the Council and approved by the Secretary represent an allocation policy. A final rule implementing that policy was published August 8, 2003 (68 FR 47256). The rule implementing the GHLs was determined to be consistent with the Halibut Act including its ''fair and equitable'' provision. The potential effects of this allocation policy were addressed in an analysis that supported that action.

As explained in the preamble to the proposed rule (74 FR 18178, April 21, 2009) on page 18179, the Council's policy is that the charter halibut fisheries should not exceed the GHLs established for Areas 2C and 3A. However, the GHLs themselves do not limit the harvest of the charter halibut fishery. A separate regulatory action is necessary to impose such a harvest restriction. NMFS promulgated a harvest restriction on the charter halibut fishery in Area 2C most recently on May 6, 2009 (74 FR 21194). That action was determined to be consistent with the ''fair and equitable'' standard of the Halibut Act. Although not directly related to that harvest restriction, this rule also is determined to be consistent with the Halibut Act (*see* discussion above under heading ''Consistency with Halibut Act'').

Comment 36: The claim in the proposed rule that the fishery CEY is the maximum catch for an area's directed commercial fixed gear fishery is false. The fishery CEY is not the maximum catch for an area's directed fishery. The fishery CEY is the basis for IPHC staff recommendations that result from application of a buffering algorithm known as ''Slow-Up Fast Down'' (SUFD) to the fishery CEY in a predictable fashion for each IPHC regulatory area. At the IPHC annual meeting, IPHC commissioners review staff recommendations as well as Conference Board and Processor Advisory Group recommendations. The commissioners then decide on catch limits, which rarely if ever equal the fishery CEY. SUFD also buffers any change in the fishery CEY, be it from a decrease in biomass or an increase in non-commercial removals, in both Slow-Up and Fast-Down years. The statement should be corrected in the final rule.

Response: NMFS agrees with this explanation. The preamble to the proposed rule did not elaborate on the SUFD policy because it is an additional complexity to the IPHC process that is irrelevant to this limited access action. Moreover, the preamble to the proposed rule never stated that the fishery CEY was equal to the commercial catch limit. The principal message in that part of the proposed rule preamble was that the IPHC takes into account all non-commercial sources of halibut mortality in setting the catch limit for the commercial setline fishery. NMFS

acknowledges that the SUFD policy technically is part of this fundamental process.

Economic Impacts

Comment 37: This action seeks to limit the guided angler catch when it should be limiting the commercial catch. This rule limits guided angler catch, leaving commercial longliners with minimal limits.

Response: This rule is not designed to limit the harvest of halibut by charter vessel anglers, but rather to curtail the growth of fishing capacity by the charter halibut fishery. Commercial harvests are heavily regulated by the IPHC and NMFS through the IFQ program. Commercial fishermen have made contributions to resource conservation and, for example, have had their catch limit cut by just over half in Area 2C between 2005 and 2009.

Comment 38: Several comments expressed concerns about the impacts of the growth of the charter halibut fishery on Pelican, Petersburg, and Gustavus in Southeast Alaska (IPHC Area 2C). These comments indicated that growth of the guided sport fishery destabilized the local economy in various ways and in some cases expressed support for this limited entry program. Destabilizing impacts cited include localized depletion, use of community resources by lodges located outside city limits and thus beyond city taxation, displacement of local residents from dock facilities in the summer by heavy charter vessel activity, sliming of docks, and environmental concerns as guided operations began to operate in Glacier Bay National Park in May through September. These concerns included habituating the bears and sea lions and endangering the food source of the killer whale resident population.

Response: Charter industry harvest levels have remained well above the GHL in Area 2C. NMFS acknowledges that the growth of the charter halibut fishery since the late 1990s has led to changes, competition with other resource user groups, and social tension in Southeast Alaska communities. This action does not address all of these concerns. The purpose of this action is to stabilize the charter halibut fishery by limiting the future growth in numbers of charter vessels that may participate in the fishery. NMFS notes, however, that the charter halibut fishery is a legitimate resource user that provides economic benefits to Alaskan coastal communities and to the Nation. Further, this program will not by itself limit the number of charter vessel anglers that may use sport fishing guide services or their harvest of halibut. Instead, this program will define and limit the number of charter operators. Potential future regulations to address the issues raised by this comment will be easier to implement because of this program.

Comment 39: My community has a community quota entity program and is entitled to use it under the final rule but does not have the financial resources to use it effectively.

Response: Specified Area 2C communities may receive up to four community charter halibut permits per community and specified Area 3A communities may receive up to seven permits per community issued to CQEs at no cost. Some costs are likely, however, in establishing and administering CQEs. Growth of a charter halibut fishery beyond the CQE permits provided by this rule, however, would require the purchase of transferable charter halibut permits. When NMFS originally authorized CQEs to acquire commercial halibut or sablefish quota share under the IFQ program, the State of Alaska responded by modifying its fisheries loan programs to provide financing for the purchase of halibut and sablefish quota share by CQEs. The State may adapt this program for loans to allow CQEs to acquire charter halibut permits. Also, CQEs eligible to receive community charter halibut permits may consider joint venture arrangements with private sector partners to share the costs of forming and operating a CQE.

Comment 40: For many years there has been significant discussion and motions regarding charter IFQs, moratoriums, limited entry programs, *etc.* These discussions and motions, in some cases passed and rescinded, have caused confusion in the charter halibut industry. This confusion has likely caused charter operators to hold on to businesses that they would have retired from or would have sold long ago. This affected the natural management of charter operations and is a factor that you have not considered.

Response: The Council and NMFS considered speculative participation in the charter vessel industry when developing this rule. Uncertainty about the intent of the Council and uncertainty about the potential criteria may have led some individuals to participate in the fishery at levels that they hoped would qualify them for a future permit, when they might otherwise not have operated. This type of speculative activity could have led to increased effort levels in the guided sport fishery. The publication of a control date of December 9, 2005 (71 FR 6442, February 8, 2006), was intended to discourage such speculative behavior. The use of minimum participation thresholds to qualify for permits and for transferable permits should further reduce the control of permits by speculative operators.

The Council subsequently developed and recommended this limited access system using 2005 as the last year in which at least minimal participation in the charter halibut fishery will qualify a person for a charter halibut permit. The Council took over a year to develop this program and listened to substantial public testimony. Anyone entering the charter halibut fishery during this time should have been well aware of the speculative risk of doing so.

Comment 41: There has been a steady decline in the number of halibut charter vessels in Valdez. For example, in 1995 there were approximately 35 halibut charter boats operating out of Valdez. Last summer there were fewer than 20. This is not due to the lack of customers, but to the long distances we are being forced to travel to find quality halibut fishing grounds for our clients, and the cost to operate a vessel under these circumstances. The proposed moratorium will cripple the economy for seasonal businesses that rely on tourists and locals alike to come to Valdez and go fishing. If anything you should make provisions to allow a small expansion of charter vessels in Valdez. Similarly, another comment stated that aside from the CQE provision, some growth, particularly in places like Kodiak, Yakutat, and Whittier, should be allowed.

Response: Valdez, Kodiak, Yakutat, and Whittier, Alaska, are in IPHC Area 3A. A charter halibut permit endorsed for Area 3A may be used anywhere within that area. This rule allows for market-based responses to changing fishing conditions in different parts of Area 3A. As halibut fishing conditions or business conditions fluctuate, holders of Area 3A charter halibut permits could enter or leave the charter halibut fishery based in any Area 3A community. Hence, no special allowance for expansion of the charter halibut business is necessary as this rule will not inhibit such expansion. NMFS expects also that holders of charter halibut permits will shift their operations to the communities where the demand for guided angling is greatest and can be served most profitably.

Comment 42: The proposed action will suppress private enterprise and competition, creating monopoly power that will trigger anti-trust laws. The Council, dominated by commercial fisheries interests, is privatizing a public resource by prohibiting free enterprise and allowing selected individuals or

companies to own a part of the public resource to which they are not entitled.

Response: A monopoly is exclusive control of a commodity or service in a particular market that makes possible the manipulation of prices. This action does not create a monopoly in the charter vessel industry. NMFS estimates that about 231 businesses will qualify for charter halibut permits in Area 2C and 296 businesses will qualify for charter halibut permits in Area 3A. These qualifying businesses likely will receive a total of about 502 transferable and non-transferable permits in Area 2C and 418 transferable and non-transferable permits in Area 3A. With this number of businesses competing to provide sport fishing guide services for halibut fishing in each area, none is likely to be able to control the market for these services or manipulate prices. Further, this rule has an excessive share provision that prevents any one business or individual from acquiring more than five permits by transfer (*see* discussion above under the heading ''Consistency with Halibut Act''). Although more than five permits may be initially allocated to a business, consolidation within the charter halibut fishery will be no more than it was during the qualifying and recent participation years. Thus NMFS expects that the charter industries in Areas 2C and 3A will be competitive, and no anti-trust issues are expected.

This rule does not privatize the halibut resource. A charter halibut permit creates no right, title, or interest in any halibut before the halibut is harvested by a charter vessel angler on the vessel for which the operator holds a permit. A charter halibut permit confers no right of compensation to the holder of the permit if it is revoked, limited, or modified. A charter halibut permit is considered a grant of permission to the holder of the permit to engage in the charter halibut fishery by allowing charter vessel anglers on the vessel operated by the permit holder to catch and retain halibut. Anglers may continue accessing the halibut resource through non-guided sport fishing which is not affected by this rule.

This action does not interfere with free enterprise. It provides use privileges that, with respect to transferable charter halibut permits, create a climate for the effective functioning of a free enterprise market for sport fishing guide services. Markets function well when they are founded on clearly defined rules that explain the nature of the privileges each market participant has to the scarce resources needed to operate their businesses. This rule creates permits that will provide fishing privileges and provide the charter halibut fishery stability necessary for effective conservation and management of the halibut resource.

Comment 43: This action will limit the number of guided charter operations and the ability of this industry to meet the demand for guided charter fishing. The limit on supply of guided angling opportunities will mean that fewer persons will be able to take advantage of guided services and that the cost of these services will increase. This will reduce the benefits to anglers and prompt some anglers, who would otherwise have used guide services, to substitute less attractive guided or non-guided fishing activity. Reduced guided angler activity will have adverse economic impacts on the guided industry and on regions of Alaska where guides are based. There will be fewer jobs and less income, and this will hurt local businesses that depend on revenue generated by charter operations.

Response: Although the number of vessels with charter halibut permits operating under this rule is limited, their passenger carrying capacity exceeds current 2008 levels of participation. The numbers of charter halibut permits and associated endorsements issued under this rule create significant opportunities for charter halibut operations to expand their capacity to meet existing and higher levels of angler demand for guided halibut fishing.

Opportunities likely exist for operators to increase the number of anglers they carry under this rule. NMFS expects that, if charter vessel angler demand warrants, operators will increase investments in their fishing vessels to increase their fishing efficiency, the average number of clients they carry (subject to the endorsement and other licensing restrictions), and the number of days each season that their vessels operate.

The Analysis (*see* **ADDRESSES**) indicates that the number of permits issued under this rule will allow permitted vessels to meet 2008 levels of charter trips by increasing the average number of trips they make in Area 2C from 36 to 52, and in Area 3A from 38 to 56. These levels of increased activity are within the capacity of the charter halibut fleet that will have permits under this rule. Further increases in numbers of trips also are possible. Members of the charter vessel industry indicated in public testimony to the Council that the charter fishing season lasts for about 100 days. Many of these trips would be half day trips so that multiple trips might be made per day. Even after assuming for days off due to bad weather and mechanical breakdown, it is likely that the number of days fished could double. Hence, it is not apparent that this rule will result in constraining operations of charter vessels with charter halibut permits or in constraining guided angling opportunities (*see* also response to Comment 21).

As discussed in the Analysis, NMFS expects, over a wide range of demand conditions, that increasing the number of passengers in a trip, or increasing the number of trips in a season, can be done at relatively constant incremental cost. This suggests that charter halibut permits under this rule can meet demand without price increases.

Comment 44: Halibut are a common property resource and everyone is entitled to make a living off a resource that belongs to no one person or group. Management is necessary but it should not stifle capitalism. This limited entry program is solely about taking more away from the general public who have a right to this resource. Guided angler caught halibut are worth five times as much to the State and fisherman as a commercial fish. Management should seek to maximize the value of the fish.

Response: NMFS agrees that the Pacific halibut resource in Areas 2C and 3A is a common property resource. As such, all resource users should be benefitted by fishery management policies implemented by NMFS. This action does not change the allocation of halibut between sport or commercial users. The U.S. Government is authorized to regulate access to this resource consistent with the Halibut Act and other applicable law. This action creates a limited set of access rights or privileges for a resource that cannot support unlimited access. Any citizen of the United States will be free to enter the guided angling business in Alaska and to guide charter vessel anglers in harvesting halibut by purchasing the relevant permits. NMFS estimates that about 231 charter vessel businesses will qualify for charter halibut permits in Area 2C and about 296 charter vessel businesses will qualify for charter halibut permits in Area 3A. Many of these businesses will qualify for transferable charter halibut permits, and a robust market for these permits is expected to develop. Therefore, this rule is not likely to stifle capitalism.

The public's access to the halibut resource is not diminished by this rule. The general public may access this resource as it does now through purchases of halibut in commercial markets (*e.g.*, grocery stores, restaurants), and through non-guided and guided sport fishing. The intent of

this rule is to stabilize the growth of charter vessel operations in the guided sport fishery for halibut. Relative to the present, this rule will not diminish charter vessel angler opportunity in the foreseeable future. Instead, it is designed to restrict the entry of additional charter halibut operations.

Comment 45: The analysis in the EA/RIR/IRFA is inadequate. There is no information about the adverse impacts this action will impose on a large percentage of the operations in the fleet. It does not include information about operations that entered the business in the years from 2006 to 2009. The IRFA does not provide adequate information on the impact to operations that will not receive permits under this rule. It should include information on lost revenue or expenses to all entities involved. Not allowing small businesses starting after 2005 to compete in the fishery is inconsistent with the Regulatory Flexibility Act.

Response: The Analysis (*see* **ADDRESSES**) estimates numbers of operations affected by this action, and examines the costs and benefits of the action accruing to different sectors. Much of the Analysis is qualitative, reflecting the limited information that exists on the charter vessel business generally and on the angler demand.

The Council's recommendation to the Secretary looked primarily at charter vessel businesses that were active during the qualifying years of 2004 and 2005. These were the participants that the Council sought to confirm in their business patterns when it made its decision to recommend this action in 2007. An ''Active'' charter business was determined to be one that made at least five logbook trips in at least one of the two qualifying years and at least five logbook trips in the recent participation year (2008). This two-tier qualification requirement was designed to assure that limited access permits were allocated to historically active charter businesses that were still active when the program was implemented. The five-logbook-trip minimum was chosen in part because it is a relatively low standard of activity. A charter vessel business with less than five logbook trips in a year is not likely in most instances to generate a significant annual income. The Council's Analysis that was made available to the public for review with the proposed rule (74 FR 18178, April 21, 2009) did not consider the effect of the participation requirement in 2008 because that year had not yet occurred at the time of Council action. However, the Council was aware that the numbers of businesses receiving permits under this rule would be no more than those that were active in 2004 or 2005, and likely would be somewhat less as some firms active in 2004 and 2005 left the charter business during 2006 and 2007.

The Council and Secretary reasonably assumed that the number of businesses that would enter the fishery during 2006 through 2009 would be small. Such businesses contemplating entry into the charter halibut fishery during those years should have been aware of the control date of December 9, 2005, set by the Council and published by the Secretary on February 8, 2006 (71 FR 6442). Being put on notice of potentially not qualifying for initial allocation of charter halibut permit(s), businesses entering the fishery after the control date should have structured their operations on the assumption that they may be in the charter halibut business temporarily. Alternatively, these businesses could have planned on purchasing one or more transferable charter halibut permits after they were issued. Other than assuming this outcome, no basis existed for estimating the number of businesses that would make a post-control date entry decision.

More recently, NMFS has prepared a supplementary analysis, with estimates of the number of businesses that are expected to qualify for charter halibut permits based on the 2004 and 2005 qualifying years and the recent participation year of 2008. The RIR and RFA analyses have been updated to reflect this new information (*see* **ADDRESSES**). In summary, the updated analyses indicate that about 231 businesses are expected to qualify for charter halibut permits in Area 2C and about 296 are expected to qualify in Area 3A. An estimated 115 businesses were active (*i.e.*, at least five logbook trips) in Area 2C in 2008 but not during either of the qualifying years indicating that these businesses may have entered the charter halibut fishery during the period 2006 through 2008. The comparable estimate of new entry businesses in Area 3A is 111.

Comment 46: Will the government offer a compensation package of vocational retraining, financial aid, or other compensation to guided charter operators who will not be able to continue in this business? This compensation may be appropriate since these persons will no longer be able to honor private agreements with clients, and will lose the value of vessels purchased for the fishery.

Response: No compensation is planned or provided in this rule for persons that do not qualify for a charter halibut permit. No legitimate investment-backed expectations exist for businesses that profit from free access to a public fishery resource.

Comment 47: By designating certain permits as non-transferable, the proposed rule seeks to create a second class of charter operators who can operate but cannot transfer their permit. No analysis has been made of the losses involved in selling surplus charter halibut fishing assets without a permit. A regulation designed solely to benefit the commercial sector to the disadvantage of a small number of charter operators is unconscionable. This classification of charter permit holders does not meet the requirements of the Halibut Act and should be removed from the rule.

Response: As discussed under the heading ''Consistency with Halibut Act,'' this rule was determined to meet the requirements of the Halibut Act. The purpose and rational basis of this rule are described above and in the preamble of the proposed rule published April 21, 2009 (75 FR 18178).

The non-transferable permits provision of this rule provides a temporal buffer to reduce the overall impact of this rule on persons that demonstrated relatively low levels of activity. Qualifying businesses will be issued transferable permits for vessels that made 15 or more logbook trips in one of the qualifying period years and in 2008. Participation in the charter halibut fishery during these years at between five and 15 logbook trips indicates a relatively low level of participation in the guided charter business. However, these businesses will qualify for non-transferable charter halibut permit(s). Businesses that receive an initial allocation of non-transferable permits will be able to continue their charter halibut operations as they previously had done, or may increase their participation in the charter halibut fishery by acquiring additional permits by transfer.

Holding non-transferable permits does not destroy the total value of business assets. A person or business with non-transferable permits may transfer ownership of vessels, fishing equipment, and real estate associated with the business to other persons that wish to enter the business and acquire charter halibut permits by transfer. Alternatively, the assets of a charter business could have value to persons that do not need charter halibut permits because their business plan does not involve the harvest of halibut. A business issued non-transferable permits may also purchase transferable permits.

Comment 48: If this proposal is approved it will set a precedent and

could potentially affect thousands in the charter industry. I have been told by NMFS that there are no other charter limited entry programs currently in effect in the United States.

Response: This rule does not establish the first limited entry management of charter vessels. A moratorium for charter vessels and headboats operating in Federal waters of the Gulf of Mexico was effective beginning on June 16, 2003 (67 FR 43558, June 28, 2002).

Comment 49: I believe that this limited entry program is going to be a ''free'' government retirement package for many who have just held on for this permit and will immediately sell it. Their business will become more valuable overnight while other businesses will not. To illustrate this point, the State of Alaska issued a Legislative Resolve No. 5 in 1983 that stated ''a share system could result in the concentration of ownership of the fishery resource in the hands of a few fishermen,'' that it ''could encourage speculation and the making of exorbitant profits at the expense of Alaska fishermen,'' and that it ''could tend to eliminate competition among halibut fishermen.'' The State Constitution does not support a limitation on charter vessels.

Response: Some persons may have participated in the charter halibut fishery before 2005, solely in a speculative effort to acquire permits should a limited entry program with transferable permits be adopted. Speculative entry is a common concern when limited entry programs are under consideration. The Council addressed this concern in two ways. First, to discourage speculative entry during program development, the Council adopted a control date of December 9, 2005, at the start of its deliberations. Announcement of this control date by the Council and Secretary (71 FR 6442, February 8, 2006) notified the public that anyone entering the charter sport fishery for halibut after the control date would not be assured of future access to the fishery if a management regime that limits the number of participants is developed and implemented. The Council continued to publicize this control date through the development of this rule.

Secondly, the Council adopted a minimum participation standard for initial allocation of charter halibut permits. A qualifying business may receive a transferable permit only if the business has a record of making at least 15 logbook trips in one year of the 2004–2005 qualifying period, and in 2008. The reasons that each person has for participating in the guided sport fishery are highly subjective, and NMFS does not have information available to discriminate among resource users on the basis of their reasons for participation.

This rule is being implemented under the authority of the Halibut Act, not the Alaska Constitution. Legislative resolutions by the Alaska legislature are not legally binding on this action. However, allowing excessive shares of halibut fishing privileges to be acquired is prohibited by the Halibut Act. The excessive share provision in this rule that limits persons to five permits (with some exceptions) assures that excessive consolidation will not occur and competition among operators will remain.

Comment 50: The proposed rule states the intended effect of this program is to curtail growth of fishing capacity in the guided sport fishery for halibut. This rule will not only curtail growth, it will eliminate it without compensation. Based on the qualifying criteria, the immediate effect will reduce the fleet size by an estimated 10 percent now, and over time as non-transferable permits are retired, an additional 15 percent of the current fleet will cease to exist. This does not include the ''private agreement'' and ''same vessel'' clauses that will eliminate even more vessels. Although there may be enough capacity in the fleet to meet current demand, with such a large reduction during peak periods anglers in the future may not be able to find an available charter.

Response: NMFS has supplemented the Council's earlier analyses using new information on charter halibut participation levels in 2008, the recent participation year (*see* Section 2.8 of the Analysis at **ADDRESSES**). The supplementary analysis takes into account the anticipated effect of the recent participation year reducing the number of charter halibut permits issued below a number based solely on participation in the qualifying years of 2004 and 2005.

Based on the earlier analysis and its supplement, the charter halibut industry will have sufficient capacity to meet existing angler demand and to meet some increases in that demand (*see* responses to Comments 21 and 43).

Comment 51: The proposed control date for qualifying for the limited entry halibut charter vessels is December 9, 2005. I respectfully request the control date be moved up until at least 2008 so companies that started after 2005 can qualify for a permit. If our company is unable to obtain a limited entry halibut permit for our charter vessel, our lodge would be forced to go out of business. Presently we have employees, vendors, and tourists from around the world and that would all be adversely affected if we were forced to close. Local, State, and Federal governments would also be adversely affected due to the loss of revenue from utilities fees, fuel taxes, payroll taxes, bed taxes, various license fees, and of course payroll taxes. With the present economic conditions, a number of charter fishing boat and lodge operators will be forced out of business this year regardless of the limited entry proposal. The 2004–2005 qualifying period is not only damaging to the economy, but is also extremely damaging to the charter businesses that have started operating since 2006. All charter operations already vested in the industry should remain in business.

Response: The control date, December 9, 2005, was recommended by the Council and published by NMFS in the **Federal Register** on February 8, 2006 (71 FR 6442). The purpose of the control date announcement was to announce that anyone entering the charter sport fishery for halibut in and off Alaska after the control date will not be assured of future access to that fishery if a management regime that limits the number of participants is developed and implemented. The Council and NMFS intent in making the control date announcement was to discourage speculative entry into the charter halibut fishery while potential entry or access control rules were being developed by the Council and, if approved, implemented by the Secretary.

The notification of a control date does not compel the Council or the Secretary to use that date. In this case, the Council used the date in part by recommending a two-year qualifying period that ran through the end of 2005. The Secretary has approved the Council's recommended charter halibut moratorium recommendation which includes this qualifying period. The comment actually is seeking a new, more recent qualifying period. This cannot be done under the approved policy of 2004 and 2005 as the qualifying period without revising the entire Council recommendation. A more recent qualifying period would be a significant change to the recommended charter halibut moratorium policy and this rule. NMFS has determined that such a significant change is not warranted and the approved policy and this rule are consistent with the Halibut Act and other applicable law.

Moratorium Elements

Comment 52: If limited entry is adopted, the permits should not be allowed to be sold when they are no

longer used. A lottery should be held and the winner would then have the same opportunity as the first person.

Response: This rule does not include a lottery to distribute charter halibut permits when they are no longer used or on a periodic basis. Such a lottery would be a substantial change from the policy recommended by the Council and approved by the Secretary. However, this suggestion could be made to the Council for its consideration as an amendment to this rule in the future. This rule implements the Council's original recommendation to establish a market-based system for permit transfers. The Council and Secretary determined that this would be more reasonable and efficient than to have a continual permit-application and permit-award process by the government.

Comment 53: I recommend that a permit be used for five years before it can be sold. This would keep people from hanging on so they can get a permit to sell. This would thin out the crowd and a new business would be forced to use the permit before it gains any value. Any charter business that is over five years old would be exempt.

Response: The proposal to require some use of a charter halibut permit before transferring would inhibit the exit and entry of charter halibut businesses and could increase costs of doing so. Requiring some permit use before transfer also would add administrative costs to this program. However, this suggestion could be made to the Council for its consideration as an amendment to this rule in the future.

Comment 54: Several comments requested clarification of how NMFS will determine the number of transferable moratorium permits each charter business will receive if they operated different vessels in the qualification period and the recent participation period. Many charter operators have replaced older vessels with newer ones for safety or other business reasons. The proposed rule provided that an applicant would receive a transferable permit for each vessel that made at least 15 trips in the applicant selected year and at least 15 trips in the recent participation year. However, the proposed regulatory text would require these minimum number of logbook trips to be made on the ''same vessel.'' It would be inconsistent with Council intent for NMFS to require that the same vessel be used in both the qualifying and recent participation periods. The Council did not intend to exclude a charter operator from the moratorium for upgrading or replacing a vessel for safety reasons as long as it did not increase capacity. Requiring the same vessel to be used in the qualifying period and the recent participation period also could result in these businesses not meeting the qualifications for a moratorium permit. In the final rule, NMFS should provide clarifying language for this statement and in the proposed regulations.

Response: NMFS agrees that the ''same vessel'' language in the proposed rule at § 300.67(b)(2)(ii) and (iii) should be clarified. NMFS has added text to § 300.67(b)(2)(iii) stating that the vessel used to meet the 15-trip criterion during the recent participation period (2008) need not be the same vessel used to meet the 15-trip criterion during the qualifying period (2004 or 2005) (*see* discussion below under ''Changes from the Proposed Rule''). NMFS agrees that the Council did not intend to disadvantage charter businesses for upgrading or replacing vessels.

The same vessel does not need to be used in both years—a qualifying year and the recent participation year—to meet the fishing trip criteria for a transferable charter halibut permit. However, the minimum 15-trip criterion in at least one of the qualifying years had to be met by a single vessel and the 15-trip criterion in 2008 had to be met by a single vessel (either the same or different vessel as used in 2004 or 2005). Upgrading a vessel, whether for safety or other reasons, will not prevent a person from qualifying for a transferable permit under this rule if the 15-trip criteria are met.

NMFS will rely on the ADF&G Saltwater Logbook record of fishing trips by each charter vessel to determine the qualifications for transferable or non-transferable charter halibut permits during the qualifying and recent participation period years. A major breakdown of a charter vessel within one of those years could prevent a business from qualifying for a transferable or non-transferable permit. Such cases may be appealed pursuant to 50 CFR 679.43.

Comment 55: What if a business replaced a vessel between 2004 and 2005? Does the applicant still have the ability to choose its ''best year'' in the qualifying period if it used different vessels in the qualifying period and the recent participation period?

Response: Yes. The Council used the term ''best year,'' but the proposed rule used the term ''applicant-selected year.'' NMFS determined that the applicant should choose between 2004 or 2005 for purposes of determining the applicant's number of transferable or non-transferable permits.

Comment 56: The proposed rule regarding non-transferable and transferable permits uses the phrase ''same vessel'' for transferable permits, but not for non-transferable permits. What is the reason for this?

Response: The Council specified a higher standard of participation for charter businesses to qualify for a transferable permit. This standard requires that a charter business demonstrate its participation in the charter halibut fishery by operating a vessel that made at least 15 bottomfish logbook trips in a qualifying year and a (potentially different) vessel that made at least 15 halibut logbook trips in the recent participation year. This ''same vessel'' standard is not required, however, to meet the minimum logbook fishing trips criterion needed for a non-transferable permit. For example, a charter halibut business that used five separate vessels that made one logbook trip each in 2005 and again in 2008, will qualify for one non-transferable charter halibut permit. A different charter halibut business that used three separate vessels that made five logbook trips each in 2005 and again in 2008 (totaling 15 trips in each year), will not qualify for one transferable charter halibut permit because at least 15 logbooks the trips were not made on the same vessel in 2005 and another single vessel in 2008. This business will qualify, however, for three non-transferable charter halibut permits. Meeting the ''same vessel'' standard for a transferable permit demonstrates a higher level of participation in the charter halibut fishery than is required for a non-transferable permit, which appropriately reflects the higher value of a transferable permit.

Comment 57: Will NMFS still look at both qualifying years (2004 and 2005) for the angler endorsement number if the applicant used different vessels in the qualification period and the recent participation period?

Response: Yes. This rule stipulates that a charter halibut permit will be endorsed for the highest number of charter vessel anglers reported on any logbook fishing trip in the qualifying period, except as provided at 50 CFR 300.67(e). The qualifying period is the sport fishing season in 2004 and 2005. Hence, the angler endorsement is determined regardless of the recent participation period (2008). Using a vessel in 2008 that is different from the one used in one or both of the qualifying years will have no effect on the angler endorsement determination.

Comment 58: All permits should be transferable.

Response: NMFS disagrees. The two-tiered qualification criteria is designed to allow a business with relatively less participation in the charter halibut fishery to continue its operation while reducing potential harvesting capacity over time by not allowing that permit to be transferred to another entity. On the other hand, a business with relatively more participation in the charter halibut fishery is allocated a transferable permit that allows new charter halibut businesses to enter the fishery by allowing the market for charter halibut permits to allocate access to the fishery in the future.

This policy reflects the intent of the Council and Secretary to balance the objective to reduce fishing capacity in the charter halibut fishery and its objective to minimize disruption to the charter fishing industry. If only transferable permits were initially allocated based on a relatively high minimum number of logbook fishing trips, the sudden reduction of charter halibut operations would be too disruptive to the industry. On the other hand, if only transferable permits were initially allocated based on a relatively low minimum number of logbook fishing trips, then little or no reduction in fishing capacity would be realized. Over time, as the non-transferable permits exit the fishery, only transferable permits will remain.

Comment 59: Eligibility considerations should be established for those who may be interested in purchasing a transferable permit after the limited entry program is established. This would be compatible with the seven factors in section 303(b)(6) of the Magnuson-Stevens Act, which the Secretary must consider in approving a limited entry program. These seven points could be used to establish ''eligibility criteria'' for receiving a transferred permit. The criteria could give priority to those who have committed themselves to the industry and may have a history in running or crewing on vessels for charter businesses. This group of people often gets lost in resource rationalization programs; this needs to be avoided as new rationalization plans develop. The criteria can also be tailored to help tie owners and operators to the Alaskan community they are based in, improve local economics for the industry, and still provide fair and equitable access based on intentional rather than passive participation that comes with absentee ownership.

Response: This rule establishes some criteria to qualify for receiving a transferred charter halibut permit. These criteria are listed at § 300.67(i)(2) of this rule. In brief, the criteria require U.S. citizenship (or 75 percent U.S. ownership of a business); a complete transfer application; a determination that the transfer will not cause the person receiving the permit(s) to exceed the excessive share limitation (unless an exception applies); the parties to the transfer do not owe NMFS any fines, civil penalties, or any other payments; and the transfer is not inconsistent with any sanctions. This rule includes no Alaska residency requirement because the Halibut Act prohibits discrimination between residents of different States. The Council could consider further criteria for transferring permits to achieve socioeconomic objectives in future actions.

Comment 60: The April 25, 2008, EA/RIR/IRFA analyzed 1, 5, 10, 15, and 20 minimum logbook trips but suggests that a five logbook-trip minimum requirement would allow up to 35 more vessels to operate in Area 2C over 2005 levels. Although it is unknown how many of these vessels would meet the recent participation requirement, this permit qualification criterion may not immediately meet the NMFS stated objective to ''limit the number of participating charter vessels.'' Moreover, with no limit on the number of trips a permitted business can take within a season once permitted, permitting those businesses that meet the minimum criteria of five logbook trips during the qualifying period and five logbook trips during the recent participation period will likely allow for increased fishing capacity given increasing client demand. We request that NMFS implement the option for a minimum of 10 logbook trips for permit qualification in lieu of the five logbook trip minimum.

Another commenter suggested that 30 to 50 days of logged halibut trips would be a more appropriate requirement.

Response: The design of the limited access system established by this rule will likely reduce the number of vessels in the charter halibut fleet relative to the fleet size in 2005, despite the relatively low participation standard of five logbook trips for a non-transferable permit. Table 46 in Section 2.8 of the Analysis (*see* **ADDRESSES**) indicates that 646 vessels participated in the charter halibut fisheries in Area 2C during 2005. Under this rule, a total of 502 charter halibut permits are expected to be issued for vessels in Area 2C. This represents a decrease in the potential charter halibut fleet size in Area 2C of about 22 percent. Comparable estimates for Area 3A are that 564 vessels participated in the charter halibut fisheries during 2005, and a total of 418 charter halibut permits are expected to be issued under this rule. This represents a decrease in the potential charter halibut fleet size in Area 3A of about 26 percent. A higher participation standard would reduce the fleet too fast and be too disruptive to these fisheries.

Comment 61: Leaving paid skippers out of the permitting issuance is wrong. An independent contractor who has operated vessels in all the proposed qualifying years for more than 50 days should qualify for a permit.

Response: The proposed rule for this action (74 FR 18178, April 21, 2009) described the rationale for limiting eligibility to receive a charter halibut permit to charter business owners that were licensed by the State of Alaska. In brief, eligibility for charter halibut permits is limited to the holder of an ADF&G business owner license because information on participation in the charter vessel fishery is organized by this license. Also, paid charter vessel skippers or guides will continue to be in the same position they were in before this rule by being able to hire their services to charter businesses.

Comment 62: The charter halibut moratorium provisions for small communities will not benefit some of these businesses due to the complexity of the provisions and the qualifying requirements. The comment offered alternative community qualifying criteria and suggested that NMFS remove the requirement for communities to form a Community Quota Entity to qualify for a community charter halibut permit.

Response: NMFS appreciates alternative suggestions to promote charter vessel businesses that operate in rural communities. However, the proposed community provisions in the proposed rule are unchanged in the final rule. This rule meets the intent of removing a new economic barrier for small isolated communities with undeveloped or underdeveloped charter industry to participate in the charter halibut fishery.

The rationale that governed the development of the community provisions is one of balance. The Council and the Secretary are attempting to balance the economic development interests of rural communities with the overall intent of this action to curtail growth of fishing capacity in the charter halibut fishery. A more lenient policy could allow too many charter businesses to enter the fishery and a more restrictive policy could allow too few. If the Council's approved community policy needs to be adjusted in the future, it can entertain proposals to do so and make regulatory

amendment recommendations to the Secretary.

Comment 63: My concern is fairness related to urban and rural businesses in deciding who receives a transferable permit. A rural charter business faces much more difficulty in maintaining and operating a business than their urban counterpart. The rule for participation in the charter halibut fishery should be revised to allow for transferable permits to be issued to rural charter businesses.

Response: This rule is not revised based on this comment. This rule allows a market-based system of allocating access to the fishery after the initial allocation of permits. With the exception of community charter halibut permits, transferable and non-transferable charter halibut permits may be used anywhere within the IPHC area for which they are designated. Insufficient information exists to distinguish between rural and non-rural charter businesses for purposes of transferable permit qualifying criteria. Hence, these criteria are the same for rural and non-rural charter businesses.

Comment 64: I strongly oppose this proposal and ask that you reject it or restructure it to include anyone that was licensed during the qualifying period. I am a crab fisherman and a charter boat owner and captain with a very large investment, both in money and time, in my business. The business is my livelihood. I do not take enough halibut charters in the year to qualify under the proposed rule. I take people out for a variety of things, including guided fishing, and I will lose business without the ability to offer halibut fishing. I need both crab and halibut charter incomes or my business will fail.

Response: The minimum participation number of logbook trips was the second lowest participation standard considered by the Council and the Secretary. Participation in the charter halibut fishery at lower levels is not indicative of a significant commitment to this fishery, and including participants at lower levels would run counter to the objectives of this rule. Businesses that do not qualify for an initial allocation of a charter halibut permit may choose to alter their charter vessel business plan to focus on other species, acquire a transferable permit to expand operation in the charter halibut fishery, or leave the charter industry to focus on other commercial fisheries or ventures. Alternatively, the business could seek a special community charter halibut permit.

Comment 65: The eligibility years are unfair and reward certain people. I would qualify for the moratorium but I do not think it is right.

Response: NMFS has determined that this rule is fair and equitable as discussed above under the heading ''Consistency with Halibut Act.''

Comment 66: I am in favor of limited entry with the 2004 and 2005 qualifying years, but opposed to the recent participation period. That is why I bought my business. My two sons have completed the required time to get their captain's licenses and are working toward the day they can take over the business. All my planning and their hard work will come to naught if this plan is adopted. Please reject the 2008 qualifying date and keep with the original 2004 and 2005 dates, so we can maintain our business and support the community.

Response: The Council chose the qualifying period and recent participation period in consideration of historical dependence and recent participation in the charter fishery, two factors that the Council and Secretary must take into account pursuant to the Halibut Act. Demonstrating at least minimal participation during both periods is critical to the design of this limited access system. Persons not eligible to be an initial recipient of a charter halibut permit may obtain permit(s) through transfer.

Comment 67: Two comments questioned the description of the charter halibut permit program in the proposed rule as a moratorium. The comments cite several instances where Council language refers to its action as a moratorium and in one case refers to it as an interim measure of stability in the guided sport halibut sector during the step-wise process toward a long-term solution. Why, if the Council submitted a moratorium to be published as an interim solution, is the Secretary proposing a permanent program in its proposed rule?

Response: The proposed rule (74 FR 18178, April 21, 2009) at page 18182 speaks to this point. In essence, a moratorium on entry into a fishery limits entry into that fishery. Hence, a moratorium is a limited access system in which permits are initially limited to those participants that meet specified criteria. This rule implements such a limited access system and it will remain in effect until it is changed or replaced through subsequent Council and Secretarial action. Such subsequent action may involve refinements to this limited access system or it may remove or replace this limited access system with a different limited access system. The Council has indicated that this rule is an important step toward a comprehensive scheme to allocate the halibut resource among users of the resource. It is intended to have a stabilizing effect on the charter halibut industry while a comprehensive system is developed and implemented that will work in concert with other management measures.

Comment 68: This program should have a sunset clause. The proposed rule should not be passed or should have the control date changed to a sunset clause. Also, logbooks were changed in 2006 to allow for the collection of data specific to halibut. This will help capture the necessary data to keep the Council and NMFS informed regarding charter fleets and harvest levels.

Response: A date for ending this limited access system—commonly called a sunset date—was never contemplated by the Council or Secretary because the system is perceived as necessary now and in the future. Changes to the system, including removing it, are possible through the development of a separate regulatory recommendation by the Council for the Secretary to review. A control date was published by the Council and the Secretary on February 8, 2006 (71 FR 6442). The control date notice announced to the public that no person was assured of future access to the charter halibut fishery if that person entered the fishery after December 9, 2005. A control date and a sunset date are not the same. The former signals the start of a potential limited access system, and the latter refers to a future expiration date for a regulation or program. This rule is not intended to end at a predetermined date. Instead, it is designed to be a step toward establishing a comprehensive program of allocating the halibut resource among resource users.

NMFS is aware of the change in logbook reporting required by ADF&G. This is explained in the preamble to the proposed rule (74 FR 18178, April 21, 2009) on page 18185. In 2004 and 2005, ADF&G required charter businesses to report bottomfish effort for each logbook trip. ADF&G further instructed logbook users that bottomfish fishing effort included effort targeting halibut.

Comment 69: Limits should be based on fleet size per community and limit fleet size generally for Area 2C. In Gustavus, nine seasons ago there were 19 operating charter boats; now there are 24. While our growth has been very small over 10 years, other areas have increased significantly. Some areas within Area 2C may need to be capped, whereas other areas should have a maximum capacity ceiling for halibut guide boats. Another concern is

absentee ownership. Many of the charter business owners do not even fish. A community-based cap would prevent more people like this, or new people, from overwhelming specific communities.

Response: With the exception of the community charter halibut permits, the Council did not specify how many permits should be allocated to individual communities. Permit limits for specific communities would be more complex and more expensive to administer than this rule because it contemplates a separate limited access system for each community. However, such proposals could be made to the Council.

Comment 70: The ''recent participation period'' should be fixed as either 2007 or 2008. Another comment suggested that 2007 should be used for the recent participation period because the nationwide economic downturn caused a number of cancellations in 2008 and recorded logbook trips fell over 50 percent for that year.

Response: This rule establishes 2008 as the recent participation period, or recent participation year, for purposes of qualifying for a charter halibut permit. The purpose of this requirement, along with the qualification years of 2004 and 2005, is to ensure that both historical dependence and recent participation are recognized, two factors that must be taken into account under the Halibut Act. The approved Council recommendation contemplated that either 2007 or 2008 could be the recent participation year, but refers to the ''year prior to implementation.'' NMFS interpreted this phrase to mean the most recent year for which a full year of logbook fishing trip data are available, and therefore established 2008 as the recent participation year.

Comment 71: I support the proposed regulations. The tremendous growth of the guided sport charter industry over the past decade has put serious pressure on fish stocks. I would like to see more reduction in permits than proposed but allowing special consideration for lodge operators who have a larger investment and contribute more to the economy. Perhaps a buy-back program makes sense for reducing the total outstanding permits or increasing the minimum number of trips in the qualifying years.

Response: This action stabilizes the guided charter fleet by capping the number of separate vessels that may be operated. The Council recommended the use of non-transferable permits to reduce the numbers of charter halibut permits over time. NMFS estimates that 502 permits will initially be issued in Area 2C, and that this will eventually decline to 347 permits as non-transferable permits expire. An additional 72 permits may be issued to CQE groups in Area 2C. In Area 3A, an initial 418 permits should decline to 319 as non-transferable permits expire. An additional 98 permits may be issued for CQEs in Area 3A.

The Council's use of non-transferable permits was meant to lead to the withdrawal from the fleet of operations that had only minimal participation without imposing a serious burden on their traditional operations in the short run. Allowing non-transferable permits to expire over time will prevent these operations from increasing participation in the long run. This rule accommodates the special needs of lodge operations by (a) issuing permits to businesses, (b) allowing them to hold multiple permits up to the five-permit excessive share limit, (c) allowing businesses to hold initially allocated permits in excess of the excessive share limit, and (d) allowing businesses to hire guides and vessel operators to use the permits.

This rule lays the groundwork for future management measures, which might include buyback, individual quotas, or further measures to modify the numbers of permits. Such proposals should be made to the Council. After Council development and analysis of such proposals, changes may be recommended to the Secretary for a separate regulatory amendment.

Comment 72: A commenter has noted an apparent conflict between text in the preamble to the rule stating that charter halibut permits would not be awarded to persons who purchased a charter fishing business that met some or all of the participation requirements but who themselves did not meet that participation requirement, and text stating that NMFS would have no obligation to determine the owners of a corporation or members of a partnership that successfully applied for a permit. The commenter points out that a person could have bought a business after the 2004–2005 qualifying period, and before the 2008 recent participation period. Without checking business ownership, it would be impossible to know if the business owners were the same in both periods.

Response: This apparent conflict is due to confusing a business with its owners. The initial allocation of permits is to businesses, and the criterion for a continuous business is not the continuity of the owners but the continuity of the business. The term ''person'' has been previously defined in § 300.61 to include an individual, corporation, firm, or association. This rule makes clear that NMFS will not recognize agreements that allow two businesses to match their logbook history to qualify for one or more charter halibut permits. For example, charter business ''A'' may have the necessary logbook trips for the qualifying period but not the recent participation period and charter business ''B'' may have the necessary logbook trips for the recent participation period but not the qualifying period. Charter business ''A'' agrees to sell its logbook history to charter business ''B.'' NMFS will not recognize this agreement. In this case, neither business will qualify for a charter halibut permit.

NMFS will issue a charter halibut permit to the person or entity—individual, corporation, firm, or association—that held the ADF&G Business Owner License that authorized the logbook fishing trips that met the participation requirements in both participation periods, qualifying and recent. NMFS does not intend to determine the individual owners of charter vessel businesses in part to avoid dividing permits among the owners or partners of dissolved corporations or partnerships. *See also* the response to Comment 105.

Comment 73: It would be very helpful for full-time residents of rural communities (the same that qualify for subsistence) to be able to get a non-transferable permit to run one boat for halibut if they captained a boat during the qualifying years. Most of the commercial fishermen would support this as they are opposed to the bigger charter operators, not the one-boat local operators. It would be very good for the small town economies, and it would provide opportunities in towns where opportunities are scarce.

Response: This rule includes provisions to assist the development of the charter halibut fishery in small rural communities (*see* § 300.67(k)). In addition, some charter halibut permits are transferable, and persons in rural areas will be able to acquire them in the market if it makes economic sense for the permits to migrate to those areas. If the Council determines that rural communities need further assistance to develop small scale charter halibut fisheries, it could develop a regulatory amendment to recommend to the Secretary.

Comment 74: Our industry is facing very uncertain times and the stocks of halibut have been declining. Controlling growth of the charter industry is critical for both the health of the halibut biomass and all users of the resource. NMFS needs to make provisions for these permits to be eligible for financing

through the NMFS Financial Services Loan Division. This important rule has been a long time coming.

Response: NMFS Financial Services Division does not have the statutory authority to make loans for this purpose. Congressional action would be necessary to provide this authority.

Comment 75: Is it possible to assign a cost recovery fee to each limited access permit to recover enforcement costs and will that be a part of this program?

Response: Cost recovery is not authorized for this program as it is not a limited access privilege program or a community development quota program as defined by the Magnuson-Stevens Act. A limited access privilege is a Federal permit issued as part of a limited access system to harvest a specific quantity of fish. A charter halibut permit is a Federal permit issued as part of a limited access system but it does not provide a privilege to harvest a specific quantity of halibut. Hence a cost recovery fee for charter halibut permits is not authorized under section 304(d)(2) of the Magnuson-Stevens Act.

Comment 76: Although the Analysis states that the Council intended to curtail the growth of the charter sector, the ''recent participation'' and ''same vessel'' clauses of the rule will effectively eliminate 40 percent of current operators. Moreover, the Council intention to curtail the growth seems to be inconsistent with the provision to provide for 192 new CQE permits. The Analysis states that it is the purpose of this action to place a moratorium on ''new'' entry; however, this action actually limits any entry since 2005.

Response: ''New'' in this context refers to entry into the charter halibut fishery in Areas 2C or 3A after December 2005 (*see* response to Comments 40 and 45 concerning the control date). Hence, this action limits entry to operations that were active in the fishery during the qualifying period and that continued to operate with at least minimal logbook fishing trips in 2008. This potential outcome was published in the **Federal Register** on February 8, 2006 (71 FR 6442), and in the Council newsletter and other media. This notice specifically stated that anyone entering the charter halibut fishery after the control date of December 9, 2005, will not be assured of future access to that fishery if a limited access system is established that limits participation in the fishery.

The ''recent participation'' requirement is an important element in this rule as it serves to initially allocate charter halibut permits to businesses that were participating in the fishery during the historical qualifying years and are still participating during the most recent year for which NMFS has complete logbook information. This also demonstrates that the Council and Secretary have taken into account present participation as required by the Magnuson-Stevens Act section 303(b)(6). The ''same vessel'' requirement is clarified in response to Comments 54 and 56 and by the change in this rule from the proposed rule (*see* ''Changes from the Proposed Rule'' below).

This rule may allow up to 72 community charter halibut permits to be issued to CQEs representing communities in Area 2C and up to 98 in Area 3A, for a total of 170. These are the maximum number of community charter halibut permits allowed under this rule and they may not all be issued.

Comment 77: It is difficult to comment on the proposed rule because it is confusing and ambiguous in several places. The proposed rule has many stated objectives depending on the agency providing information. The Analysis (at page 2) states that the purpose and need for action is due to the reallocation of halibut harvest to the charter sector from the commercial sector. Since 1997, the commercial sector has been trying to protect their fisheries by submitting different proposals from quota share programs to limited entry programs. This proposal begins with an inaccurate statement and continues with inaccuracies throughout including the data used for this proposal.

Response: The problem statement on page 3 of the Analysis (*see* **ADDRESSES**), describes the evolution of the issue and then succinctly states the problem:

> ''To address the potential rush of new entrants into the charter fishery, the Council is considering establishing a moratorium on the charter sector. The moratorium is to provide an interim measure of stability in the guided sport halibut sector during the step-wise process toward a long-term solution. In doing so, however, the Council is also concerned with maintaining access to the halibut charter fishery by small, rural, coastal communities. To address this, the Council is considering establishing a separate program to allow these communities to enter the halibut charter fishery.''

The Analysis accurately points to a *de facto* allocation of the halibut resource over the years from the commercial fishery to the charter fishery as the charter fishery expanded its activity. The Analysis states that the Council began to consider methods to cap the growth of charter halibut harvests in 1993. The historical information presented in the Analysis is accurate. Further, the Analysis incorporates the best scientific information available.

Comment 78: I am in favor of limited access for the charter fishery for halibut similar to the commercial program. I am a small stakeholder in both fisheries and have seen my small commercial IFQ for halibut cut in half from its original allocated poundage. My only concern is that I will not have enough years in the charter business to qualify for an allocation. I would like to see a provision in the new regulations that would allow a commercial fisherman to use his allocation as a charter fisherman.

Response: This rule makes no connection between the commercial IFQ halibut fishery and the charter halibut fishery. A charter halibut permit under this rule does not specify an amount of halibut that may be harvested as does an IFQ permit. The Council has adopted a new recommendation for a catch sharing plan that contains a proposal for a limited transfer of IFQ halibut to a charter halibut permit holder. A future proposed rule may be developed that will describe this proposal.

Comment 79: Is the definition of a ''halibut logbook fishing trip'' in the proposed rule consistent with the Council motion? Footnote 8 in the motion specifies that, for the year prior to implementation, evidence of participation includes ''actual halibut statistical area, rods, or boat hours.'' We presume that this means that a bottomfish statistical area or bottomfish boat-hours must be reported along with at least one halibut kept or released for that boat-trip. The definition of a halibut logbook fishing trip in the proposed rule, however, appears to exclude the requirement that a bottomfish statistical area be reported if bottomfish boat-hours are not reported. It is common for vessels targeting salmon to catch halibut. Charter operators targeting salmon were instructed in 2007 and 2008 to report the statistical area and boat-hours under the salmon target category. Therefore, the proposed definition of ''halibut logbook fishing trip'' might include some unknown number of trips without bottomfish effort as long as at least one halibut was reported kept or released. This suggests that the Council's intent was that the boat had to have reported a bottomfish statistical area or bottomfish boat-hours along with any halibut kept or released as evidence of participation.

Response: Credit for participation in 2008 (the recent participation year) depends on the number of halibut logbook fishing trips in that year. A

halibut logbook fishing trip will be a trip for which a business owner reported, within ADF&G time limits, the number of halibut kept or released, the number of boat hours that the vessel engaged in bottomfish fishing, or the statistical area(s) where the halibut fishing occurred. Footnote 8 in the Council's motion explains that evidence of participation includes ''[a]ctual halibut statistical areas, rods, or boat hours as reported in ADF&G logbooks * * *.''

The Council's motion uses the conjunction ''or'' indicating that actual halibut statistical areas and boat hours are alternative ways to meet this requirement. This parallels the use of the word ''or'' in the paragraph on ''Evidence of participation.'' This rule uses the same construction in the definition of ''halibut logbook fishing trip'' at § 300.67(f)(3) and specifies that any one of the pieces of information—the number of halibut kept, the number of halibut released, the boat hours that the vessel engaged in bottomfish fishing, or the statistical area(s) where halibut fishing occurred—would be sufficient.

The Council's motion language may lead to some businesses qualifying for charter halibut permits because their charter vessels anglers caught halibut incidentally to salmon catches. The 2008 logbook did not include information on the number of rods, but did include information on the number of halibut kept and released, and NMFS used this information along with the statistical area and boat hours information. NMFS interprets the Council's reference to boat hours as a reference to bottomfish target boat hours. While the number of rods might have been included in the definition of halibut logbook fishing trip to be consistent with the Council's motion, it would not make sense because that data field was not included in 2008 logbooks.

Comment 80: The definition of a charter vessel angler is in conflict with the definition of sport fishing guide services, since a non-paying angler included in the first definition is not receiving ''assistance for compensation.'' This definition should be replaced with ''charter vessel client'' and not include non-paying anglers. Also, the definition of charter vessel operator should be changed to specify that the operator is in ''physical control of the vessel'' in order to distinguish this from other types of control (*e.g.,* financial).

Response: No change is made to the definition of charter vessel angler or sport fishing guide services. NMFS intends the definition of ''charter vessel angler'' at § 300.61 of this rule to include non-paying anglers. The definition of ''sport fishing guide services'' is not limited to situations where charter vessel anglers are directly compensating someone for services. If someone is compensated in any manner by any person to provide sport fishing assistance, then that person is providing sport fishing guide services according to this definition. NMFS acknowledges the need to clarify the proposed definition of charter vessel operator. *See* discussion below under the heading ''Changes from the Proposed Rule.''

Comment 81: Revise § 300.66(b) ''Fish for halibut except in accordance * * *'' to read ''Catch and retain halibut except in accordance * * *.'' This change is suggested to ensure that limited entry permit requirement prohibitions are not applied to vessels that may incidentally catch, but not retain, halibut. Likewise, most of the bulleted descriptions of prohibitions on page 18190 of the proposed rule refer to vessels fishing for halibut, when in fact these prohibitions are only in effect for vessels with anglers catching and retaining halibut. It is virtually impossible to define a vessel or angler that is ''fishing for halibut'' because the gear and fishing technique used for halibut are similar to that used for other bottomfish species.

Response: No change is made. The prohibition at § 300.66(b) previously read, ''fish for halibut except * * *.'' The only change proposed in the proposed rule published April 21, 2009 (74 FR 18178), and made final by this rule is to add a reference to § 300.67. The phrase ''fish for halibut'' existed previously and was not proposed. It is used deliberately, so that the prohibition will apply to vessels fishing for halibut. Vessels fishing for halibut may not be successful, but if they are successful, they may not retain the halibut unless authorized to do so.

Only one of the prohibitions on page 18190 of the proposed rule refers to ''fishing for halibut.'' This bulleted point is actually more general than the corresponding changes to regulations in § 300.66. Most of the prohibitions in the regulatory text at § 300.66 refer to vessels ''with one or more charter vessel anglers on board catching and retaining halibut.''

Comment 82: The requirement to have a logbook on board is not consistent with current ADF&G regulations, nor is it necessary to enforce logbook reporting. ADF&G regulations and instructions do not currently require that the logbook be carried on board the vessel, only that it be completed before offloading any fish (or clients, if no fish kept), or if operating a trailer boat, that it be completed before offloading any fish and departing the launch site. This is because some guides that operate small skiffs keep the logbook in the vehicle pulling the boat trailer to protect the logbook from the elements. This prohibition should be revised to say: ''Operate a vessel in Area 2C or Area 3A with one or more charter vessel clients on board that are catching and retaining halibut without completing a State of Alaska Department of Fish and Game saltwater charter logbook that specifies the following * * *.''

Response: The saltwater charter logbook needs to be onboard the charter vessel during a fishing trip, similar to the commercial IPHC logbook requirements. NOAA Office of Law Enforcement and USCG enforcement personnel depend on being able to review the logs while the vessel is engaged in fishing. The optimum time to enforce charter halibut regulations is either at sea during the fishing trip or dockside when the fishing trip is terminating. Effective enforcement is compromised if the logbook is not available to an authorized officer during these encounters. A logbook may be kept in a dry bag or dry container to protect it from the weather or sea spray while onboard a small open boat. NMFS acknowledges that ADF&G regulations and instructions do not currently require that the ADF&G saltwater charter logbook be carried on board the vessel. As this erroneous information was not in the proposed regulatory text, no change is made in this rule.

Comment 83: All references to ''licensed business owners'' or ''business owner licenses'' during the qualifying years (2004–2005) should be replaced with ''registered or licensed business owner'' or ''business owner license or registration.'' There was no business license in 2004, only a business registration.

Response: NMFS acknowledges the need for this correction. *See* discussion below under the heading ''Changes from the Proposed Rule.''

Comment 84: The final rule needs to clarify if there will be an annual permitting process. Page 18192 of the proposed rule states that there would be a start of the program application process and then no additional application would be required. In the next paragraph it states NMFS would require additional reports only when the structure of the business owning the permit changes or the permit is transferred. The executive summary of the Analysis, on page xxv, under business ownership information, states that persons would need to annually disclose affiliation and ownership through an application and affidavit to

NMFS and that enforcement of this provision would require NMFS to have the authority to suspend a permit until the business provides the necessary annual documentation.

Response: The proposed rule is correct; no change is made in this rule. This rule at § 300.67(h) provides for a single application period for an initial allocation of charter halibut permit(s). The permit(s) will not expire annually. A charter halibut permit will cease to be valid, as stated at § 300.67(j)(3), if the permit holder is an individual and the individual dies, or if the permit holder is a non-individual entity and the entity dissolves or changes as defined at § 300.67(j)(5). NMFS must be notified within 30 days of the death of an individual who holds a transferable or non-transferable permit. For a non-individual entity, NMFS must be notified within 15 days of the effective date of a change as required at § 300.67(j)(5)(ii). A ''change'' is defined at § 300.67(j)(5). The purpose of this requirement is to monitor and enforce the expiration of non-transferable permits and the excessive share limit and its exceptions under § 300.67(j). NMFS determined that an annual statement of ownership or affiliation is not necessary and would save administrative costs for affected business and NMFS. Most other limited access systems administered by NMFS for Alaska fisheries do not require annual permit applications. Compliance with the notification requirement when there is a ''change'' in the status of the permit holder as defined at § 300.67(j)(5) should be sufficient to monitor and enforce the excessive share limit and its exceptions under § 300.67(j).

Comment 85: Absentee ownership of access privileges has been identified by Congress as a significant threat to fishery dependent communities. However, this rule seeks only to discourage, not prohibit, leasing. If implemented as written, this program will allow limited entry permit holders to divest themselves of all aspects of a charter business except the permit, then lease owned permits to active charter boat operators. Entities with no working connection to the charter industry and fishery dependent communities will be authorized to draw rents from the resource. The prospect of permit leasing raises concerns about the impact on transferable permit prices, the potential for permit concentration with individual owners, the potential for permits to become concentrated in ports with the greatest number of summer visitors (exacerbating identified fishing ground congestion and localized depletion in those areas), undercutting commitment to stewardship often associated with the receipt of a permit in a limited access program. The impacts of leasing on communities and the resource have not been adequately addressed. Various proposals were made for reducing the potential for leasing, including requiring (except in limited circumstances) permit holders to be on board when permit-authorized fishing takes place, limiting leasing operations by geographic area, limiting pure leasing without full investment in the capital or operations of the business, and requiring the charter permit holder to be present in the Alaska community where the charters originate.

Response: This rule does not have an explicit prohibition against leasing, although the Council recommended one, for the reasons discussed in the proposed rule (74 FR 18178, April 21, 2009) at page 18191. The charter industry has a variety of business models, and the way some of these business models function is substantially similar to a lease between the permit holder and the vessel operator. For example, the owner of a charter business or of a business such as a wilderness lodge, that also provides charter services, employs hired skippers and guides to operate one or more vessels. The charter business may or may not own the vessels. The rules governing the identification of qualified businesses and the number of permits they would receive did not require vessel ownership by the qualified business. Operations by these businesses may be difficult to distinguish from leasing. There is no bright line between how these types of businesses operate and what would be considered leasing arrangements. For this reason, enforcement of a prohibition on leasing would be difficult, time consuming, and costly. NMFS determined that the benefits derived from a leasing prohibition did not justify the costs of enforcement and the disruption to existing business operations.

Comment 86: Several comments requested clarification on what an angler endorsement authorizes. Specifically, does it apply only to the number of halibut clients (presumably paying but not non-paying halibut fishermen) and does not govern the total number of people on board?

Response: Each charter halibut permit will have an angler endorsement number. The angler endorsement number on the permit is the maximum number of charter vessel anglers that may catch and retain halibut on board the vessel authorized by the permit (*see* 50 CFR 300.66(s) and (t)). The angler endorsement does not limit the number of passengers that an operator may carry, only the number that may catch and retain halibut. The term ''charter vessel angler'' is defined in this rule (50 CFR 300.61) to include all persons, paying or non-paying, who use the services of the charter vessel guide. The charter halibut permit, once issued with its angler endorsement, would limit the number of charter vessels anglers who can catch and retain halibut on the permitted vessel.

Comment 87: The proposed rule is not clear about how angler endorsements will be determined for an applicant who qualifies for more than one permit. Does that applicant receive an endorsement for the highest number of anglers in any one logbook for all of their vessels being issued to that applicant or is each vessel permit issued an angler endorsement based on its own individual history?

Response: Charter halibut permits under this rule are issued to individuals or businesses which held ADF&G Business Owner Licenses (or registration) that authorized logbook fishing trips during the qualifying and recent participation periods. Hence, this rule is oriented toward the charter vessel activity of a qualifying business rather than the activity of specific vessels. The regulatory text at 50 CFR 300.67(e) states simply that, ''a charter halibut permit will be endorsed for the highest number of charter vessel anglers reported on any logbook fishing trip in the qualifying period'' (except as provided at 50 CFR 300.67(e)(1) and (2)). Therefore, a qualifying charter vessel business will receive charter halibut permit(s) with an angler endorsement based on the highest number of charter vessel anglers reported by that business on any logbook trip in the qualifying period regardless of the number of vessels involved. The same endorsement will apply to all permits initially issued to the qualifying business. As explained in the preamble of the proposed rule (74 FR 18178, April 21, 2009) at page 18184, this action is designed to limit the number of charter vessels participating in the charter halibut fishery, not to prevent all expansion of fishing effort. Of course, any such expansion would be constrained by safety, USCG licensing, and other regulations that limit the number of anglers that may be on board a vessel.

Comment 88: Angler endorsements should be based on the year chosen by the applicant for determining the number of permits. This might work out as more permits and less anglers per boat, or they might choose to go with less permits but the permit would have

a higher angler endorsement. They should not receive the highest endorsement value unless earned within the same year or you add additional latent capacity to the program that is not necessary.

Response: This rule implements the Council's recommendation with regard to angler endorsements. Other more constraining alternatives are possible and may be necessary in the future. Proposals for such alternatives could be made to, and developed by, the Council for recommendation to the Secretary.

Comment 89: Under the section ''Angler endorsement on permits'' the proposed rule states ''that the angler endorsement number on an applicant's permits would be the highest number of clients that the applicant reported on any logbook fishing trip in 2004 or 2005, subject to minimum endorsement of four.'' In some cases charter owners, including myself, have upgraded our vessels after the ''applicant selected year'' from traditional four angler configurations to more environmentally efficient six or more angler configurations. We should not be penalized for investing in and upgrading our equipment to be more environmentally friendly, safer, more cost effective, and remain competitive in our industry. I suggest grandfathering consideration be given to such situations, especially for those of us that have been in this business for a decade or more.

Response: The Council's motion was meant to reflect the fleet composition and practices as they were in the qualifying period (2004 and 2005). The recent participation year was meant to screen out operations that had not continued to be active in recent years and is not included to reflect capacity upgrades since the qualifying period. As a result, permit endorsements reflect business activity levels in 2004 and 2005. The endorsement provisions are relatively liberal, reflecting the highest number of clients included on a trip taken by a qualifying business during the two year qualifying period. This endorsement is applied to all the permits received by the qualifying business. To the extent that a qualifying business does not receive charter halibut permits with endorsements that match its increased carrying capacity, the business could enter the permit market and obtain by transfer one or more permits with the appropriate number of endorsements, or ''stack'' two or more permits on a vessel.

Comment 90: The angler endorsement system is cumbersome and inflexible. Special identification cards equal to the number of angler endorsements should be issued to each halibut charter permit holder. The permit holder may fish, lease, or sell any or all of the angler endorsements. The proper number of angler endorsement cards must be on the vessels when engaged in the catching and retention of halibut equal to halibut anglers. All angler endorsements will have the proper identifying information, and this information will be entered into the ADF&G logbooks. The maximum number of angler endorsements per permit should be capped at six and the minimum at one. Allowing halibut charter permit holders to buy and sell individual angler endorsements will provide flexibility and a more affordable means for new entrants into the fisheries. The present proposal allows only for the buying or stacking of four, five, or six angler endorsements with a halibut charter permit. The buying and selling of angler endorsement cards will be similar to the process of buying and selling transferable halibut charter permits and can only be engaged in by entities that presently own halibut charter permits.

Response: This is not the approach to endorsements recommended by the Council and implemented by this rule. Alternative approaches to angler endorsements are possible. Proposals for such alternatives could be made to, and developed by, the Council for recommendation to the Secretary.

Comment 91: The types of permits proposed in the moratorium are unacceptable. The six-person and four-person permits will only allow operators to take six or four charter anglers, depending upon which permit is granted. Our vessel is certified for four to six anglers, and the number of anglers we carry varies by trip. We cannot run a profitable business with this restriction.

Response: The angler endorsement represents the maximum number of anglers that may catch and retain halibut. This rule does not require that the number of charter vessel anglers on a vessel operating under a charter halibut permit exactly equal the angler endorsement on the permit.

Comment 92: The proposed rule uses the term ''angler'' rather than ''client,'' and states, ''The term 'angler' includes all persons, paying or non-paying, who use the services of the charter vessel guide.'' This is problematic for two reasons.

First, in 2004 and 2005 the ADF&G logbook required charter operators to report only the number of ''clients and crew that fished.'' Anglers that fished from a charter vessel without compensating the operator (comps) were not, and currently are not, considered ''clients'' or ''guided anglers'' because the operator was not compensated for services. Limiting charters to a number of anglers (including non-paying) equal to the number of paying clients in the past is inconsistent.

Second, the proposed definition of ''charter vessel angler'' is not consistent with the proposed definition of ''sport fishing guide services.'' This is because the definition of ''charter vessel angler'' includes non-paying anglers that use the services of a charter vessel guide. The definition of a charter vessel guide includes a person that ''provides sport fishing guide services'' and the definition of ''sport fishing guide services'' requires that assistance is provided ''for compensation.'' Therefore, a non-paying angler cannot be using the services of a charter vessel guide if that angler is not providing compensation.

NMFS should consider defining charter clients as anglers that receive assistance for compensation (including any compensation, not just ''paying'' clients). There should also be a distinction between charter clients and anglers that fish on private boats but share the cost of bait and fuel with the owner, as this is a common practice.

Response: The comment is correct that logbooks from 2004 and 2005 did not explicitly request information on non-paying anglers or ''comps.'' Reporting in this period is likely to have differed among businesses, with some including non-paying anglers under the heading of ''comps'' and others not. The Council recommendation was for the number of endorsements to be the highest number of reported anglers on any trip conducted by the guide business in 2004 and 2005. In some instances, the number of endorsements may be lower than they would have been if the trip with the most anglers had included comps, and the operator had not reported comps under the client heading.

A charter vessel angler includes the non-paying anglers that use sport fishing guide services. The definition of ''sport fishing guide services'' at 50 CFR 300.61 does not require each angler to be individually compensating the person providing sport fishing assistance for this definition to be applicable. This definition applies if there is any compensation from any source for assistance to a person who is sport fishing. Hence, no conflict exists between this definition and the definition for charter vessel angler.

NMFS agrees that a distinction exists between a charter vessel angler and a non-guided angler. The former uses the

services of a charter vessel guide (pursuant to the definitions at 50 CFR 300.61) and the latter does not. Several friends in a boat sport fishing for halibut and sharing the costs of bait, fuel, or other supplies are not charter vessel anglers unless one of them is providing sport fishing guide services.

Comment 93: The proposed rule talks about stacking permits. There is no mention of not being able to split a permit between boats. This would best fit our business plan as most operators may only need one or two more endorsements to add to a permit with four endorsements. (In Southeast Alaska, the maximum number of lines fishing per vessel is six.)

Response: Stacking permits in this action means having more than one permit on a charter vessel to use the total number of angler endorsements. For example, an operator could hold two charter halibut permits, one with an endorsement of four and another with an endorsement of six. Both of these permits combined, or ''stacked,'' would authorize this operator to have up to 10 charter vessel anglers on board the vessel, unless this number of passengers is prohibited by USCG licensing or other safety rules or regulations. This rule does not provide for splitting permits as this would potentially multiply the number of permits initially allocated contrary to the intent of this rule.

Comment 94: NMFS should issue permits only to charter businesses which have been in full compliance with the law. NMFS should require charter businesses to show proof of enrollment in a random drug testing program (as required by the USCG) in the qualifying as well as recent participation years, and proof of paying city sales tax in these years.

Response: Enforcement of drug testing and sales tax rules is beyond the scope of this action.

Comment 95: Why is Area 3A being treated the same as Area 2C? The proposed rule states that ''the Council recommended no change in management of the charter vessel fishery in Area 3A because that fishery appeared stable.''

Also, a comparison of the number of active vessels and the level of harvest shows cases where the number of vessels appears to be inversely related to the level of harvest. The proposed rule states that ''the intended effect is to curtail growth of fishing capacity in the guided sport fishery for halibut'' and that ''open access in the charter vessel fleet has resulted in virtual unlimited increases in charter harvests.'' The vessel and harvest data cited refute this.

Response: The first quote in the comment is from the preamble to the proposed rule published April 21, 2009 (74 FR 18178) in the third column on page 18180 in a discussion of Council actions in 2007 with respect to the GHL. In fact, the quoted sentence has additional text the reads, ''* * * appeared stable at about its GHL.'' In developing and implementing this rule, the Council and Secretary determined that applying a limited access system in Area 2C only would quickly result in excessive charter capacity in the adjacent Area 3A. Hence, applying this limited access system to both areas at the same time avoids a disjointed step-wise approach which would be more disruptive to the charter industry than this rule. While, the highest growth rate in the charter halibut fishery has been observed in Area 2C, the charter halibut fishery also has exhibited growth between 1999 and 2007 in Area 3A. Elements of this rule accommodate different circumstances in Area 2C and 3A. Large lodges with multiple permits are more common in Area 2C. This rule accommodates this by allowing businesses to hold multiple permits, meeting lodge owners' needs. Large party boats are more common in Area 3A. This rule accommodates this by allowing stacking of permits and angler endorsements that vary on permits.

The long-term trend in halibut harvests by the charter vessel sector does not refute the quoted statements. The trend in charter halibut fishery harvests between 2003 and 2007 in Area 3A is one of slow but steadily increasing halibut harvests from 2,724,000 pounds (1,235.6 mt) in 2002 to 4,002,000 pounds (1,815.3 mt) in 2007. A slight decline in the charter halibut harvest in 2006 is not significant.

Comment 96: Community charter halibut permits are inconsistent with the purpose of this program. Issuing permits to communities is also unfair to persons who recently participated in the fishery but will not qualify for a permit under the program.

Response: The Council recommended using the CQE program to help develop the charter vessel sector in certain rural communities. The Council balanced the objectives of stabilizing the guided charter sector and its rural development objectives. There will be constraints on CQE permits; they will be anchored in the rural communities. The Council has consistently included the objective of providing for the development of rural communities through the use of fishery resources. This is consistent with requirements of the Halibut Act. The Bering Sea Community Development Quota Program and the IFQ CQE programs are similar examples. All of these programs involve tradeoffs between rural communities and other user groups.

The community charter halibut permits will be issued to CQEs, not directly to businesses. It is possible that, under agreement with the CQEs that hold community charter halibut permits, some of these permits will be used by businesses that entered the charter halibut fishery after 2005 and do not otherwise qualify for an initial allocation of charter halibut permit(s).

Also, acquiring a transferable charter halibut permit through the market, contracting with another business that holds a charter halibut permit, arranging to use a community charter halibut permit, or changing the business plan to avoid targeting halibut are all alternatives for a person that does not qualify for an initial allocation of a charter halibut permit.

Comment 97: The CQE program would allow expansion of the guided charter fleet and undercut the stabilization objectives of the program. Limits should be placed on the community permit program including: (a) No more than four permits be allowed in a community; (b) charter boats should be required to begin and end their trips in the community designated on the permit; (c) community eligibility should be based on whether or not 10 charter vessels terminated trips in the community in the qualifying years, not on whether or not 10 charter businesses did; (d) impose a recency qualification requirement on CQE groups (10 charter vessel businesses terminate charter trips in the year prior to implementation).

Response: While other management schemes can be envisioned, the Council indicated that stability in the charter halibut fishery was one of the principal objectives of this action. The Council also sought to support rural development objectives similar to those addressed in other Council programs. Although community charter halibut permits may allow for some increased effort, this rule also is designed to reduce overall effort over time. The elements that provide for such reduction in effort include minimum participation criteria to receive an initial allocation of a charter halibut permit, and the reduction in effort as non-transferable permits expire. With respect to the specific proposals:

(a) No more than four community charter halibut permits per eligible community are permitted in Area 2C, while seven are permitted in Area 3A. The larger number of permits permitted

in Area 3A reflects the larger resource base available in that area.

(b) This rule requires all charter vessel fishing trips authorized by a community charter halibut permit begin or end within the boundaries of the community designated on the permit. This is meant to ensure that charter vessel anglers on the vessel have an opportunity to use the goods and services available in the community.

(c) The approved Council recommendation clearly states that eligible communities are those ''in which 10 or fewer active charter businesses terminated trips'' in each of the qualifying years (2004 and 2005). Regardless of this condition, this rule specifically names the eligible communities.

(d) The approved Council recommendation does not include a recent participation requirement for community charter halibut permits. Such a requirement would be a substantive change to the proposed rule and will require a separate Council action and regulatory amendment to this rule.

Comment 98: The Organized Village of Kake Council would like to see the Kake area be left open for local six-pack charter boats that would like to enter into the guided sport halibut fishery. Although the amount of sport charters in Kake is limited, the dozen that enrolled in the six-pack license class this past winter indicates an interest in guided sport halibut in our small town and should be given a chance to enter. We have witnessed the large number of charter businesses in the larger cities and can see that they need to be limited, but to shut down all of Southeast Alaska, including rural areas, to a limited license on sport halibut fisheries is too extensive and favors larger communities over rural villages. NOAA should study Kake to see what we are doing to develop a sustainable economy, which includes developing six pack charter boats that will help sustain the two or three lodges that we have in our community.

Response: This rule has a special provision for rural communities like Kake through its CQE program. Kake is specifically listed in this rule as an Area 2C community that is eligible to receive community charter halibut permits (50 CFR 300.67(k)(2)(i)). As such, a CQE representing Kake can receive a maximum of four community charter halibut permits at no charge and can acquire a maximum of four additional charter halibut permits through the market for transferable charter halibut permits. Hence, a CQE representing Kake can hold a maximum of eight permits. Individual businesses in Kake are not limited by this provision from acquiring additional charter halibut permits.

Comment 99: The CQE-eligible communities within the Gulf of Alaska would have preferred, under optimal conditions, an open access system. Given the current conditions which render an open access management system completely inappropriate, the measures provided for CQE communities in the proposed rule are fair and equitable. It has been previously demonstrated that the Halibut and Sablefish IFQ program disadvantaged these 42 communities. The resulting Amendment 66 to the Halibut and Sablefish Program created the CQE program and made CQEs eligible to purchase halibut and sablefish quota share. The proposed community charter halibut permit will help to provide much needed economic opportunity to the eligible CQE communities.

Response: NMFS acknowledges the support for the CQE program.

Comment 100: Special permits for U.S. Military Morale, Welfare, and Recreation vessels should be limited to the number of vessels that were operated by the military for morale, welfare, and recreational purposes during the qualification periods. Also, the vessels authorized by these permits should allow participation only to active military personnel and their immediate family. The stakeholder committee was provided information that indicated that an extensive list of qualified people go on military morale vessels including YMCA members, guests, and a wide variety of others that did not have anything to do with active military personnel and their immediate family.

Response: This rule is designed, based on Council recommendation, to have a minimal effect on a Moral, Welfare and Recreation Program of the U.S. Armed Services. A special military charter halibut permit issued to such a program is non-transferable and restricted to the regulatory area designated on the permit. NMFS is aware of only one of these programs in Alaska currently offering recreational charter halibut fishing to service members. If it is determined that additional restrictions are needed on the use of military charter halibut permits, NMFS can issue a rule with those restrictions.

Comment 101: The commenter supports the prohibition on operating a charter vessel in Area 2C and Area 3A during a single charter vessel trip.

Response: NMFS acknowledges the support.

Comment 102: The commenter supports the excessive share limit section as written. This issue was debated and the Council recommended that larger businesses retain their grandfather rights if the business is sold with all assets and permits. NMFS did a good job of writing this section to provide the balance that was recommended by the stakeholder committee and chosen by the Council as the preferred alternative.

Response: NMFS acknowledges the support.

Comment 103: The proposed rule ''grandfathers'' current participants that qualify for more than five permits to receive and operate more than five permits while restricting all other entities to five. Grandfathering in this manner has become an accepted practice in Alaska's quota share programs; however, other programs do not allow the grandfather rights (*i.e.*, access privileges in excess of the excessive share cap defined for the fishery) to be sold in total as is proposed in this rule. Allowing grandfathering to continue after a business is sold raises serious social equity issues. While a case can be made for allowing large operations to continue to operate above the cap for a given amount of time, providing the opportunity for those licenses to all be sold to one entity perpetuates the inequity. We recommend that NMFS modify the proposed regulations to restrict purchasers of halibut guided sport limited entry permits to the defined excessive share limit of five permits.

At a minimum we strongly recommend that NMFS remove the requirement that transfer of more than five permits be contingent upon the transfer of all assets, including lodges, vessels, and other assets. This provision will inflate the overall value of businesses holding more than five permits, providing them with a windfall. There is simply no need for NMFS to tie all business assets to the transfer of more than five permits; this is a market decision between buyer and seller, and is outside of NMFS's purview. This provision does not seem to be administratively feasible or appropriate.

Response: The approved Council recommendation specifically provides for a conditional exception to the excessive share limit of five charter halibut permits. This provision, commonly called the ''grandfather'' provision, applies only to an initial recipient of charter halibut permits that initially qualifies for more than five permits. The Secretary has approved

this recommendation and it is implemented in this rule.

One condition to this grandfather provision is that it applies as long as the initial recipient of more than five charter halibut permits continues to exist as it does at the time it is initially issued the permits. If the initial recipient is an individual and dies, then the exception stops and the individual's successor-in-interest may not hold more than five permits. If the initial recipient is a non-individual corporate entity that dissolves or changes, then the exception also stops and the new or changed entity may not hold more than five permits. This rule refers to 50 CFR 679.42(j)(4)(i) for the meaning of ''change'' for a non-individual entity.

The other condition allows grandfathered permits in excess of the five-permit limit to be transferred to a new person (*i.e.*, individual or non-individual entity) without application of the five-permit limit providing, among other things, that the person transferring its grandfathered permits also is transferring its entire charter vessel fishing business, including all assets of that business, to the person designated to receive the permits. The language of the Council recommendation stated that ''grandfathered permits that are sold in total when a business owner sells his entire business/fleet maintain that grandfathered status.'' This rule implements this language by stating that ''NMFS may approve a permit transfer application that would result in the person that would receive the transferred permit(s) holding more than five (5) * * * permits if * * * [t]he person transferring its permits also is transferring its entire charter vessel fishing business, including all assets of that business, to the designated person that would receive the transferred permits'' (50 CFR 300.67(j)(6)).

These exceptions are designed to balance the need to apply the excessive share limit to the charter halibut fishery in these areas with the need to recognize that some charter vessel businesses will qualify for more than five permits and should be allowed to continue business with the same number of charter vessels for which they initially qualified. The Council and Secretary intend, however, to have more charter vessel businesses comply with the excessive share limit over time than may do so at the time of initial allocation of permits. As charter businesses change, exit, and enter the charter halibut fishery over time, the number of businesses holding grandfathered permits should decrease relative to the number that received them at initial allocation. This outcome is encouraged to the extent that costs of transferring grandfathered permits are increased by the ''all assets'' requirement at 50 CFR 300.67(j)(6)(iv).

NMFS will require applicants for transfers of charter halibut permits in excess of the excessive share limit to attest that (1) the existing permit holder that holds more than five permits will be transferring all of the transferable permits that were initially issued together, (2) the current permit holder will be transferring all assets of its charter vessel fishing business along with the permits, and (3) the person that will receive the permits in excess of the excessive share limit does not hold any permits at the time of the proposed transfer. NMFS also will require applicants to submit a copy of the charter vessel fishing business sale contract with the application for transfer of charter halibut permits. The comment is correct that NMFS does not define or describe all of the assets that will have to be included in the sale of a charter vessel fishing business because each sale will be unique. NMFS may require additional documentation of the items included in the sale of the business.

Comment 104: The excessive share limit section in the proposed rule limits any charter owner from growing beyond five vessels or its current size. We understand the desire to limit consolidation of permits to only a few owners; however, this provision is overly restrictive. Further it would prevent a permit holder from selling to another entity that has any permits thus limiting market value. An alternative needs to be developed.

Response: An excessive share limit to prevent excessive consolidation under a limited access system is a requirement of the Halibut Act (*see* discussion above under the heading ''Consistency with Halibut Act''). Determining what is excessive is a public policy judgment of the Council that is based on the current structure of the charter halibut fishery. Alternative excessive share limits should be suggested to the Council for development and potential recommendation to the Secretary. Also, permit holders would be prevented from receiving permits by transfer only if the transfer would result in that person holding more than five permits.

Comment 105: Several comments stated that charter businesses had been purchased between the qualifying period (2004 or 2005) and the recent participation period (2008). Page 18182 of the proposed rule (74 FR 18178) states that ''[c]harter halibut permits would not be awarded to persons who purchased a charter fishing business that met some or all of the participation requirements but who themselves do not meet the participation requirements.'' The proposed rule specifies that NMFS would not recognize private business purchase agreements when issuing permits because the Council did not recommend it.

The comments disagree with the proposal to not recognize private business purchase agreements when issuing permits, stating that they purchased charter businesses that had sufficient participation in the qualifying period and continued to operate the business in the recent participation period. Some comments specified that their business purchases included the fishing history of the business's vessels, rights to any limited entry program benefits, and in some cases, the purchasers have taken possession of the business's logbooks from the qualifying period. One comment requested analysis of the impacts of either including or excluding a number of potential initial recipients due to private agreements to transfer participation history with a business. Another commenter stated that he consulted a lawyer when drafting the contract of sale to prevent problems with the transfer of the future limited entry permit and any future IFQs and notified NOAA General Counsel of the sale. Another commenter stated a belief that the Council intended for persons that purchased rights and operating histories and met other application criteria (*e.g.*, operated the year prior to implementation) to be eligible for permits. One comment suggested that NMFS should change the rule to specify that if a charter operation met the minimum qualifications in 2004 or 2005 but was sold after 2005 and kept the same name, that charter company will qualify for a permit if it met the minimum requirements in the recent participation period. The comment suggests that NMFS establish an appeal process to address this issue if the rule is not changed.

Response: NMFS did not propose to recognize private agreements for several reasons that were stated in the proposed rule preamble. Prominent among these was that the Council did not recommend this policy. The Council has expressed its intent to recognize private agreements that transfer participation history in the establishment of other limited access systems, but not for this action. Because the Council did not recommend to recognize private agreements for this action, NMFS did not include such a provision in the rule implementing this program.

Notwithstanding the narrative in the proposed rule (74 FR 18178, April 21,

2009) preamble on page 18182, the proposed rule also makes clear on page 18186 that NMFS will issue a charter halibut permit to the entity that held the ADF&G Business Owner License that authorized the logbook fishing trips that met the participation requirements. Further, the proposed rule at page 18186, states that NMFS will follow the form of ownership that the business used to obtain legal authorization from the State of Alaska for its past participation in the charter halibut fishery. NMFS will not determine the owners of a corporate entity or the members of a partnership that held the appropriate license. An applicant that receives an initial administrative determination finding that the applicant does not qualify for a permit may appeal that determination as specified in this rule at 50 CFR 300.67(h)(6) and described in the proposed rule on page 18186 and 18195.

Comment 106: The criteria for a permit should be based on currently licensed guides' total catch records. Do not allow any newcomers to qualify for charter halibut permits but grandfather current charter operators into the program.

Response: The Council could have chosen alternative qualifying criteria for demonstrating participation in the charter halibut fishery. The Council noted in its problem statement that it had previously considered other options including awarding quota share based on catch records. In this action, however, the Council selected 2004 and 2005 as the qualifying period which is consistent with the problem statement and the Halibut Act as described above under the heading ''Consistency with Halibut Act.'' Anyone who started a charter halibut fishing business after the December 9, 2005, control date (71 FR 6442, February 8, 2006) was on notice that they may not qualify for participation under a future moratorium on new entry or other limited access program.

Comment 107: Magnuson Stevens 1853(b)(6)(A) requires that a limited access system take into account present participation in the fishery. With 2004 or 2005 being the qualifying years for participation in the proposed limited access fishery and 2009 being the year of promulgation, we are looking at data that is four to five years old being used to establish who gets a permit. In *Alliance Against IFQs* v *Brown*, while upholding the agency decision, the Ninth Circuit held that, the three-year delay ''pushed the limits of reasonableness,'' but did not constitute arbitrary and capricious agency action. Reliance on data four to five years old may exceed the limits referenced by the Court. If NMFS chooses to press forward with the rule, it should drop the qualifying year requirement and consider only the year prior to implementation.

Response: As discussed above under the heading ''Consistency with Halibut Act,'' the Council is required to consider present participation in the fishery and historical fishing practices in, and dependence on, the fishery when developing a limited access system. The charter halibut permit program is consistent with this requirement. The Council intended to require active participation in the qualifying period (historical) and the recent participation period (present) because it determined a business that participated in both periods demonstrates an acceptable level of dependence on the charter halibut fishery.

Comment 108: If qualification for a charter halibut permit is based on the 2004 and 2005 logbooks, many charter captains will be adversely affected. Although some may have the funds to buy the limited entry permits they need to keep operating, I am not likely to be able to afford to buy any permits.

Response: At the beginning of the development of this rule, the Council announced a control date of December 9, 2005, to alert potential businesses of the possibility of a limited access system for the charter halibut fishery. This announcement was made by a **Federal Register** notice published February 8, 2006 (71 FR 6442). This notice informed any business entering the charter halibut fishery in Areas 2C and 3A after 2005 that they were not be assured of future access to the fishery if a limited access system was developed and implemented.

Comment 109: Two separate comments noted that their participation in the charter halibut fishery during the qualifying period was prevented because of problems with vessels.

Response: The Council recognized that certain unavoidable circumstances could prevent a permit applicant from participating in either the qualifying period or recent participation period. The preamble to the proposed rule (74 FR 18178, April 21, 2009) on page 18187 contains a detailed description of the unavoidable circumstances exception to the qualification requirements. To qualify for the unavoidable circumstances exception in the charter halibut permit program, an applicant must demonstrate that (1) it participated in either the qualifying period or the recent participation period, (2) it had a specific intent to participate in the period the applicant missed, (3) the circumstance that thwarted participation was unavoidable, unique to the applicant, and unforeseen and unforeseeable, (4) the applicant took all reasonable steps to overcome the problem, and (5) the unavoidable circumstance actually occurred. Permit applicants that are initially denied a charter halibut permit may make an unavoidable circumstances appeal through the NOAA Office of Administrative Appeals.

Comment 110: Please rewrite the rule to include regular active duty soldiers. Under the proposed rule, those who volunteered for active military duty in 2004 and 2005 do not qualify for the military exemption, unlike those called up from the reserves. The proposed rule states that volunteers will not qualify for a charter halibut permit since they chose to serve this country instead of staying home and fishing. As stated under Military Exemptions: ''This exemption would not apply to persons in the regular armed forces. The rationale for not including persons in the regular armed forces is that a person's decision to enlist in the regular armed services is a voluntary career choice and is not unavoidable.''

In the Council motion, the military exemption in footnote 10 reads: ''The military exemption refers to an individual who was assigned to active military duty during 2004 or 2005, who qualifies as 'active' during the year prior to implementation, and who demonstrated an intent to participate in the charter fishery in Area 2C or 3A (prior to the qualifying period).'' What is NMFS's interpretation of ''active duty''? As stated above, it does not address active duty or reserve components specifically.

Response: NMFS agrees that it misinterpreted the Council's motion. Regulatory text at 50 CFR 300.67(g)(3)(i) is changed in this rule to add ''active U.S. military'' to active service in the National Guard or military reserve (*see* discussion below under the heading ''Changes from the Proposed Rule''). The approved Council recommendation, as correctly quoted in the comment, does not limit ''active military duty'' to service in the National Guard or military reserve. The proposed rule misinterpreted this phrase to apply only to the National Guard or military reserve due to experience with a different exception for service in the National Guard or military reserve that applies to the IFQ fisheries for halibut and sablefish (73 FR 28733, May 19, 2008). In this rule, however, active military duty is functionally the same regardless of what military unit a person is assigned. NMFS understands that

enlistment in a regular branch of the U.S. military is not necessarily a career choice due to the fact that enlistment periods are short relative to a typical career of 20 or 30 years.

Comment 111: The halibut stocks would be better protected if the qualifying years (2004 and 2005) were moved back at least one year.

Response: NMFS determined that the halibut stocks are adequately protected under this rule. The selection of the qualifying years involved consideration of participation in the charter halibut fishery as required by the Halibut Act.

Comment 112: Two comments noted that representatives of the charter industry took part in developing the charter halibut permit program and held different views on its rationale.

Response: The history of management of the charter halibut fishery generally, and limited access management, in particular, was summarized in the preamble to the proposed rule (74 FR 18178, April 21, 2009) on pages 18179 to 18182. That summary references the Council's charter halibut stakeholder committee. Although this committee made specific recommendations to the Council regarding the elements and options under consideration, the Council's development of this rule also was influenced by its problem statement, analysis of alternatives (*see* **ADDRESSES**), and extensive public testimony.

Comment 113: We support the criteria for awarding permits and anticipate that most charter operators in our area will qualify under the number of vessels. This should effectively reduce fleet size and fishing capacity from current levels for charter businesses that have overcapitalized in recent years. Charter operators will still be able to lease additional vessels beyond those for which they receive permits under the limited access program or will eventually procure additional permits.

Response: NMFS acknowledges the support for this rule.

Other Management Measures

Comment 114: The charter industry should support scientific research on the halibut resource. This scientific research can be funded in part by a percentage of charter businesses' earnings going to the halibut and salmon commissions for the studies that are necessary to sustain these stocks. There is enough room in the fishery for the commercial and charter businesses to exist. Let's work together to assure that this natural resource will remain abundant forever. We all want healthy abundant stocks.

Response: This rule does not establish a fee on the distribution or use of charter halibut permits, nor does it establish cost recovery fees for holding charter halibut permits. Cost recovery fees are not authorized for this rule because charter halibut permits do not allocate a percentage of the total allowable catch to each permit holder.

Comment 115: Does paragraph 300.66(i) of the proposed rule mean only the vessel owner and immediate family can use the vessel for subsistence fishing, or does it mean the vessel owner or immediate family must be onboard, and any other individual is allowed as long as he or she has a subsistence permit? We are strongly against the former interpretation, as it restricts the use of our vessel when we are not chartering.

Response: The prohibition at 50 CFR 300.66(i) was established by the rule published September 24, 2008, at 73 FR 54932. This paragraph is amended in this rule to include a unique definition of the term ''charter vessel'' that pertains only to this prohibition. This prohibition was developed by the Council in 2004 to allow an individual who holds a subsistence halibut registration certificate (SHARC) and also owns a charter vessel to use the vessel for subsistence fishing for halibut. This can be done only if the vessel's owner of record and his/her immediate family are on board and each individual engaging in subsistence fishing on board the charter vessel holds a SHARC. Hence, the prohibition at 50 CFR 300.66(i) prohibits any person other than the charter vessel's owner of record and immediate family from being on board a charter vessel if anyone on board the vessel is engaged in subsistence fishing for halibut.

Subsistence halibut regulations, published April 15, 2003 (68 FR 18145), prohibited retention of any subsistence halibut that were harvested using a charter vessel. The Council and Secretary subsequently authorized an exception for individuals who owned a charter vessel and also held a SHARC to use the vessel for their harvest of subsistence halibut. The exception does not apply if anyone other than the owner and his/her immediate family is on board the vessel. This rule simply adds a unique definition of ''charter vessel'' for purposes of this prohibition.

Comment 116: Subsistence and commercial halibut participation rights should be changed. Subsistence use should be based on need, not where you live. A return to the old two hook subsistence gear would be nice, as would having to adhere to sport fishing regulations on daily limits. There is no need for allowing one individual to take 15 or 30 halibut a day just because he or she lives in a ''rural'' community. Also, since the implementation of the IFQ program for commercial halibut fisheries, there has been an increase in commercial fishing gear in areas that traditionally were free of this gear.

Response: This rule does not make any changes to fishery management regulations for the subsistence or commercial setline fisheries. Suggestions for such changes should be directed to the Council for recommendation to the Secretary.

Comment 117: Ban all charter fishing in the area for all time.

Response: Prohibiting the charter halibut fishery was not considered as an option or alterative to this rule. Guided sport fishing for halibut is a legitimate use of the Pacific halibut resource and the second largest fishery (after the commercial setline fishery) for halibut in Areas 2C and 3A. Prohibiting the charter halibut fishery in these areas would severely diminish economic benefits to Alaska and other States. Moreover, prohibiting the charter halibut fishery would not achieve the objectives of this action.

Comment 118: I disagree with the limited entry program. Could NMFS allow only Alaska residents to fish for halibut and keep the money with Alaskans?

Response: The Halibut Act prohibits discrimination between residents of different States when making allocations of the halibut resource. Regulations established by this action apply to all permit holders, regardless of their business location or place of residence.

Comment 119: Why limit charter operations? Why not also limit sport fishing permits and commercial operating permits for halibut fishing? When limits are placed on halibut for all entities involved, there are fewer boats on the water and fewer fish removed, and everyone is subject to the same rules.

Response: Additional restrictions on the commercial setline and unguided sport fisheries for halibut are outside the scope of this action. The commercial setline fishery for halibut already operates under a limited access system. Since its implementation in 1995, the IFQ program for commercial setline fishery for halibut and sablefish limits entry to quota share and IFQ permit holders. A market for the distribution of these permits has developed just as is expected for charter halibut permits. In addition, the commercial setline fishery has taken large reductions in its catch limits in recent years.

The unguided sport fishery for halibut is different from either the commercial setline fishery or the commercial charter halibut fishery. Participation and harvest levels have remained relatively steady in the unguided sport fishery for over 10 years (1995 to 2007) and amount to roughly seven percent of total halibut removals. By comparison, the harvest and participation levels in the guided sport sector have increased over the same period and amount to roughly 14 percent of total removals. This growth in estimated halibut removals by the charter halibut fishery prompted action by the Council and NMFS. For now, the IPHC regulations governing unguided sport fishing for halibut appear to be sufficient for managing this relatively small fishery.

Comment 120: The moratorium ignores the rapid and recent growth of the unguided recreational fishery and growth in the subsistence fishery. State of Alaska annual harvest estimates show that unguided halibut harvest in Area 2C increased from 122,562 pounds in 2006 to 1.131 million pounds in 2007. The commercial catch limit is set by subtracting all other removals from the total CEY (constant exploitation yield); therefore, an allocation decision should not be made without taking into consideration the present participation in not only the commercial quota share and guided recreational fisheries but also the unguided recreational fisheries.

Response: Actually, the ADF&G annual harvest estimates indicate that the unguided fishery in Area 2C harvested about 723,000 pounds (328.0 mt) in 2006, 1,131,000 pounds (513.0 mt) in 2007, and 1,265,000 pounds (573.8 mt) in 2008. These estimates are point estimates at the midpoint of a range of possibilities. For example, the 95 percent confidence interval for the estimated harvest by the private unguided sport fishery in 2007 ranges between 987,000 pounds (447.7 mt) and 1,274,000 pounds (577.9 mt). In addition, a growth trend is not apparent in the long-term harvest estimates of the unguided sport fishery. For example, over the 10-year period 1997 through 2006, the ADF&G estimated unguided sport harvest of halibut ranged from a low of 723,000 pounds (328.0 mt) in 2001 and 2006 to a high of 1,187,000 pounds (538.4 mt) in 2004. The average estimated unguided sport harvest of halibut over this period was 922,400 pounds (418.4 mt). With this perspective, the single year estimate of 1,131,000 pounds (513.0 mt) in 2007 does not appear to be a significant increase. The Council considered the unguided recreational fishery harvest levels when it developed this rule (*see* Table 3 of the EA/RIR/IRFA prepared for this action [*see* **ADDRESSES**]). It did not recommend any restrictions on the unguided sport harvest of halibut because that did not appear to be necessary from the relatively stable long-term trend in estimated harvests by this sector. If this trend changes in the future, the Council or the IPHC may consider further restrictions on the unguided sport harvest of halibut in Areas 2C and 3A.

Comment 121: Some rural Southeast Alaska communities are heavily dependent on commercial and subsistence fishing. Residents in rural Southeast Alaska, where there is no store and transportation in and out is by boat or seaplane service, must live off the surrounding land and seas. The moratorium must be limited to the guided sport charter sector only. Any extension to subsistence users would be an added hardship on the local economy already suffering from regulations that have unforeseen long-term effects on rural fishing towns.

Response: This rule directly affects only the charter halibut fisheries in Areas 2C and 3A. No changes are made by this action to restrict commercial setline fishing or subsistence halibut fishing opportunity.

Comment 122: I support the idea of limiting the number of participants in the charter halibut fleet. However, as an operator who runs trips that do not return to port for 7 to 10 days at a time, compliance with some rules is difficult. These include the requirement to save carcasses, not being able to skin halibut, not being able to freeze halibut on board, and having different size limits for a second halibut. Implementing such complicated rules should be avoided in the future, and the needs of operations that do not return to port each day should be considered.

Response: NMFS acknowledges the support for this rule. No restrictions exist on freezing sport-caught halibut on board a vessel. The comment is referring to an allowance under ADF&G regulations that discounts sport-caught fish preserved for human consumption from any daily bag limit that may apply to that fish. These ADF&G regulations do not apply to sport-caught halibut, however. All halibut on board a vessel are counted toward the daily bag and possession limits that apply in the regulatory area in which the vessel is operating. Hence, sport-caught halibut possessed onboard a vessel must not be filleted, mutilated, or otherwise disfigured in any manner. An exception allows cutting halibut into two dorsal pieces, two ventral pieces, and two cheek pieces, with skin on all pieces (*see* section 28(2) of the annual management measures published March 19, 2009 (74 FR 11681)). If charter operators and sport fishermen have freezers on their vessels large enough to accommodate such pieces of halibut, no regulation prohibits them from being frozen.

A requirement to save halibut carcasses is not included in this rule and is not currently in effect. The requirement that limits the extent to which sport-caught halibut may be cut and to leave the skin on is necessary to enforce the existing daily bag and possession limits. Because this regulation is needed to enforce other restrictions, it is not designed to discriminate against any particular charter vessel business model or sector of the industry. The current configuration of the charter sector fleet was considered by the Council and the Secretary when this rule was developed and implemented.

Comment 123: I support limited access as it will help limit over fishing in the charter sector. Also, I believe that NMFS and the Council should continue to pursue an IFQ program for halibut charter operators. Commercial setline fishermen understand that lower quotas are due to stress on the stocks, but it is hard to see the commercial quota lowered due to continued pressure on the stocks by commercial sport charter operators who have consistently exceeded their harvest guidelines. The only fair way to resolve this is to develop an IFQ system for the charter fleet. This is the only way to protect the resource for all users—commercial, subsistence, and guided and unguided sport fishermen—and minimize conflicts between the sectors.

Response: NMFS acknowledges the support for this rule. The preamble to the proposed rule for this action (74 FR 18178, April 21, 2009) and the notice for the December 9, 2005, control date for the guided sport fishery for halibut (71 FR 6442, February 8, 2006) describe the development of a charter vessel IFQ program and the reasons why it was not implemented. The Council may revisit this type of limited access system in the future. If so, the Council will develop regulations for such a system and recommend them to the Secretary as a separate action.

Comment 124: I do not support establishing an IFQ program for the charter halibut fishery in IPHC Areas 2C and 3A.

Response: This action does not implement an IFQ program for the charter halibut fishery. The preamble to the proposed rule for this action (74 FR 18178, April 21, 2009) and the notice for

the December 9, 2005, control date for the guided sport fishery for halibut (71 FR 6442, February 8, 2006) describe the development of a charter vessel IFQ program and the reasons why it was not implemented at that time.

Comment 125: I support the one-halibut daily bag limit to protect the halibut resource. It is very frustrating to watch the Area 2C halibut charter industry consistently over fish its GHL every year while the commercial setline fishermen must quit fishing when their quota is met. The same requirement should be placed on the charter sector. Please keep the one-halibut daily bag limit in place.

Response: The one-halibut daily bag limit that was implemented in 2009 on charter vessel anglers in Area 2C (74 FR 21194, May 6, 2009) is designed to keep the overall harvest of charter vessel anglers in Area 2C close to the GHL for that area. That action is different from this rule.

Comment 126: I generally support the necessity to conserve the halibut fishery. However, my concern is to the impact on the sports fisherman and the guided sport charter vessel as a small entity in a vast industry. The one-fish bag limit in Area 2C will virtually end charter fishing for halibut and reduce the guided angler harvest to the lowest level in the last 10 years.

Please reconsider not only the stated intent to ''* * * limit the harvest of Pacific halibut by guided sport charter vessel anglers * * *'' but reassess this action's impact to the non-resident fisherman and the industry that provides this service. There are other means to accomplish conservation objectives without targeting or destabilizing one halibut fishery in favor of another.

Response: This comment appears to be a reaction to the final rule published on May 6, 2009 (74 FR 21194). That action reduced the daily bag limit of halibut for charter vessel anglers from two halibut per day to one halibut per day. This rule to establish a limited access system for the charter halibut fishery in Areas 2C and 3A does not affect the earlier one-halibut bag limit rule.

Comment 127: I believe the goal of the Council is to put the charter operations out of business. The Council is considering an option of having the tourist buy the second fish from the commercial side. If IFQs are being sold at $25 per pound, my guests will have to pay $2,500 for a 100-pound fish.

Response: The objective of this rule is not to put charter vessel operations out of business. NMFS has estimated that about 527 charter vessel businesses (231 in Area 2C and 296 in Area 3A) will qualify for initial allocation of charter halibut permits under this rule. Those businesses that do not qualify for initially allocated permits may acquire them by transfer. The option the comment refers to is a component of the Catch Sharing Plan adopted by the Council in October 2008. A proposed rule that would implement the Catch Sharing Plan, if it is approved, will be published by NMFS for public comment.

Comment 128: One comment suggested that if NMFS intends to limit recreational removals of halibut, it should establish a fair and equitable baseline allocation for the recreational sector, establish a near real-time recreational harvest accounting method, and implement harvest control measures for recreational harvest effort to ensure that the recreational sector does not exceed its allocation.

Response: The intended effect of this rule is to curtail growth of fishing capacity in the guided sport fishery for halibut, not to directly limit recreational removals of halibut. The suggestions provided in the comment are beyond the scope of this action. These suggestions could be made to the Council, IPHC, or ADF&G with respect to timely estimation of recreational harvests.

Comment 129: Supply and demand will limit the charter fleet. If a charter service cannot compete, it will and should be forced out by market forces. When the economy, tourism, weather, or other factors impact businesses, operations will close; consequently, there will be fewer people fishing and fewer fish caught. Those who work hard will likely survive and those who do not will fail; it does not matter how long they have been chartering. This is a service industry and businesses will generally succeed or fail based on their service.

Response: NMFS agrees that charter vessel operations provide a service and that they operate in a competitive market. However, NMFS disagrees that supply and demand alone will sufficiently control harvesting capacity in the charter halibut fleet to the desired levels. Experience in Area 2C demonstrates that under profitable price and cost considerations, excessive capacity will occur in the fishery. This is due primarily to the fact that access to the fish is free in an open access fishery.

Comment 130: The Analysis stated that for enforcement the number of harvested halibut on the vessel should not exceed the client endorsement through the ''gifting'' of skipper and crew fish. For this reason, retention of halibut by skipper and crew needs to be eliminated. The final rule should include a permanent prohibition against retention of halibut by skipper and crew for 3A and 2C (if necessary) as part of this action. A prohibition on skipper and crew retaining halibut was enacted in 2009 in the one-fish bag limit for Area 2C.

Response: NMFS will enforce the daily bag limit for sport-caught halibut based on the area being fished and whether the anglers are charter vessel anglers or non-guided anglers. For example, under current regulations, the daily bag limit for charter vessel anglers in Area 2C is one halibut per day (50 CFR 300.65(d)(2)), while non-guided anglers in that area and all anglers in Area 3A may catch and retain two halibut per day (section 28(1)(b) of the annual management measures published March 19, 2009, at 74 FR 11681). Under this rule and current bag limit regulations, a charter vessel with three charter vessel anglers on board in Area 2C will be limited to three halibut per day, regardless of whether the charter halibut permit on board the vessel was endorsed for a larger number of anglers.

Currently, the guide and crew on a charter vessel in Area 2C are prohibited from catching and retaining halibut during a charter fishing trip, and the number of lines used to fish for halibut are limited to the number of charter vessel anglers on board or six, whichever is less (50 CFR 300.65(d)(2)). In 2009, and in several previous years, ADF&G also prohibited skipper and crew retention of all fish and limited the number of rods to the number of (paying) charter vessel anglers onboard in Area 3A (Emergency Order No. 2–R–3–03–09). The Council could recommend to the Secretary that the same guide/crew and line limit applied currently in Area 2C also apply in Area 3A. That change is outside the scope of this action.

Comment 131: The final rule should limit the number of rods a charter vessel may fish to the number of angler endorsements on the charter halibut permit. This should be added to the rule so that a charter vessel could not fish extra rods if the number of passengers on board exceeds the number of angler endorsements. It would also prevent fishing by skipper and crew fishing under the claim that they are fishing for another species.

Response: Current NMFS regulations (at 50 CFR 300.65(d)(2)(iii)) already limit the number of lines used to fish for halibut in Area 2C to six or the number of charter vessel anglers on board,

whichever is less. This action limits the number of charter vessel anglers catching and retaining halibut to the angler endorsement specified on the charter halibut permit.

Comment 132: Localized moratoria within local area management plan (LAMP) areas could also be implemented to achieve sustainable halibut harvests without having to limit halibut charter operators.

Response: One LAMP currently exists for Sitka Sound and no others are being considered. Although alternative means may be found that would achieve the objectives of this rule, the Council and NMFS found that this limited access system best fit the Council's objectives and is consistent with the requirements of the Halibut Act.

Comment 133: A 100-pound fish limit for the charter fisherman will do little to protect the spawning population of halibut. It would be a waste of time to put a limit on the sport fish size and not the size of fish caught in the commercial fishery.

Response: No weight limit exists on fish caught by charter vessel anglers in either Area 2C or 3A. This rule does not establish a weight limit on halibut harvested by charter vessel anglers in these areas. The comment is irrelevant to this rule.

Comment 134: Several comments suggested that NMFS should implement harvest restrictions instead of the limited access system. Suggestions included (1) a one halibut per day rule with an annual limit of four to six fish for charter anglers, (2) regulations similar to Oregon's one fish per day, minimum size 32 inches, and the first fish you catch over 32 inches is your limit for the day, (3) limit the size of halibut to a number of inches or to a weight under 100 pounds, and (4) a slot limit.

Response: This rule does not impose additional catch limit restrictions because the objective of this action is to curtail growth in the capacity of the charter halibut fishery, not to control charter angler harvest. None of the suggested alternatives would achieve the objective of this action and are outside the scope of this rule.

Comment 135: A moratorium by itself will not stabilize the charter vessel industry. The charter industry does not need in-season closures or a one-fish limit. A larger GHL with a moratorium would work, however, as it would guarantee an amount of fish that could be caught. That would help create a stable business plan.

As I understand the moratorium, each charter boat will be given a permit which is good for the highest number of trips that were taken in 2004 or 2005, multiplied by the most people that were taken fishing on that boat. Issuing permits for trips would not work because you cannot always fill the seats. It would be preferable if the permits were issued with a yearly amount of fish that can be retained. Each permit should be issued with the number of fish stamped on it. There would be no need to renew the permits yearly; they could be permanent, with a transferable option. The permit should not be limited to the type of boat that it is issued to. If a person runs a six pack boat and wanted to run a larger boat and take more fishermen per trip, then it should be allowed to do that, as long as it stays within the overall fish issued for that permit.

There would be concerns about tracking the amount of fish caught per boat to make sure no one is cheating. The best thing may be to eliminate logbooks and issue punch cards. They could be generic with a line on them for the captain to write the date that fish were caught, and once they are punched, they become void. The punch cards could be thrown out the following day. When you are out of punch cards, you are done for the year.

Response: Under this rule, charter halibut permits will be issued to qualifying businesses, not to individual vessels. Each charter halibut permit will have an angler endorsement number specifying the largest number of charter vessel anglers that may be catching and retaining halibut on a vessel carrying the permit. The angler endorsement number on the permit will be based on the highest number of charter vessel anglers that the applicant reported on any logbook fishing trip in 2004 or 2005, subject to a minimum endorsement of four. The number of halibut that may be retained by charter vessel anglers is limited by the daily bag limits in regulation for the area in which the vessel is operating, not by the charter halibut permit. In-season closures of the charter halibut fishery were not proposed and are not implemented by this rule. A charter halibut permit will not limit the permit holder to any number of fishing trips, and does not limit the type of charter vessel on which the permit is used. A one-halibut daily bag limit for charter vessel anglers in Area 2C was effective on June 5, 2009 (74 FR 21194, May 6, 2009), and is not affected by this action.

Comment 136: Two comments raised safety concerns. One stated that guides have to meet high standards, have local experience and knowledge, and have a good safety record. Unguided (either outfitted or completely independent sport fishing) sport fishing is less safe. Therefore this action may lead to increased levels of injury and possibly death among recreational anglers. Magnuson-Stevens Act National Standard 10, which requires that conservation and management measures promote the safety of human life at sea to the extent practicable, should not be ignored.

The other comment recalled the safety comment that NMFS responded to in the final rule establishing the Area 2C one-halibut daily bag limit (Comment 124 on page 21222 published May 6, 2009 at 74 FR 21194). In its response, NMFS claimed to be unable to confirm when the last charter fatality in Alaskan saltwater occurred. NMFS should contact USCG Alaska and ask them specifically for this information. The information is available and it is the responsibility of NMFS to secure it from the USCG, especially when the issue in question is safety.

Response: This rule will not create new safety risks. The number of charter halibut permits that NMFS expects to issue under this rule, and the numbers of associated endorsements, create significant opportunities for operators to meet existing levels of angler demand for guided halibut fishing, as well as expanded demand. Although National Standard 10 does not apply to this rule because it is authorized under the Halibut Act, not the Magnuson-Stevens Act, promoting the safety of human life at sea is a good standard for all fishery regulations. This rule adheres to this standard by not creating new safety risks and by stabilizing the charter halibut fishery. In its analysis of the potential effects of this rule the Council and NMFS found no safety concern.

Data Quality

Comment 137: Logbooks are not a good source of information for issuing charter halibut permits. The government has no way to verify the accuracy of a logbook. The IRS should do an extensive audit to see if the money reported to the IRS matches what was put in the logbook. If the business is legitimate, then they could receive a valuable limited entry permit.

Response: Charter halibut permits allocated under this rule will be based solely on logbook fishing trips; not the amount of halibut reported as harvested in the logbooks. The Council chose to rely on the fishing trip data in ADF&G Saltwater Charter Logbooks as the best available source of information on participation in the charter fishery. NMFS expects that the logbook trip information recorded is reasonably accurate for purposes of this action.

Comment 138: A non-resident but frequent visitor to Southeast Alaska expressed concern that more halibut regulations would be necessary. The commenter encouraged implementation of a solid regulatory foundation based on good science that would provide healthy halibut populations for future generations. The commenter wanted to see only regulations that are necessary to ensure a healthy population for the years to come and to rest on a solid foundation of good science.

Response: NMFS agrees that fishery management policy and the regulations implementing that policy should be based on the best scientific information available. This rule is not designed to directly control the biological condition of the halibut population. To the extent that this rule will stabilize the fishing capacity of the charter halibut fishery, it may indirectly enhance the effectiveness of other regulations that are designed to control halibut harvests and thereby support conservation of the stock.

Comment 139: Halibut is a finite resource and needs to be managed very carefully using the most accurate data possible. I strongly support a halibut charter limited entry program for the guided charter sector.

Response: NMFS agrees that the best scientific information available should be used in fishery management and acknowledges support for this rule.

Comment 140: The reason stated for the moratorium is to curtail growth of a particular industry. However, there is insufficient information to prove that by passing this moratorium the desired outcome will be achieved. We can only assume the desired outcome (based on this statement) is fewer charter fleet vessels. But other statements by NMFS indicate that the permits available to the charter industry will allow for continued growth. Further, any charter vessels removed from the fleet will be replaced by unguided vessels. This proposed rule does not support the desired outcome. It only succeeds in putting charter operations out of business, and placing more financial burden on the economy of all Southeast Alaska communities and on individual families that rely on charter industry businesses and jobs. It also places unguided, unsafe, non-certified drivers on boats in the same area. Any client visiting one of the many charter resorts can use his or her sport fishing license to fish for halibut, but instead of hiring a safe, trained, USCG-licensed captain to operate the boat, he or she can rent the same boat from the same charter resorts and go to the same spot and fish for the same fish. How does allowing this behavior address the objectives of this action?

Response: The intended effect of this rule is to curtail growth of fishing capacity in the guided sport fishery for halibut. This rule does not directly control the harvest of halibut nor does it reduce this harvest. Under this rule, NMFS will issue charter halibut permits to sport fishing businesses that were authorized by ADF&G to conduct logbook fishing trips. The number of logbook fishing trips that will be conducted by these qualifying businesses under this rule will be roughly the same as those taken in recent years immediately prior to this rule. These businesses will be able to grow to meet potentially increased charter vessel angler demand in the future by increasing their average number of trips per season, increasing the average number of anglers carried on each trip, and other operational efficiencies. Charter halibut fishing opportunity will be enhanced under this rule through the community charter halibut permits. Hence, NMFS does not expect a shortage of charter halibut fishing opportunities. Sport fishermen may freely choose whether to use a charter vessel or a unguided vessel to fish for halibut. *See also* responses to Comments 21 and 136.

Comment 141: The data used to establish permit criteria is based on secondhand data with no level of accuracy. The catch record system in place does not have a recorded weight for the species being reviewed. If the intent is to better manage the halibut fishery, reporting a certified scale weight in the round should be required in the bottomfish logbooks. This would assist in having the best scientific information for making management decisions.

Response: NMFS agrees that fishery management should be based on the best scientific information available. However, the intended effect of this rule is to curtail growth of fishing capacity in the guided sport fishery for halibut. This rule does not directly control the harvest of halibut. Therefore, highly precise and accurate estimates of the weight of each halibut harvested by charter vessel anglers are not necessary. Charter halibut permits will be allocated under this rule based on the participation of businesses in the charter halibut fishery using logbook fishing trips as evidence of participation. The numbers of halibut harvested in the past or their weight will have no bearing on the initial distribution of charter halibut permits. The ADF&G saltwater charter logbook data for the qualifying period (2004 and 2005) and the recent participation period (2008) are the best available information for purposes of this rule.

Comment 142: The proposed rule discriminates against any charter operation that began operating between 2006 and 2009. The RIR does not contain any numbers on charters from 2006 to 2009. The data in the Secretarial Review Draft EA/RIR/IRFA only demonstrate activity from the charter fleets from 1999 to 2005.

Response: The Council announced a control date of December 9, 2005. NMFS published that control date in the **Federal Register** on February 8, 2006 (71 FR 6442). The purpose of this control date announcement was to provide notice to persons entering the charter halibut fishery after the control date that they would not be assured of future access to the charter halibut fishery if a limited access system were developed and implemented. Because the Council decided to develop this limited access system based on the control date, it did not give participation credit to charter businesses that entered after that date as eligible. Moreover, when the Council finally decided to recommend its charter halibut moratorium to the Secretary on March 31, 2007, the most recent information on participation in the charter halibut fishery was from 2005. Saltwater charter logbook data for 2006 through the present was not available at that time. Since the Secretarial Review Draft EA/RIR/IRFA was made available for public comment, NMFS has supplemented the Analysis using ADF&G logbook data from 2008. This updated Analysis is contained within the final EA/RIR/FRFA (*see* **ADDRESSES**) and that information was considered when NMFS approved this action and published this rule.

Comment 143: There exists neither proper analysis identifying the number of vessels excluded nor a remedy for those that have made substantial investments.

Response: NMFS recently supplemented the Analysis using ADF&G logbook data from 2008. This updated Analysis is contained within the final EA/RIR/FRFA (*see* **ADDRESSES**). This rule does not compensate charter businesses that do not qualify for any charter halibut permits. One reason compensation is not necessary is that the control date announcement (71 FR 6442, February 8, 2006) provided notice to businesses about the risk of entering the charter halibut fishery after the control date. Another reason compensation is not provided is that businesses have value even without charter permits. Charter vessel assets

may be used in fishing for species other than halibut or for other endeavors. Also, a market for transferable charter halibut permits is expected to emerge under this rule that will allow acquisition of permit(s).

Comment 144: The proposed rule is based on inadequate or projected data. IPHC clearly acknowledges the lack of recent accurate data to determine the harvest levels for sport fishing. It has recently posted comments from its 2009 annual meeting stating that it will work with sport representatives to review Alaska sport regulations and determine if changes are necessary and will work with ADF&G and NMFS staff to provide clearer documentation of the Alaska sport regulations. They noted support for clearer data collection for accuracy and timely accounting and have recommended lowering the harvest rate in Area 2, which will permit rebuilding of the exploitable biomass in this area.

Response: This rule relies on ADF&G saltwater charter logbook data to determine participation in the charter halibut fishery during the qualifying period (2004 and 2005) and recent participation period (2008), which was determined by the Council and NMFS to be the best available information on which to base the qualifying criteria. This participation is determined by numbers of logbook fishing trips; not by numbers or weight of halibut harvested. The IPHC projected sport harvest estimates are not pertinent to this rule. However, NMFS supports improved accuracy and timeliness of recreational harvest estimates of halibut and all other species.

Comment 145: Several comments contend that the Council's previous attempts at developing limited access for the charter halibut fishery failed due to poor data. The Secretarial Review Draft EA/RIR/IRFA indicates that other Council attempts at curtailing charter halibut vessels were rejected primarily due to the lack of adequate data for individual charter businesses. The proposed rule also provides a lengthy history of the Council's consideration of limited entry for charter vessels indicating that its 1997 control date and 2001 charter IFQ program failed because of poor data. Those data have not changed in respect to this proposal; the Council has used the same inaccurate data throughout this process. The data used to create the GHL is between 5 and 15 years old. It is impossible to address the present participation in the fishery and to determine the dependence on and the economics of the fishery using old data.

Response: The history of the Council's work to develop a limited access system for the charter halibut fishery is described in the proposed rule (74 FR 18178, April 21, 2009) beginning on page 18181. The Council's earlier attempts, especially that to develop an IFQ program for the charter halibut fishery relied heavily on charter logbook data to determine the historical harvest of halibut by individual operators. In contrast, this rule is based on logbook fishing trips—not pounds of halibut harvested—as a measure of participation in the charter halibut fishery.

The evidence of a logbook fishing trip is not so rigorous that highly accurate reporting is essential. For example, during the qualifying period, an ADF&G saltwater charter logbook that shows the statistical areas where bottomfish fishing occurred, or boat hours that the vessel engaged in bottomfish fishing, or the number of rods used from the vessel in bottomfish fishing, will serve as evidence of a bottomfish logbook fishing trip. Using the ADF&G saltwater charter logbook as the basis for this information is the best available information for purposes of this rule and is consistent with the historical and present participation requirements of the Halibut Act.

Comment 146: Several comments concerned the fact that halibut, as a species, were not required to be reported by ADF&G in logbooks during 2004 and 2005. Some confusion resulted about whether and how to report halibut harvested on charter vessel trips. ADF&G stopped having halibut harvest recorded in the logbooks after the 2001 season; therefore, halibut harvest was not recorded during 2004 and 2005. Many charter operators recorded ''bottomfishing'' information when conducting halibut charters and others recorded the ADF&G area fished, the number of rods used, and the number of hours fished for my halibut charter trips after 2001. There was no ADF&G record of harvest. Many charter operators did not record any halibut fishing activity because there was no place in the logbook to record it. When the ADF&G was asked how to handle halibut charter trips, some charter operators were told by ADF&G personnel that they did not have to record halibut charter trips. Consequently, for those operators who conducted halibut charters during the qualifying time but did not record them in the ADF&G logbooks, NMFS should consider alternative qualifying documentation such as personal log books, fishing license records, and affidavits from clients.

Response: As discussed in the preamble to the proposed rule (74 FR 18178, April 21, 2009) on page 18185, the basic unit of participation for purposes of this rule is a logbook fishing trip. During the qualifying period of 2004 and 2005, participation will be measured by bottomfish logbook fishing trips because ADF&G did not require halibut kept or released to be reported as a distinct species. Halibut were considered to be bottomfish during that period. ADF&G attached instructions to each logbook that stated that bottomfish fishing effort included effort targeting halibut. Reporting of any one of three types of bottomfish effort data would qualify a trip as a bottomfish logbook trip for purposes of this rule.

In 2006, ADF&G changed its required logbook report to specify halibut data for each logbook fishing trip. If a business owner did not comply with specified reporting requirements, then the fishing trip will not be counted as either a bottomfish logbook fishing trip during the qualifying period or a halibut logbook fishing trip during the recent participation period for purposes of this rule. Regardless of what any particular ADF&G personnel may say to an operator, each operator or business is responsible for complying with applicable Federal halibut fishery regulations and ADF&G reporting requirements.

Comment 147: NMFS should consider implementing or being prepared to implement its own logbook program for halibut to gather the information needed to manage the fishery and for development of any long term management programs. The Alaska State Legislature had legislation in front of it to repeal the sunset date in the current guide licensing program, which is the authorizing legislation for the logbook program, and at the last minute what passed extended the sunset date for one year to January 1, 2010. Another piece of legislation was introduced that again will extend the sunset date for only one year; therefore we are concerned about the advisability of relying on the State logbook program.

Response: The NMFS, IPHC, and Council have relied, and continue to rely, on ADF&G to collect recreational fishing information regarding halibut. This information is essential to the management policies and regulations developed respectively by the IPHC and Council. The Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires Federal agencies to minimize the paperwork burden on individuals and small businesses, to minimize the cost to the Federal government of information collection, and to strengthen the partnership between Federal and State governments by minimizing the burden and maximizing the utility of data collection. ADF&G has

a sport fishing data collection program, staff, and infrastructure to collect recreational fishing data. The Alaska Region, NMFS, by comparison does not have a sport fisheries division and data collection system. Establishing a system to monitor the sport harvest of one species would be costly.

Comment 148: NMFS lacks sufficient information to establish a moratorium because there was no accurate logbook data on charter halibut harvests by charter vessels in 2004 and 2005.

Response: The limited access system established by this rule does not rely on an accurate accounting of halibut harvests by charter vessel anglers during 2004 and 2005. During those years, ADF&G did not require charter vessel business to report the number of halibut that were kept or released. Instead, businesses were required to report bottomfish effort for each logbook fishing trip. ADF&G attached instructions to each logbook stating that bottomfish fishing effort included effort targeting halibut. Hence, the bottomfish logbook fishing trip data are sufficiently accurate as evidence of participation in the fishery for purposes of this rule. *See also* responses to Comments 145 and 146.

Comment 149: A couple of comments expressed concern about the sport halibut harvest estimates based on the mail survey conducted by ADF&G. One comment noted the time lag in the survey that delayed estimates of harvests in one year until close to the end of the following year. The other comment noted that data published on the Council's Web site did not match ADF&G records, and that the mail survey conducted by ADF&G in 2007 had less than 50 percent of the survey forms returned. When determining any action on a proposed rule in regard to the harvest levels, all data must be accurate.

Response: The annual estimate of recreational halibut harvests is based on the statewide harvest survey, a mail survey conducted by ADF&G to assess the harvest of all species of fish taken from freshwater and saltwater in sport fishing. It provides a reasonably accurate estimate of these sport harvests and is especially useful for revealing long-term trends. This rule, however, does not rely on the statewide harvest survey data. The limited access system established by this rule is based on participation in the charter halibut fisheries during certain years as indicated by logbook fishing trips. The statewide harvest survey does not rely on a high percent of survey returns to produce reasonably accurate and precise estimates of sport fishing harvests. Moreover, these surveys are not being used to establish the limited access system under this rule. Because the intended effect of this rule is to curtail growth of fishing capacity in the guided sport fishery for halibut in Areas 2C and 3A, the exact number of halibut harvested in any one area in any one year is of less concern than the growth trend in harvests and fishing capacity over time.

Comment 150: The Council and NMFS have completely failed to gather or evaluate data relative to the charter sector. The Council states that the need for implementing a moratorium is to manage the fisheries within the GHL policy, which the commenter asserts is unfair and outdated. Despite the Council failing to present economic data supporting its supposition, NOAA Web site data clearly show increases in quota share equity and ex-vessel value between 300 percent and 400 percent statewide and within areas. This massive increase in profitability does not lend credence to the need for wiping out the charter sector.

Response: NMFS estimates that a total of 527 charter businesses will qualify for an initial allocation of either a transferable or non-transferable charter halibut permit. The Analysis (*see* **ADDRESSES**) indicates this number of businesses is sufficient to accommodate market demand for guided sport fishing for halibut. This rule is designed to curtail growth of fishing capacity in the charter halibut fishery as intended by the Council and based on its problem statement. The GHL policy implemented in 2003 (68 FR 47256, August 8, 2003) was designed to establish an amount of halibut harvest by the charter halibut sector that will be monitored annually. The purpose of the GHL is different from this rule.

Other Issues

Comment 151: The public received insufficient information about the moratorium and its impact on recently started charter halibut businesses. Uncertainty over whether or when a fishery is going to be managed under a limited access system adversely affects business activity. Investment-backed expectations need to be protected. Council control dates and final action twice before (April 1997 and April 2001) but neither of these rules were signed into law. This is probably why charter businesses started in later years.

Response: A control date notice is not by itself a Federal rule. The control date notice published in advance of this action on February 8, 2006 (71 FR 6442), stated that it did not commit the Council or the Secretary to any particular management regime or criteria for entry to the charter halibut fishery. All previous control date notices also have language to this effect. Similarly, the public is not required by a control date notice to invest or not invest in a fishing business that may be affected by the development and implementation of a limited access rule in the future. That decision is left to the business owner. The primary purpose of a control date notice is to give notice to persons contemplating an investment in a business that may be affected by a future limited access system that such a system may be developed and implemented. Affected persons can then incorporate the risk of potentially not receiving an initial allocation of permit(s) into their investment decision making. Risk-averse persons may decide to delay their investment pending potential regulatory changes; risk-taking persons may not let this information affect their investment decisions. In either case, the control date notice provides the public with information that a limited access system may be developed for a fishery and, if so, that entering the fishery after the control date may not lead to an initial allocation of a limited access permit.

Comment 152: Use of the government Web site to submit comments is too complicated. It was difficult to find and I required 30 minutes of assistance from a very patient NOAA employee on the phone to navigate to this URL to provide comments.

Response: The Web site, ''Regulations.gov'' is a Federal government Web site serving many agencies. Currently the Web site is operating successfully, and NMFS has received thousands of letters of comment through it. A person experiencing problems with Regulations.gov should contact Regulations.gov directly. In addition, help can be provided by contacting the individual listed under the preamble heading **FOR FURTHER INFORMATION CONTACT** and comments may be submitted by mail, fax, or hand delivery if the electronic alternative proves too difficult.

Comment 153: The current Administration fully supports recreational fishing and its benefits to the Nation, and calls for efforts to allocate a fair percentage of managed coastal fisheries to sport fishing.

Response: NMFS acknowledges that sport fishing in general and guided sport fishing in particular generates substantial economic benefits for the Nation. This action addresses the problem identified by the Council in its problem statement and has been

determined to be fair and equitable as required by the Halibut Act (*see* discussion above under the heading ''Consistency with Halibut Act'').

Comment 154: This action violates Executive Order 12962. The primary intent of the E.O. is ''to provide for increased recreational fishing opportunities nationwide.'' Reducing and eliminating access to a public resource is not consistent with the language contained in E.O. 12962.

Response: This final rule is consistent with E.O. 12962. This action limits the number of charter vessels that may carry anglers catching and retaining halibut in Areas 2C and 3A. This action does not reduce or eliminate charter vessel angler access to the Pacific halibut resource. Under this rule, an estimated 502 charter halibut permits will be issued in Area 2C and 418 permits will be issued in Area 3A. Each permit will have an angler endorsement that specifies the maximum number of charter vessel anglers that may be harvesting halibut on the vessel. Multiplying the average angler endorsement level in each area by the number of permits expected in the area yields an estimate of the total number of charter vessel anglers that may be served on any day. For Area 2C this estimate is 3,028 anglers and for 3A it is 3,577 anglers. In other words, this rule will allow a total of 6,605 charter vessel anglers to have access to the halibut resource on any day. To the extent that some charter vessel operations, particularly in Area 2C, offer half-day trips, this estimate is conservative. In addition, this estimate of charter vessel angler opportunity does not include the potential additional community charter halibut permits that may be available to CQEs.

Another way of judging whether charter vessel angler opportunity for access to the resource is constrained under this rule is to compare the average number of logbook fishing trips per vessel per season in 2008 with the average number of trips per vessel per season that will be needed under this rule to serve the same number of charter vessel anglers that fished in 2008. Charter halibut vessels in Area 2C averaged 36 trips per season in 2008. Based on the total number of permits expected to be initially issued under this rule, charter vessels will need to make 52 trips in Area 2C to serve the same number of charter vessel anglers that fished in 2008. In Area 3A, charter vessels took an average of 38 trips during the season in 2008. Under this rule, the same number of anglers could be served by 56 trips. Based on a practical halibut fishing season of 100 days, opportunity exists for permitted charter vessels under this rule to increase their average number of trips per season in response to increased angler demand. Hence, this action is not expected to reduce or eliminate charter vessel angler access to the halibut resource in Alaska, as suggested by the comment.

Comment 155: Several comments expressed general support for the limited access system for the charter halibut fishery and urged implementation of it as soon as possible. One comment asserted that the administrative record proves a long history of trying to address the unchecked growth of the halibut charter industry and that the charter community has unfortunately resisted these efforts as proven by their litigation efforts to challenge regulatory limits. Another comment expressed the view that guided sport charter operations are commercial endeavors with substantial and growing impacts on halibut populations that Federal managers have for too long failed to control. Continued growth of the charter fleet is especially damaging because it occurs without effective means to accurately account for the catch and without an effective enforcement mechanism to hold the fleet within its GHL. Limited access may improve the ability of the charter sector to maintain a two-fish bag limit without excessive pressure on the resource and other user groups. Another comment stated that the rapid growth of the charter boat industry and its catch of halibut in these areas is out of control and not sustainable and that NMFS should implement this moratorium in Areas 2C and 3A because the halibut stocks, particularly in Area 2C, are in desperate need of rebuilding. This view was expressed also by a recreational angler who wrote that this is an important step toward controlling the continued over utilization of the near shore resource and that this step to limit the number of halibut charters is long overdue. The angler strongly urged the Secretary of Commerce to approve the charter halibut moratorium and to implement it as soon as possible.

Other comments from participants in the charter vessel and commercial setline sectors indicated that the program will be a first step in developing a long-term solution to ongoing conservation concerns and allocation disputes between the two sectors. The comments indicated that the program will stabilize the fishery and provide a foundation for additional market-based management programs such as individual quotas. The charter halibut permit program fairly balances past and current participation, limits new entry to businesses that buy permits from persons exiting in the fishery, and provides appropriate opportunities for small coastal communities to enter the charter vessel fishery through community charter halibut permits. The program also establishes appropriate standards for transferable versus non-transferable permits. The commenters supported the rule because it will in their view ultimately curtail fishing capacity growth in the charter vessel sector.

Response: NMFS acknowledges the support for this rule. Stakeholders from all halibut user groups have provided useful information during the Council development and rulemaking process for this action. Although litigation can slow this process, plaintiffs have the right to challenge government rules. This fosters the development of robust rulemaking that ultimately benefits all participants in the fishery management process.

With regard to accounting for sport harvests of halibut, the best available information on the recreational harvest of halibut is derived from ADF&G sport fishing data sources including the Statewide Harvest Survey of sport fishermen, the Saltwater Sport Fishing Charter Logbook, and creel census surveys. NMFS finds that the recreational harvest estimates provided by ADF&G from these data sources are reasonably accurate.

This rule is not designed to directly limit the amount of halibut harvested in the charter halibut fishery, nor is it designed to limit the sport harvest of halibut in localized areas. Scientific information does not exist that would discern localized depletion at a scale smaller than an IPHC area or attribute it to a particular gear group within Area 2C or Area 3A. The purpose of this action is to curtail growth of fishing capacity in the charter halibut fishery. By stabilizing the number of vessels participating in this fishery, other regulations that restrict the harvest of charter vessel anglers may have improved effectiveness.

Comment 156: As a halibut charter operator, I have been adversely affected by the publicity and rumors of reduced halibut harvests and draconian measures such as a one-fish bag limit that confuse recreational anglers about their opportunities to access to the halibut resource. The limited access system may help alleviate some of this uncertainty for business owners. The length of time the Council and NMFS have taken to get to this point has made it difficult for those in the fishery to make business decisions. Unfortunately, there has been significant charter

turnover and new businesses have started or existing businesses have expanded. Support for the program is declining because many of these new businesses say they will not qualify for the program.

Response: NMFS acknowledges the time that has transpired between the Council action to adopt the charter halibut moratorium and Secretarial action to promulgate this rule. During this time, NMFS also implemented a one-halibut daily bag limit for charter vessel anglers in Area 2C (74 FR 21194, May 6, 2009). Limited access systems including this one typically are complicated to implement. NMFS acknowledges also that the entry and exit rate of charter vessel fishing businesses may be high relative to other businesses. Publication of the December 9, 2005, control date (71 FR 6442; February 8, 2006), however, announced that persons entering the charter halibut fishery after the control date will not be assured of future access to the fishery if a limited access system is implemented. With the intended stability that this rule will bring to the charter halibut fishery, confusion among recreational anglers should dissipate.

Comment 157: Halibut charter fishery participation rules should be simple, easy to implement, and easy to enforce. I like the idea of a limited number of permits awarded to established fishing guides on a seniority basis. Limiting the number of boats fishing seems like a straightforward way to control the harvest of halibut taken by sports charter.

Response: This action is intended to curtail growth of fishing capacity in the guided sport fishery for halibut. This action, by itself, is not designed to limit the number of charter vessel anglers who may use sport fishing guide services or their harvest of halibut. However, by stabilizing the number of vessels participating in this fishery, the effectiveness of other regulations that limit the harvest of halibut by charter vessel anglers may be improved.

Changes From the Proposed Rule

This action was proposed and public comments were solicited for 45 days beginning on April 21, 2009 (74 FR 18178), and ending June 5, 2009. By the end of the comment period 166 public submissions were received. All comments received by the comment ending date are summarized and responded to above under the heading ''comments and responses.'' The following 24 changes are made from the proposed rule in this final rule.

1. In § 300.61, a reference to § 300.65(d) is added to the definition of charter vessel angler. On June 5, 2009, NMFS implemented regulations limiting charter vessel anglers in Area 2C to catching and retaining one halibut per day (May 6, 2009, 73 FR 21194). These regulations added a definition of charter vessel angler to § 300.61 for purposes of § 300.65(d). The proposed rule to implement a charter halibut permit program (April 21, 2009, 74 FR 18178), proposed a revision to the definition of charter vessel angler that inadvertently excluded the reference to § 300.65(d). To maintain the current definition of charter vessel angler in § 300.61, the reference to § 300.65(d) is added in this final rule.

2. In § 300.61, the definition of charter vessel operator is not revised. The current definition of charter vessel operator is for purposes of § 300.65(d), and the proposed rule would have applied the definition for purposes of § 300.67 in addition to § 300.65(d). On further examination of the proposed rule text, NMFS determined that the definition of charter vessel operator is not needed for purposes of § 300.67. This final rule, at §§ 300.66 and 300.67 (*see* changes 3, 6, and 9 from the proposed rule), references the definition of operator in § 300.2. Operator means, with respect to any vessel, the master or other individual aboard and in charge of that vessel. This definition is consistent with the intended definition of charter vessel operator in the proposed rule. This change is also consistent with the suggestion in Comment 80 to clarify the proposed definition of charter vessel operator.

3. In § 300.61, the definition of crew member is revised. This final rule changes the reference to ''charter vessel operator'' from the proposed rule to ''operator of a vessel with one or more charter vessel anglers on board''. This change reflects NMFS's determination to replace charter vessel operator with operator, as defined in § 300.2, for purposes of § 300.67. This determination is described in change 2 from the proposed rule.

4. In § 300.61, a definition of ''valid'' is added to clarify its meaning with respect to a charter halibut permit. For purposes of §§ 300.66 and 300.67, a valid charter halibut permit is the permit currently in effect.

5. In § 300.66(p), text is added to clarify that a person is prohibited from submitting inaccurate information to an authorized officer as defined in § 300.2. The paragraph at § 300.66(p) currently prohibits a person from failing to submit or submitting inaccurate information on any report, license, catch card, application or statement required under § 300.65. The proposed rule for this action proposed to apply this prohibition to §§ 300.65 and 300.67. The change in § 300.66(p) from the proposed to final rule clarifies that persons are also prohibited from submitting inaccurate information to an authorized officer.

6. In § 300.66, the word ''operate'' is changed to ''be an operator of'' in paragraphs (r), (s), (t), (u), and (v). This change from the proposed rule is made to ensure consistency with the definition of operator in § 300.2, as described in change 2 from the proposed rule.

7. In § 300.66(r) and § 300.67(a)(1), the word ''original'' is added before ''valid charter halibut permit''. This addition clarifies that an operator of a vessel with one or more charter vessel anglers catching and retaining Pacific halibut on board must have on board an original valid charter halibut permit. A copy or facsimile of a valid charter halibut permit would not meet the requirements of §§ 300.66 and 300.67.

8. In § 300.66, paragraph (w) is not included in the final rule. On further examination of the proposed rule text, NMFS determined that regulations in § 300.67 regarding crew member compliance would be unnecessarily redundant. The prohibition on crew members catching and retaining halibut during a charter fishing trip at § 300.65(d)(ii) is not changed with this final rule.

9. In § 300.67(a)(1), general permit requirements, ''charter vessel operator'' is changed to ''operator''. This change is made for consistency with the definition of operator in § 300.2, as described in change 2 from the proposed rule.

10. In § 300.67(a)(1), text is added at the end of the paragraph to clarify that a charter halibut permit holder must insure that the operator of the permitted vessel complies with all requirements of §§ 300.65 and 300.67.

11. In § 300.67(a)(1) and (a)(3), text is added to clarify that the angler endorsement on a charter vessel permit(s) must be equal to or greater than the number of charter vessel anglers who are catching and retaining halibut. In paragraph (a)(1) the phrase ''at least'' is added to the last phrase of the sentence to read, ''* * * endorsed for at least the number of charter vessel anglers who are catching and retaining Pacific halibut.'' The language of the proposed rule, without the ''at least'' phrase, implied that a charter halibut permit endorsement had to be equal to the number of charter vessel anglers on board. This implied meaning was not intended. For the same reason, in paragraph (a)(3), the phrase ''up to'' is substituted for the word ''only'' to

clarify that the angler endorsement does not require a charter vessel to have the maximum number of anglers on board to make the charter halibut permit valid. Rather, the number of charter vessel anglers on board a charter vessel must not exceed the angler endorsement on its permit. These clarifying words also respond in part to a question raised in Comment 86.

12. In § 300.67, paragraphs (b) and (d), are revised to clarify the order of determining whether an applicant for one or more charter halibut permits is eligible for any permits, and if so, how many, and whether any will be designated as transferable. The organization of paragraph (b) may have confused qualifying criteria for a transferable permit with the determination of how many permits could qualify for a transferable designation and whether the same logbook fishing trips that qualified an applicant for a transferable permit(s) could be used also to qualify for a non-transferable permit(s). The revised paragraphs also better reflect the explanation in the preamble to the proposed rule than did the proposed rule regulatory text in paragraphs (b) and (d). The revised paragraphs make no substantive changes in the qualifying criteria, but rather reorganize the proposed rule text of these paragraphs to make clear the following sequence. First, to qualify for any type of permit—non-transferable or transferable—an applicant must apply within the application period and meet the logbook fishing trip requirements described in paragraph (b)(1). Second, if the applicant meets the standards described in paragraph (b), then the number of permits will be determined as described in paragraph (c), which is unchanged from the proposed rule. Finally, the designation of one or more of the permits as transferable will require meeting the standards described in paragraph (d).

13. In § 300.67(b)(2)(ii) (previously paragraph (b)(5)(ii) in the proposed rule), a minor technical edit is made to remove the word ''the'' and to change the word ''owners'' to its singular form ''owner.'' These minor changes correct an editorial oversight in the proposed rule and make the word ''owner'' in its singular form consistent throughout the regulatory text.

14. In § 300.67(b), a new paragraph (3) is added to clarify that the term ''ADF&G Business Owner License'' includes an ''ADF&G business owner registration.'' The latter term was used by ADF&G in 2004; however, the former term was used in 2005 and 2008. The term ''ADF&G Business Owner License'' also includes ''sport fish business owner license,'' ''sport fish business license,'' and ''ADF&G business license.'' The proposed rule (at page 18185) discussed the various terms used to describe this authority from the State of Alaska, ADF&G, granted as a registration or license that authorized every charter vessel fishing trip. Although discussed in the proposed rule preamble, this clarification did not appear in the proposed rule text. This oversight was pointed out in Comment 83.

15. In § 300.67(d)(1)(iii), a sentence is added to clarify that the vessel used to qualify for a transferable permit during one of the qualifying years (2004 or 2005) does not have to be the same vessel used to qualify during the recent participation year (2008). The proposed rule regulatory text at paragraph (b)(2)(ii) and (iii) stated that qualifying for a transferable permit would require meeting the minimum of 15 logbook fishing trips with the same vessel in each year (qualifying and recent participation year). This text could be interpreted to mean that the logbook trips had to have been made on the same vessel in both years (*See* Comments 54 through 57). This is not the intended interpretation. What is intended, as clarified in this change, is that the minimum 15 bottomfish logbook fishing trips had to have been made from the same vessel in either 2004 or 2005. Also, the minimum 15 halibut logbook fishing trips during 2008 had to have been made from the same vessel during that year, but the vessel used in 2008 is not required to be the same vessel that was used in either 2004 or 2005.

16. In § 300.67(d), paragraph (d)(2) is added for consistency with the qualifications for a transferable permit described in the preceding paragraph (d)(1) (previously paragraph (b)(2) in the proposed rule), the preamble to the proposed rule, and the Analysis. The proposed rule language suggested that the number of transferable permits would be equal to the number of vessels that met the minimum logbook trip criterion of 15 during only the applicant-selected year of the qualifying period. NMFS found several inconsistencies between this language and other statements in the proposed rule and in the Analysis. First, a permit designation of transferable requires that the 15-trip minimum criteria be met in one year of the qualifying period and in the recent participation year. Second, the preamble to the proposed rule at page 18183 states that the minimum participation criteria in both years would be taken into account in designating a charter halibut permit as transferable. Finally, in the Analysis (**ADDRESSES**) section 2.5.5 makes clear that the Council intended that the number of permits designated transferable would be controlled by the lesser of the number of vessels that met the 15-trip minimum criteria in one year of the qualifying period or the number of vessels that met the 15-trip minimum criteria in the recent participation year.

17. In § 300.67(f)(3), the information element, ''the statistical area(s) where bottomfish fishing occurred,'' is added to correct an oversight of not including this information element in the proposed rule. The proposed rule preamble, on page 18185, discussed the various information elements that would be required as evidence of a halibut logbook fishing trip during the recent participation period (2008). The proposed rule proposed a definition of ''halibut logbook fishing trip'' to include information about the number of halibut kept or released or the number of boat hours that the vessel engaged in bottomfish fishing. The 2008 ADF&G saltwater sport fishing charter trip logbook required the recording of the primary ADF&G statistical area fished when boat hours fished for bottomfish were recorded. Hence, reporting the statistical area(s) where bottomfish fishing occurred as optional evidence of participation is consistent the 2008 logbook reporting procedures. Adding statistical area(s) also is consistent with the logbook fishing trip information elements in § 300.67(f)(2) and with the evidence of participation recommendation by the Council (Issue 9 in the March 31, 2007, motion adopted by the Council). The number of rods used from the vessel in bottomfish fishing is not included in § 300.67(f)(3) because it was not required to be reported in 2008 logbooks. Moreover, any guided bottomfish fishing in 2008 should have been reported in terms of boat hours and bottomfish statistical area, which would be the requisite evidence of participation.

18. In § 300.67(f)(7), the year ''2008'' is substituted for the proposed rule place holder text that read, ''[insert the recent participation year].'' As explained in the proposed rule on page 18182 of the proposed rule, specifying the year that would be the recent participation period was held pending a NMFS determination of the most recent year for which ADF&G charter logbook data would be available. In adopting its charter halibut moratorium recommendation to the Secretary, the Council contemplated that the recent participation period or ''year prior to implementation'' would be either 2007 or 2008. Based on the availability of

logbook data, NMFS has determined that 2008 is the recent participation period.

19. In § 300.67(g), language is added at the beginning to clarify certain limitations on the use of the unavoidable circumstance exception. These limitations were discussed in the preamble to the proposed rule (74 FR 18178, April 21, 2009) on page 18188, but were omitted from the regulatory text by oversight. The new regulatory text makes clear, first, that unavoidable circumstance claims must be made on appeal pursuant to § 300.67(h)(6). Second, the new text clarifies that the Office of Administrative Appeals will not accept an unavoidable circumstance claim unless the person making the claim would be excluded from the charter halibut fishery entirely unless their unavoidable circumstance was recognized. Finally, the new text clarifies that unavoidable circumstance claims to increase the number of permits issued or to change a non-transferable permit into a transferable permit will not be accepted.

20. In § 300.67(g)(3)(i), language is added to clarify that proof of active military service during the 2004 and 2005 qualifying period will qualify an applicant for the unavoidable circumstance, military service provision. This provision will not be limited only to service in the National Guard or military reserve as indicated in the proposed rule. This change is being made in response to Comment 110. The comment correctly noted that in adopting its charter halibut moratorium recommendation to the Secretary, the Council intended that the military exemption apply to an individual who was assigned to active military duty during 2004 or 2005. The proposed rule text interpreted the Council's recommendation too narrowly in limiting the military service provision to service only in the National Guard or military reserve. Hence, the final rule text is revised to accurately reflect the Council's approved recommendation. In addition, a new paragraph (g)(3)(iii) is added to clarify that the criteria to be used in determining the number and type (transferable or non-transferable) of charter halibut permit(s) initially allocated under this military service provision is in paragraph (g)(2)(v)(B), immediately preceding paragraph (g)(3). The proposed rule presumed that NMFS will be guided by the criteria in paragraph (g)(2)(v)(B), but the added text makes this explicit. Finally, the added text makes clear that all permits issued under this military service provision will receive angler endorsements of six by cross reference to paragraph (e)(2).

21. In § 300.67(h)(3), language is added to authorize NMFS to issue non-transferable interim permit(s) for undisputed permit claims. On further examination of the proposed regulatory text, NMFS determined that without this explicit authority, a dispute over any one permit would prevent issuing any charter halibut permit(s) for which an applicant appeared to qualify. For example, an applicant may claim three charter halibut permits; however, the official charter halibut record support issuing only two permits. The proposed rule regulatory text at § 300.67(h) suggests that NMFS may not issue any permits to the applicant until after the 30-day evidentiary period, an IAD is issued, and OAA accepts the applicant's appeal regarding the third disputed permit. In this example, the applicant may eventually win the appeal for the third disputed permit, but lose an entire fishing season waiting for the disputed claim to be resolved. This change from the proposed rule will allow NMFS to issue interim permits for undisputed permit claims, allowing an applicant to continue charter halibut operations while disputed permit claims are processed and adjudicated.

22. In § 300.67(i)(1), a reference to paragraph (b)(2) in the proposed rule is changed to paragraph (d)(2) in the final rule. This change is necessary to update a reference to regulatory text in § 300.67(b) in the proposed rule, which is revised in this final rule as described in changes 12 and 16.

23. In § 300.67(k)(4), the maximum permit limitations on a CQE is clarified by removing the word ''following'' and instead referring specifically to the maximum number of charter halibut and community charter halibut permits specified in paragraphs (k)(4)(i) and (k)(4)(ii).

24. In § 679.2, the definition of ''community quota entity (CQE)'' is revised by removing the parenthetical phrase ''for purposes of the IFQ program.'' After further examination of the proposed rule text, NMFS determined that this phrase could cause confusion by suggesting that the CQE definition applies only to the IFQ program. This rule establishes another potential purpose for a CQE, which is to hold community charter halibut permits. This expanded role for CQEs that represent communities identified in this rule does not require a substantive change to the CQE definition. This clarification is consistent with the proposed rule that thoroughly described the potential role for CQEs in the charter halibut fishery.

Classification

Regulations governing the U.S. fisheries for Pacific halibut are developed by the International Pacific Halibut Commission (IPHC), the Pacific Fishery Management Council, the North Pacific Fishery Management Council (Council), and the Secretary of Commerce. Section 5 of the Northern Pacific Halibut Act of 1982 (Halibut Act, 16 U.S.C. 773c) provides the Secretary of Commerce with the general responsibility to carry out the Convention between Canada and the United States for the management of Pacific halibut, including the authority to adopt regulations as may be necessary to carry out the purposes and objectives of the Convention and Halibut Act. This final rule is consistent with the Secretary of Commerce's authority under the Halibut Act.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

A FRFA was prepared that describes the economic impact that this action has on small entities. The RIR/FRFA prepared for this final rule is available from NMFS (*see* **ADDRESSES**). The FRFA for this action explains the need for, and objectives of, the rule, summarizes the public comments on the initial regulatory flexibility analysis and agency responses, describes and estimates the number of small entities to which the rule will apply, describes projected reporting, recordkeeping and other compliance requirements of the rule, and describes the steps the agency has taken to minimize the significant economic impact on small entities, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency that affect the impact on small entities was rejected.

The need for and objectives of this action; a summary of the comments and responses; a description of the action, its purpose, and its legal basis; and a statement of the factual, policy, and legal reasons for selecting the alternative embodied in this action are described elsewhere in this preamble and are not repeated here.

The proposed rule was published in the **Federal Register** on April 21, 2009 (74 FR 18178). An Initial Regulatory Flexibility Analysis (IRFA) was prepared and described in the classification section of the preamble to the rule. The public comment period ended on June 5, 2009. NMFS received 166 communications containing 157 separate comments. Comments 45 and

143 address the IRFA. Comments 39–41, 43, 45–47, 51, and 143 address the economic impact of the rule on small entities.

Two classes of entities are directly regulated by this action: (1) guided charter businesses active in IPHC Areas 2C and 3A, and (2) CQE-qualified communities and CQE groups formed by those communities in Areas 2C and 3A. Almost all of the guided charter businesses are believed to be small entities. This conclusion is based on a Small Business Administration (SBA) threshold of $7.0 million in gross revenues on an annual basis for facilities offering recreational services, including guided fishing services (NAICS 713990). The largest of these entities, which are lodges, may be considered large entities under SBA standards, but that cannot be confirmed. The 32 communities in Area 2C and 3A directly regulated as part of this action would be considered small entities under the SBA definitions because they have populations under 50,000 persons.

Under this action, NMFS will issue permits to an estimated 231 businesses in Area 2C and to 296 businesses in Area 3A. In Area 2C, 173 of the guided businesses that show evidence of bottomfish fishing in 2008 will not qualify to receive an Area 2C guided charter permit under the limited entry program. In Area 3A, 154 of the guided businesses that show evidence of bottomfish fishing in 2008 will not qualify to receive an Area 3A guided charter permit.

Businesses that do not qualify to receive a charter halibut permit do not meet activity thresholds during the qualifying period (2004–2005) or do not meet the 2008 thresholds in the recency provisions of the Council's motion.

This action seeks to help 32 small, remote communities in Areas 2C and 3A develop charter businesses by mitigating the economic barrier associated with purchasing a charter halibut permit and creating a number of non-transferable permits that can be held only by the non-profit entity representing the eligible community.

Under this action, 18 qualifying Area 2C communities are eligible to each receive up to four community halibut charter permits per community at no cost; 14 Area 3A communities are eligible to each receive up to seven community halibut charter permits per community at no cost. Guided halibut fishing trips made with these permits must either begin or end within the boundaries of the eligible community designated on the permit. In addition, each of these community CQE programs will be able to buy additional transferable permits equal in number to its allocation of community halibut charter permits. This authority to acquire by transfer additional transferable charter halibut permits makes it possible for CQEs representing eligible communities to hold a maximum of eight permits per community in Area 2C or a maximum of 14 permits per community in Area 3A. These potential permit numbers are different from the excessive share limits imposed on other entities (a five-permit limit unless initially allocated more).

Of the directly regulated entities, only currently active guided charter operations that will not receive a permit to continue to participate in this fishery will suffer significant adverse economic impacts. These operations must enter the market for transferable charter halibut permits to remain active in the charter halibut fishery.

Permit applications must be submitted prior to the start of the program. The application will require information about the business applying for the permit, including the ownership structure of the business (U.S. citizenship papers for individuals) and information on the charter activities of the business. After submitting the initial permit application, additional applications will be required only for transfer of permits. NMFS will require additional reports when the structure of the business holding the permit changes or the permit is transferred. The initial application for a charter permit could take an estimated two hours to complete, depending on the amount of additional information the applicant needs to provide. The application for transfer of a charter permit is estimated to take two hours to complete, based on previous experience with the groundfish License Limitation Program.

Persons applying for a community charter permit or a military charter halibut permit must submit applications for these special permits. In addition, CQEs representing communities eligible to receive community charter halibut permits will be required to identify the person that will use the permit. The application for a community charter halibut permit or a military charter halibut permit is estimated to take two hours to complete. In all cases, basic reading and writing skills are required to complete the application forms.

The Council and NMFS have taken several steps to minimize the burden on directly regulated small entities. The Council published information about the control date frequently during its deliberations. The Council adopted this control date at its December 2005 meeting. In April 2006, it received a recommendation from its Charter Halibut Stakeholder Committee that it initiate an analysis of an entry moratorium using the December 9, 2005, control date. At its April 2006 meeting it requested staff to prepare an analysis of moratorium options based on the December 9, 2005, control date. The Council received a discussion paper from staff, based on this control date in December 2006. It adopted a preliminary preferred alternative based on this control date in February 2007, and it recommended a limited access system that included this control date in April 2007. Newsletters for each of these Council meetings contained information on the Council action and mentioned this control date. NMFS published a notice in the **Federal Register** in February 2006 stating that the Council had adopted this control date (71 FR 6442, February 8, 2006) and the Council devoted a paragraph to this notice in its February 2006 newsletter.

This action creates a class of non-transferable permits to ease the transition from an open access fishery for a large class of businesses participating at relatively low levels of activity. Thus, any business that reported more than five logbook trips in the qualifying and in the recent participation period, but that had no vessel with at least 15 trips in one of the two years, 2004 or 2005, and in 2008, will receive non-transferable permits. These permits will allow that operation to continue its activity until the operator leaves the fishery, at which time they will expire. Thus, a transitional mechanism is provided for many operations that otherwise would have been forced to withdraw from the fishery immediately.

The Council and NMFS created transferable permits to allow the market to reallocate permits among recipients. This makes it possible for businesses that were active in 2008 but not during the qualifying period to continue their activity by purchasing permits.

The Council has created a class of community halibut charter permits. These will be issued without charge to qualifying communities. If qualified communities in Area 2C take full advantage of this program, an additional 72 permits may be issued for guided charter vessels. If qualified communities in Area 3A take full advantage, an additional 98 permits may be available. These permits were created to provide development opportunities for rural communities, but they should offer opportunities for businesses that do not receive transferable or non-transferable permits, and that are willing to enter a

joint venture with a qualified community to utilize these permits.

The Council and Secretary considered a no-action alternative, but this was rejected because it would not accomplish the objective of this action, which is to stabilize the businesses in this fishery by controlling entry, while providing opportunities for rural community development. The Council also considered an option that only required a single landing in 2008 to meet the recency requirement. This option was rejected because this action was originally taken to stabilize the businesses in the charter halibut fishery with respect to active participants in 2004 and 2005. The recency requirement was adopted because the Council was aware that implementation would take several years, and it wanted to limit qualifying businesses to those businesses active during the qualification period and still active close to the time the program was implemented. Therefore, the Council elected to require the same level of participation in the qualification period and in the recency period.

Paperwork Reduction Act Collections of Information

This rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) and which has been approved by OMB under control number 0648–0592. Public reporting burden estimates per response for these requirements are two hours for charter halibut permit application, two hours for community charter halibut permit application, two hours for military charter halibut permit application, two hours for transfer of a charter halibut permit, and four hours for appeal of permit denial. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection-of-information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (*see* **ADDRESSES**) and by e-mail to *David_Rostker@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.

List of Subjects

15 CFR Part 902

Recordkeeping and reporting requirements.

50 CFR Part 300

Fisheries, Fishing, Reporting and recordkeeping requirements, Treaties.

50 CFR Part 679

Alaska, Fisheries.

Dated: December 18, 2009.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

■ For the reasons set out in the preamble, NMFS amends 15 CFR Chapter IX, and 50 CFR Chapters III and VI as follows:

15 CFR Chapter IX

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

■ 1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

■ 2. In § 902.1, in the table in paragraph (b), under the entry ''50 CFR'', add entries for ''300.67(h), (i), (k), and (l)'', in alphanumeric order to read as follows:

§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) * * *

CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648–)
* * * * *	
50 CFR	
* * * * *	
300.67(h), (i), (k), and (l)	–0592
* * * * *	

50 CFR Chapter III

PART 300—INTERNATIONAL FISHERIES REGULATIONS

Subpart E—Pacific Halibut Fisheries

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

Authority: 16 U.S.C. 773–773k.

■ 4. In § 300.61, definitions are amended by:

■ A. Removing the definition for ''Charter vessel''.

■ B. Revising definitions for ''Charter vessel angler'', ''Charter vessel fishing trip'', ''Charter vessel guide'', ''Crew member'', and ''Sport fishing guide services''.

■ C. Adding definitions for ''Charter halibut permit'', ''Community charter halibut permit'', ''Military charter halibut permit'', and ''Valid'' in alphabetical order.

The revisions and additions read as follows:

§ 300.61 Definitions.

* * * * *

Charter halibut permit means a permit issued by the National Marine Fisheries Service pursuant to § 300.67.

Charter vessel angler, for purposes of §§ 300.65(d), 300.66, and 300.67, means a person, paying or non-paying, using the services of a charter vessel guide.

Charter vessel fishing trip, for purposes of §§ 300.65(d), 300.66, and 300.67, means the time period between the first deployment of fishing gear into the water from a vessel after any charter vessel angler is onboard and the offloading of one or more charter vessel anglers or any halibut from that vessel.

Charter vessel guide, for purposes of §§ 300.65(d), 300.66 and 300.67, means a person who holds an annual sport guide license issued by the Alaska Department of Fish and Game, or a person who provides sport fishing guide services.

* * * * *

Community charter halibut permit means a permit issued by NMFS to a Community Quota Entity pursuant to § 300.67.

Crew member, for purposes of §§ 300.65(d), and 300.67, means an assistant, deckhand, or similar person who works directly under the supervision of, and on the same vessel as, a charter vessel guide or operator of a vessel with one or more charter vessel anglers on board.

* * * * *

Military charter halibut permit means a permit issued by NMFS to a United States Military Morale, Welfare and Recreation Program pursuant to § 300.67.

* * * * *

Sport fishing guide services, for purposes of §§ 300.65(d) and 300.67, means assistance, for compensation, to a person who is sport fishing, to take or attempt to take fish by being onboard a vessel with such person during any part of a charter vessel fishing trip. Sport fishing guide services do not include services provided by a crew member.

* * * * *

Valid, with respect to a charter halibut permit for purposes of §§ 300.66 and 300.67, means the charter halibut permit that is currently in effect.

* * * * *

■ 5. In § 300.66, revise paragraphs (b), (i), (o), and (p), and add paragraphs (r), (s), (t), (u), and (v) to read as follows:

§ 300.66 Prohibitions.

* * * * *

(b) Fish for halibut except in accordance with the catch sharing plans and domestic management measures implemented under §§ 300.63, 300.65, and 300.67.

* * * * *

(i) Fish for subsistence halibut from a charter vessel or retain subsistence halibut onboard a charter vessel if anyone other than the owner of record, as indicated on the State of Alaska vessel registration, or the owner's immediate family is aboard the charter vessel and unless each person engaging in subsistence fishing onboard the charter vessel holds a subsistence halibut registration certificate in the person's name pursuant to § 300.65(i) and complies with the gear and harvest restrictions found at § 300.65(h). For purposes of this paragraph (i), the term ''charter vessel'' means a vessel that is registered, or that should be registered, as a sport fishing guide vessel with the Alaska Department of Fish and Game.

* * * * *

(o) Fail to comply with the requirements of §§ 300.65 and 300.67.

(p) Fail to submit or submit inaccurate information on any report, license, catch card, application, or statement required or submitted under §§ 300.65 and 300.67, or submit inaccurate information to an authorized officer.

* * * * *

(r) Be an operator of a vessel with one or more charter vessel anglers on board that are catching and retaining halibut without an original valid charter halibut permit for the regulatory area in which the vessel is operating.

(s) Be an operator of a vessel 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.

(t) Be an operator of a vessel 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.

(u) Be an operator of a vessel in Area 2C and Area 3A during one charter vessel fishing trip.

(v) Be an operator of a vessel in Area 2C or Area 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.

■ 6. Add § 300.67 to subpart E to read as follows:

§ 300.67 Charter halibut limited access program.

This section establishes limitations on using a vessel on which charter vessel anglers catch and retain Pacific halibut in International Pacific Halibut Commission (IPHC) regulatory areas 2C and 3A.

(a) *General permit requirements.* (1) In addition to other applicable permit and licensing requirements, any operator of a vessel with one or more charter vessel anglers catching and retaining Pacific halibut on board a vessel must have on board the vessel an original valid charter halibut permit or permits endorsed for the regulatory area in which the vessel is operating and endorsed for at least the number of charter vessel anglers who are catching and retaining Pacific halibut. Each charter halibut permit holder must insure that the operator of the permitted vessel complies with all requirements of §§ 300.65 and 300.67.

(2) *Area endorsement.* A charter halibut permit is valid only in the International Pacific Halibut Commission regulatory area for which it is endorsed. Regulatory areas are defined in the annual management measures published pursuant to § 300.62.

(3) *Charter vessel angler endorsement.* A charter halibut permit is valid for up to the maximum number of charter vessel anglers for which the charter halibut permit is endorsed.

(b) *Qualifications for a charter halibut permit.* A charter halibut permit for IPHC regulatory area 2C must be based on meeting participation requirements in area 2C. A charter halibut permit for IPHC regulatory area 3A must be based on meeting participation requirements in area 3A. Qualifications for a charter halibut permit in each area must be determined separately and must not be combined.

(1) NMFS will issue a charter halibut permit to a person who meets the following requirements:

(i) The person applies for a charter halibut permit within the application period specified in the **Federal Register** and completes the application process pursuant to paragraph (h) of this section.

(ii) The person is the individual or non-individual entity to which the State of Alaska Department of Fish and Game (ADF&G) issued the ADF&G Business Owner Licenses that authorized logbook fishing trips that meet the minimum participation requirements described in paragraphs (b)(1)(ii)(A) and (b)(1)(ii)(B) of this section for one or more charter halibut permits, unless the person is applying as a successor-in-interest.

(A) Reported five (5) bottomfish logbook fishing trips or more during one year of the qualifying period; and

(B) Reported five (5) halibut logbook fishing trips or more during the recent participation period.

(iii) If the person is applying as a successor-in-interest to the person to which ADF&G issued the Business Owner Licenses that authorized logbook fishing trips that meet the participation requirements described in paragraphs (b)(1)(ii) of this section for one or more charter halibut permits, NMFS will require the following written documentation:

(A) If the applicant is applying on behalf of a deceased individual, the applicant must document that the individual is deceased, that the applicant is the personal representative of the deceased's estate appointed by a court, and that the applicant specifies who, pursuant to the applicant's personal representative duties, should receive the permit(s) for which application is made; or

(B) If the applicant is applying as a successor-in-interest to an entity that is not an individual, the applicant must document that the entity has been dissolved and that the applicant is the successor-in-interest to the dissolved entity.

(iv) If more than one applicant claims that they are the successor-in-interest to a dissolved entity, NMFS will award the permit or permits for which the dissolved entity qualified in the name(s) of the applicants that submitted a timely application and proved that they are a successor-in-interest to the dissolved entity.

(2) Notwithstanding any other provision in this subpart, and except as provided in paragraph (b)(1)(iv) of this section,

(i) One logbook fishing trip shall not be credited to more than one applicant;

(ii) One logbook fishing trip made pursuant to one ADF&G Business Owner License shall not be credited to more than one applicant; and

(iii) Participation by one charter halibut fishing business shall not be allowed to support issuance of permits to more than one applicant.

(3) For purposes of this section, the term ''ADF&G Business Owner(s) License(s)'' includes a ''business registration,'' ''sport fish business owner license,'' ''sport fish business license,'' and ''ADF&G business license''.

(c) *Number of charter halibut permits.* An applicant that meets the participation requirements in paragraph (b) of this section will be issued the number of charter halibut permits equal to the lesser of the number of permits determined by paragraphs (c)(1) or (c)(2) of this section as follows:

(1) The total number of bottomfish logbook fishing trips made pursuant to the applicant's ADF&G Business License in the applicant-selected year divided by five, and rounded down to a whole number; or

(2) The number of vessels that made the bottomfish logbook fishing trips in the applicant-selected year.

(d) *Designation of transferability.* Each permit issued to an applicant under paragraph (c) of this section will be designated as transferable or non-transferable.

(1) Minimum participation criteria for a transferable permit are described in paragraphs (d)(1)(i) and (d)(1)(ii) of this section as follows:

(i) Reported fifteen (15) bottomfish logbook fishing trips or more from the same vessel during one year of the qualifying period; and

(ii) Reported fifteen (15) halibut logbook fishing trips or more from the same vessel during the recent participation period.

(iii) The vessel used during the recent participation period is not required to be the same vessel used during the qualifying period.

(2) The number of transferable charter halibut permits issued to an applicant will be equal to the lesser of the number of vessels that met the minimum transferable permit qualifications described in paragraphs (d)(1)(i) or (d)(1)(ii) of this section.

(e) *Angler endorsement.* A charter halibut permit will be endorsed for the highest number of charter vessel anglers reported on any logbook fishing trip in the qualifying period except that:

(1) The angler endorsement number will be four (4) if the highest number of charter vessel anglers reported on any logbook fishing trip in the qualifying period is less than four (4) or no charter vessel anglers were reported on any of the applicant's logbook fishing trips in the applicant-selected year; and

(2) The angler endorsement number will be six (6) on a charter halibut permit issued pursuant to military service under paragraph (g)(3) of this section.

(f) For purposes of this section, the following terms are defined as follows:

(1) *Applicant-selected year* means the year in the qualifying period, 2004 or 2005, selected by the applicant for NMFS to use in determining the applicant's number of transferable and nontransferable permits.

(2) *Bottomfish logbook fishing trip* means a logbook fishing trip in the qualifying period that was reported to the State of Alaska in a Saltwater Charter Logbook with one of the following pieces of information: The statistical area(s) where bottomfish fishing occurred, the boat hours that the vessel engaged in bottomfish fishing, or the number of rods used from the vessel in bottomfish fishing.

(3) *Halibut logbook fishing trip* means a logbook fishing trip in the recent participation period that was reported to the State of Alaska in a Saltwater Charter Logbook within the time limit for reporting the trip in effect at the time of the trip with one of the following pieces of information: The number of halibut that was kept, the number of halibut that was released, the statistical area(s) where bottomfish fishing occurred, or the boat hours that the vessel engaged in bottomfish fishing.

(4) *Logbook fishing trip* means a bottomfish logbook fishing trip or a halibut logbook fishing trip that was reported as a trip to the State of Alaska in a Saltwater Charter Logbook within the time limits for reporting the trip in effect at the time of the trip, except that for multi-day trips, the number of trips will be equal to the number of days of the multi-day trip, *e.g.,* a two day trip will be counted as two trips.

(5) *Official charter halibut record* means the information prepared by NMFS on participation in charter halibut fishing in Area 2C and Area 3A that NMFS will use to implement the Charter Halibut Limited Access Program and evaluate applications for charter halibut permits.

(6) *Qualifying period* means the sport fishing season established by the International Pacific Halibut Commission (February 1 through December 31) in 2004 and 2005.

(7) *Recent participation period* means the sport fishing season established by the International Pacific Halibut Commission (February 1 through December 31) in 2008.

(g) *Unavoidable circumstance.* Unavoidable circumstance claims must be made pursuant to paragraph (h)(6) of this section, and will be limited to persons who would be excluded from the charter halibut fishery entirely unless their unavoidable circumstance is recognized. This unavoidable circumstance provision cannot be used to upgrade the number of permits issued or to change a non-transferable permit to a transferable permit, and is limited to the following circumstances.

(1) *Recent participation period.* An applicant for a charter halibut permit that meets the participation requirement for the qualifying period, but does not meet the participation requirement for the recent participation period, may receive one or more charter halibut permits if the applicant proves paragraphs (g)(1)(i) through (iv) of this section as follows:

(i) The applicant had a specific intent to operate a charter halibut fishing business in the recent participation period;

(ii) The applicant's specific intent was thwarted by a circumstance that was:

(A) Unavoidable;

(B) Unique to the owner of the charter halibut fishing business; and

(C) Unforeseen and reasonably unforeseeable by the owner of the charter halibut fishing business;

(iii) The circumstance that prevented the applicant from operating a charter halibut fishing business actually occurred; and

(iv) The applicant took all reasonable steps to overcome the circumstance that prevented the applicant from operating a charter halibut fishing business in the recent participation period.

(v) If the applicant proves the foregoing (*see* paragraphs (g)(1)(i) through (iv) of this section), the applicant will receive the number of transferable and non-transferable permits and the angler endorsements on these permits that result from the application of criteria in paragraphs (b), (c), (d), (e), and (f) of this section.

(2) *Qualifying period.* An applicant for a charter halibut permit that meets the participation requirement for the recent participation period but does not meet the participation requirement for the qualifying period, may receive one or more permits if the applicant proves paragraphs (g)(2)(i) through (iv) of this section as follows:

(i) The applicant had a specific intent to operate a charter halibut fishing business in at least one year of the qualifying period;

(ii) The applicant's specific intent was thwarted by a circumstance that was:

(A) Unavoidable;

(B) Unique to the owner of the charter halibut fishing business; and

(C) Unforeseen and reasonably unforeseeable by the owner of the charter halibut fishing business;

(iii) The circumstance that prevented the applicant from operating a charter halibut fishing business actually occurred; and

(iv) The applicant took all reasonable steps to overcome the circumstance that prevented the applicant from operating a charter halibut fishing business in at least one year of the qualifying period.

(v) If the applicant proves the foregoing (*see* paragraphs (g)(2)(i) through (iv) of this section), the applicant will receive either:

(A) One non-transferable permit with an angler endorsement of four (4); or

(B) The number of transferable and non-transferable permits, and the angler endorsement on those permits, that result from the logbook fishing trips that the applicant proves likely would have taken by the applicant but for the circumstance that thwarted the applicant's specific intent to operate a charter halibut fishing business in one year of the qualifying period and the applicant did not participate during the other year of the qualifying period.

(3) *Military service.* An applicant for a charter halibut permit that meets the participation requirement in the recent participation period, but does not meet the participation requirement for the qualifying period, may receive one or more permits if the applicant proves the following:

(i) The applicant was ordered to report for active duty military service as a member of a branch of the U.S. military, National Guard, or military reserve during the qualifying period; and

(ii) The applicant had a specific intent to operate a charter halibut fishing business that was thwarted by the applicant's order to report for military service.

(iii) The number of transferable and non-transferable charter halibut permit(s) that an applicant may receive under paragraph (g)(3) of this section will be based on the criteria in paragraph (g)(2)(v)(B) of this section. Angler endorsements on all such charter halibut permits will be pursuant to paragraph (e)(2) of this section.

(h) *Application for a charter halibut permit.* (1) An application period of no less than 60 days will be specified by notice in the **Federal Register** during which any person may apply for a charter halibut permit. Any application that is submitted by mail and postmarked, or submitted by hand delivery or facsimile, after the last day of the application period will be denied. Electronic submission other than by facsimile will be denied. Applications must be submitted to the address given in the **Federal Register** notice of the application period.

(2) *Charter halibut permit.* To be complete, a charter halibut permit application must be signed and dated by the applicant, and the applicant must attest that, to the best of the applicant's knowledge, all statements in the application are true and the applicant complied with all legal requirements for logbook fishing trips in the qualifying period and recent participation period that were reported under the applicant's ADF&G Business Owner Licenses. An application for a charter halibut permit will be made available by NMFS. Completed applications may be submitted by mail, hand delivery, or facsimile at any time during the application period announced in the **Federal Register** notice of the application period described at paragraph (h)(1) of this section.

(3) *Application procedure.* NMFS will create the official charter halibut record and will accept all application claims that are consistent with the official charter halibut record. If an applicant's claim is not consistent with the official charter halibut record, NMFS will issue non-transferable interim permit(s) for all undisputed permit claims, and will respond to the applicant by letter specifying a 30-day evidentiary period during which the applicant may provide additional information or argument to support the applicant's claim for disputed permit(s). Limits on the 30-day evidentiary period are as follows:

(i) An applicant shall be limited to one 30-day evidentiary period; and

(ii) Additional information received after the 30-day evidentiary period has expired will not be considered for purposes of the initial administrative determination.

(4) After NMFS evaluates the additional information submitted by the applicant during the 30-day evidentiary period, it will take one of the following two actions.

(i) If NMFS determines that the applicant has met its burden of proving that the official charter halibut record is incorrect, NMFS will amend the official charter halibut record and use the official charter halibut record, as amended, to determine whether the applicant is eligible to receive one or more charter halibut permits, the nature of those permits and the angler and area endorsements on those permits; or

(ii) If NMFS determines that the applicant has not met its burden of proving that the official charter halibut record is incorrect, NMFS will notify the applicant by an initial administration determination, pursuant to paragraph (h)(5) of this section.

(5) *Initial Administration Determination (IAD).* NMFS will send an IAD to the applicant following the expiration of the 30-day evidentiary period if NMFS determines that the applicant has not met its burden of proving that the official charter halibut record is incorrect or that other reasons exist to initially deny the application. The IAD will indicate the deficiencies in the application and the deficiencies with the information submitted by the applicant in support of its claim.

(6) *Appeal.* An applicant that receives an IAD may appeal to the Office of Administrative Appeals (OAA) pursuant to § 679.43 of this title.

(i) If the applicant does not apply for a charter halibut permit within the application period specified in the **Federal Register**, the applicant will not receive any interim permits pending final agency action on the application.

(ii) If the applicant applies for a permit within the specified application period and OAA accepts the applicant's appeal, the applicant will receive the number and kind of interim permits which are not in dispute, according to the information in the official charter halibut record.

(iii) If the applicant applies for a permit within the specified application period and OAA accepts the applicant's appeal, but according to the information in the official charter halibut record, the applicant would not be issued any permits, the applicant will receive one interim permit with an angler endorsement of four (4).

(iv) All interim permits will be non-transferable and will expire when NMFS takes final agency action on the application.

(i) *Transfer of a charter halibut permit*—(1) *General.* A transfer of a charter halibut permit is valid only if it is approved by NMFS. NMFS will approve a transfer of a charter halibut permit if the permit to be transferred is a transferable permit issued under paragraph (d)(2) of this section, if a complete transfer application is submitted, and if the transfer application meets the standards for approval in paragraph (i)(2) of this section.

(2) *Standards for approval of transfers.* NMFS will transfer a transferable charter halibut permit to a person designated by the charter halibut

permit holder if, at the time of the transfer the following standards are met:

(i) The person designated to receive the transferred permit is a U.S. citizen or a U.S. business with a minimum of 75 percent U.S. ownership;

(ii) The parties to the transfer do not owe NMFS any fines, civil penalties or any other payments;

(iii) The transfer is not inconsistent with any sanctions resulting from Federal fishing violations;

(iv) The transfer will not cause the designated recipient of the permit to exceed the permit limit at paragraph (j) of this section, unless an exception to that limit applies;

(v) A transfer application is completed and approved by NMFS; and

(vi) The transfer does not violate any other provision in this part.

(3) For purposes of paragraph (i)(2) of this section, a U.S. business with a minimum of 75 percent U.S. ownership means a corporation, partnership, association, trust, joint venture, limited liability company, limited liability partnership, or any other entity where at least 75 percent of the interest in such entity, at each tier of ownership of such entity and in the aggregate, is owned and controlled by citizens of the United States.

(4) *Application to transfer a charter halibut permit.* To be complete, a charter halibut permit transfer application must have notarized and dated signatures of the applicants, and the applicants must attest that, to the best of the applicants' knowledge, all statements in the application are true. An application to transfer a charter halibut permit will be made available by NMFS. Completed transfer applications may be submitted by mail or hand delivery at any time to the addresses listed on the application. Electronic or facsimile deliveries will not be accepted.

(5) *Denied transfer applications.* If NMFS does not approve a charter halibut permit transfer application, NMFS will inform the applicant of the basis for its disapproval.

(6) *Transfer due to court order, operation of law or as part of a security agreement.* NMFS will transfer a charter halibut permit based on a court order, operation of law or a security agreement, if NMFS determines that a transfer application is complete and the transfer will not violate an eligibility criterion for transfers.

(j) *Charter halibut permit limitations*—(1) *General.* A person may not own, hold, or control more than five (5) charter halibut permits except as provided by paragraph (j)(4) of this section. NMFS will not approve a transfer application that would result in the applicant that would receive the transferred permit holding more than five (5) charter halibut permits except as provided by paragraph (j)(6) of this section.

(2) *Ten percent ownership criterion.* In determining whether two or more persons are the same person for purposes of paragraph (j)(1) of this section, NMFS will apply the definition of an ''affiliation for the purpose of defining AFA entities'' at § 679.2 of this title.

(3) A permit will cease to be a valid permit if the permit holder is:

(i) An individual and the individual dies; or

(ii) A non-individual (*e.g.,* corporation or partnership) and dissolves or changes as defined at paragraph (j)(5) of this section.

(iii) A transferable permit may be made valid by transfer to an eligible recipient.

(4) *Exception for initial recipients of permits.* Notwithstanding the limitation at paragraph (j)(1) of this section, NMFS may issue more than five (5) charter halibut permits to an initial recipient that meets the requirements described in paragraphs (b), (d), and (e) of this section for more than five (5) charter halibut permits, subject to the following limitations:

(i) This exception applies only to an initial recipient as the recipient exists at the time that it is initially issued the permits;

(ii) If an initial recipient of transferable permit(s) who is an individual dies, the individual's successor-in-interest may not hold more than five (5) charter halibut permits;

(iii) If an initial recipient permit holder that is a non-individual, such as a corporation or a partnership, dissolves or changes, NMFS will consider the new entity a new permit holder and the new permit holder may not hold more than five (5) charter halibut permits.

(5) For purposes of this paragraph (j), a ''change'' means:

(i) For an individual, the individual has died, in which case NMFS must be notified within 30 days of the individual's death; and

(ii) For a non-individual entity, the same as defined at § 679.42(j)(4)(i) of this title, in which case the permit holder must notify NMFS within 15 days of the effective date of the change as required at § 679.42(j)(5) of this title.

(6) *Exception for transfer of permits.* Notwithstanding the limitation at paragraph (j)(1) of this section, NMFS may approve a permit transfer application that would result in the person that would receive the transferred permit(s) holding more than five (5) transferable charter halibut permits if the parties to the transfer meet the following conditions:

(i) The designated person that would receive the transferred permits does not hold any charter halibut permits;

(ii) All permits that would be transferred are transferable permits;

(iii) The permits that would be transferred are all of the transferable permits that were awarded to an initial recipient who exceeded the permit limitation of five (5) permits; and

(iv) The person transferring its permits also is transferring its entire charter vessel fishing business, including all the assets of that business, to the designated person that would receive the transferred permits.

(k) *Community charter halibut permit*—(1) *General.* A Community Quota Entity (CQE), as defined in § 679.2 of this title, representing an eligible community listed in paragraph (k)(2) of this section, may receive one or more community charter halibut permits. A community charter halibut permit issued to a CQE will be designated for area 2C or area 3A, will be non-transferable, and will have an angler endorsement of six (6).

(2) *Eligible communities.* Each community charter halibut permit issued to a CQE under paragraph (k)(1) of this section will specify the name of an eligible community on the permit. Only the following communities are eligible to receive community charter halibut permits:

(i) For Area 2C: Angoon, Coffman Cove, Edna Bay, Hollis, Hoonah, Hydaburg, Kake, Kassan, Klawock, Metlakatla, Meyers Chuck, Pelican, Point Baker, Port Alexander, Port Protection, Tenakee, Thorne Bay, Whale Pass.

(ii) For Area 3A: Akhiok, Chenega Bay, Halibut Cove, Karluk, Larsen Bay, Nanwalek, Old Harbor, Ouzinkie, Port Graham, Port Lyons, Seldovia, Tatitlek, Tyonek, Yakutat.

(3) *Limitations.* The maximum number of community charter halibut permits that may be issued to a CQE for each eligible community the CQE represents is as follows:

(i) A CQE representing an eligible community or communities in regulatory area 2C may receive a maximum of four (4) community charter halibut permits per eligible community designated for Area 2C.

(ii) A CQE representing an eligible community or communities in regulatory area 3A may receive a maximum of seven (7) community charter halibut permits per eligible community designated for Area 3A.

(4) NMFS will not approve a transfer that will cause a CQE representing a community or communities to hold more than the total number of permits described in paragraphs (k)(4)(i) and (k)(4)(ii) of this section, per community, including community charter halibut permits granted to the CQE under this paragraph (k) and any charter halibut permits acquired by the CQE by transfer under paragraph (i) of this section.

(i) The maximum number of charter halibut and community charter halibut permits that may be held by a CQE per community represented by the CQE in regulatory area 2C is eight (8).

(ii) The maximum number of charter halibut and community charter halibut permits that may be held by a CQE per community represented by the CQE in regulatory area 3A is fourteen (14).

(5) *Limitation on use of permits.* The following limitations apply to community charter halibut permits issued to a CQE under paragraph (k)(1) of this section.

(i) Every charter vessel fishing trip authorized by such a permit and on which halibut are caught and retained must begin or end at a location(s) specified on the application for a community charter halibut permit and that is within the boundaries of the eligible community designated on the permit. The geographic boundaries of the eligible community will be those defined by the United States Census Bureau.

(ii) Community charter halibut permits may be used only within the regulatory area for which they are designated to catch and retain halibut.

(6) *Application procedure.* To be complete, a community charter halibut permit application must be signed and dated by the applicant, and the applicant must attest that, to the best of the applicants' knowledge, all statements in the application are true and complete. An application for a community charter halibut permit will be made available by NMFS and may be submitted by mail, hand delivery, or facsimile at any time to the address(s) listed on the application. Electronic deliveries other than facsimile will not be accepted.

(l) *Military charter halibut permit.* NMFS will issue a military charter halibut permit without an angler endorsement to an applicant provided that the applicant is a Morale, Welfare and Recreation Program of the United States Armed Services.

(1) *Limitations.* A military charter halibut permit is non-transferable and may be used only in the regulatory area (2C or 3A) designated on the permit.

(2) *Application procedure.* An applicant may apply for a military charter halibut permit at any time. To be complete, a military charter halibut permit application must be signed and dated by the applicant, and the applicant must attest that, to the best of the applicants' knowledge, all statements in the application are true and complete. An application for a military charter halibut permit will be made available by NMFS and may be submitted by mail, hand delivery, or facsimile at any time to the address(s) listed on the application. Electronic deliveries other than facsimile will not be accepted.

50 CFR Chapter VI

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 introductory text for the definition of ''community quota entity (CQE)'' to read as follows:

§ 679.2 Definitions.

* * * * *

Community quota entity (CQE) means a non-profit organization that:

* * * * *

[FR Doc. E9–30662 Filed 1–4–10; 8:45 am]

BILLING CODE 3510–22–P