rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

VII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 7, 2010.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.368 is amended as follows:

■ i. In paragraph (a)(2), revise the introductory text;

■ ii. In paragraph (a)(2), in the table, remove the commodities Garlic, bulb and Shallot, bulb; revise the commodities Onion, bulb; Onion, green; and Vegetable, root, except sugar beet, subgroup 1B; and alphabetically add the following commodities;

■ iii. In paragraphs (c)(2) and (d)(2), revise the introductory text.

The amendments read as follows:

§ 180.368 Metolachlor; tolerances for residues.

(a) * * *

(2) Tolerances are established for residues of S-metolachlor, including its metabolites and degradates, in or on the commodity(s), as defined. Compliance with the tolerance levels specified in the following table below is to be determined by measuring only the sum of free and bound S-metolachlor, S-2-chloro-N-(2-ethyl-6-methylphenyl)-N-(2-methoxy-1-methylethyl)acetamide, its R-enantiomer, and its metabolites, determined as the derivatives, 2-(2-ethyl-6-methylphenyl)amino-1-propanol and 4-(2-ethyl-6-methylphenyl)-2-hydroxy-5-methyl-3-morpholinone, calculated as the stoichiometric equivalent of S-metolachlor, in or on the commodity.

Commodity	Parts per million
* * *	* *
Brassica, leafy greens, subgroup 5B	1.8
Bushberry subgroup 13-07B	0.15
Caneberry subgroup 13-07A	0.10
Carrot, roots	0.40
* * *	* *
Cucumber	0.13
* * *	* *
Melon, subgroup 9A	0.10
* * *	* *
Okra	0.10
Onion, bulb, subgroup 3-07A	0.10
Onion, green, subgroup 3-07B	2.0
* * *	* *
Sesame, seed	0.13
* * *	* *
Sorghum, sweet, stalk	4.0
* * *	* *
Turnip, greens	1.8
* * *	* *
Vegetable, root, except sugar beet, subgroup 1B, except carrot	0.30

* * * * *

(c) * * *

(2) Tolerances with regional registration are established for residues of S-metolachlor, including its metabolites and degradates, in or on the commodities identified in the following table below. Compliance with the tolerance levels specified in the following table below is to be determined by measuring only the sum of free and bound S-metolachlor, S-2-chloro-N-(2-ethyl-6-methylphenyl)-N-(2-methoxy-1-methylethyl)acetamide, its R-enantiomer, and its metabolites, determined as the derivatives, 2-(2-ethyl-6-methylphenyl)amino-1-propanol and 4-(2-ethyl-6-methylphenyl)-2-hydroxy-5-methyl-3-morpholinone, calculated as the stoichiometric equivalent of S-metolachlor, in or on the commodity.

* * * * *

(d) * * *

(2) Tolerances for are established for the indirect or inadvertent residues of S-metolachlor, including its metabolites and degradates, in or on the commodities identified in the following table below. Compliance with the tolerance levels specified in the following table below is to be determined by measuring only the sum of free and bound S-metolachlor, S-2-chloro-N-(2-ethyl-6-methylphenyl)-N-(2-methoxy-1-methylethyl)acetamide, its R-enantiomer, and its metabolites, determined as the derivatives, 2-(2-ethyl-6-methylphenyl)amino-1-propanol and 4-(2-ethyl-6-methylphenyl)-2-hydroxy-5-methyl-3-morpholinone, calculated as the stoichiometric equivalent of S-metolachlor, in or on the commodity.

* * * * *

[FR Doc. 2010–23130 Filed 9–16–10; 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 100503209–0430–02]

RIN 0648–AY85

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 amending the limited access program for charter vessels in the guided sport fishery for Pacific halibut in the waters of International Pacific Halibut Commission Regulatory Area 2C (Southeast Alaska) and Area 3A (Central Gulf of Alaska). These regulations revise the method of assigning angler endorsements to charter halibut permits to more closely align each endorsement

with the greatest number of charter vessel anglers reported for each vessel that a charter business used to qualify for a charter halibut permit. This action is necessary to achieve the halibut fishery management goals of the North Pacific Fishery Management Council.

DATES: Effective October 18, 2010.

ADDRESSES: Electronic copies of the Categorical Exclusion, the Regulatory Impact Review (RIR), the Initial Regulatory Flexibility Analysis (IRFA), and the Final Regulatory Flexibility Analysis (FRFA) prepared for this action are available from *http://www.regulations.gov* or from the NMFS Alaska Region website at *http://alaskafisheries.noaa.gov*. The Environmental Assessment, RIR, and FRFA for the charter halibut limited access program are available from the NMFS Alaska Region website at *http://alaskafisheries.noaa.gov*.

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

SUPPLEMENTARY INFORMATION: The International Pacific Halibut Commission (IPHC) and NMFS manage fishing for Pacific halibut (*Hippoglossus stenolepis*) through regulations established under authority of the Northern Pacific Halibut Act of 1982 (Halibut Act). The IPHC 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, D.C., 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 18, 2010 (75 FR 13024). IPHC regulations affecting sport fishing for halibut and charter vessels in IPHC Areas 2C and 3A may be found in sections 3, 25, and 28 of the March 18 final rule.

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 is operating.

Section 773c(c) of the Halibut Act also authorizes the North Pacific Fishery Management Council (Council) 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 commercial fishery Individual Fishing Quota Program, codified at 50 CFR part 679, subsistence halibut fishery management measures, codified at 50 CFR 300.65, and the limited access program for charter vessels in the guided sport fishery, codified at 50 CFR 300.67. This action is consistent with the Council's authority under section 773(c) of the Halibut Act.

Charter Halibut Limited Access Program

In March 2007, the Council recommended a limited access program for charter vessels in IPHC Areas 2C and 3A. The intent of the program was to curtail growth of fishing capacity in the charter sector by limiting the number of charter vessels that may participate in the guided sport fishery for halibut in Areas 2C and 3A. NMFS published a final rule implementing the program on January 5, 2010 (75 FR 554). Under the program, 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. Portions of the limited access program final rule that related to eligibility criteria, the permit application process, and other administrative procedures became effective on February 4, 2010. The requirement to have a charter halibut permit on board a charter vessel fishing for halibut will become effective on February 1, 2011.

Qualifications for Charter Halibut Permit

An applicant must demonstrate participation in the charter halibut fishery during a historic qualifying period and during a recent participation period to receive an initial allocation of a charter halibut permit. The two historic qualifying periods are the sport fishing seasons established by the IPHC in 2004 and 2005 (February 1 through December 31). Applicants need to demonstrate participation only in one of these years–2004 or 2005. The recent participation period is the sport fishing season established by the IPHC in 2008 (February 1 through December 31). This year was selected as the recent participation period because, at the time of program implementation, it was the most recent year for which NMFS had a complete record of saltwater charter vessel logbook data from the Alaska Department of Fish and Game (ADF&G).

The basic unit of participation for receiving a charter halibut permit is a logbook fishing trip. A logbook fishing trip is an event that was reported to ADF&G in a saltwater charter vessel logbook within the requisite time limit in effect when the trip was made.

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 the 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 documentation of at least 15 logbook fishing trips during one of the qualifying years–2004 or 2005–and at least 15 logbook fishing trips during 2008.

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 onboard the vessel during a charter vessel fishing trip. The term "charter vessel angler" is defined by regulation at 50 CFR 300.61 to include all persons, paying or non-paying, who use the services of the charter vessel guide onboard the vessel. The angler endorsement assigned to a charter halibut permit limits the number of persons onboard that may catch and retain halibut.

Under the final rule implementing the limited access program (75 FR 554, January 5, 2010), the angler endorsement assigned to a charter halibut permit for all qualified businesses would be equal to the greatest number of anglers reported for any vessel the business used for at least one logbook fishing trip in the qualifying period (2004 and 2005). The minimum angler endorsement would be four. All permits issued to an applicant would have the same angler endorsement.

In February 2010, the Council reviewed the method described in the January 5, 2010, final rule for assigning angler endorsements to the second and subsequent charter halibut permits issued to business owners receiving

more than one permit for an area. The Council noted that in some cases, the greatest number of charter vessel anglers reported for one vessel could be greater than the number of anglers reported on other vessels the business used to qualify for charter halibut permits. For example, if an applicant used three vessels to qualify for three permits, and reported a maximum of six charter vessel anglers for the first vessel's trips, a maximum of four charter vessel anglers for the second vessel, and a maximum of three charter vessel anglers for the third vessel in the qualifying period, under the limited access program final rule the applicant would be issued three charter halibut permits, each with an angler endorsement of six. The Council was concerned about this method of assigning angler endorsements because the total number of angler endorsements the applicant would receive on all permits combined could be greater than the total number of charter vessel anglers the business reported for all of the vessels it used in the qualifying period. The Council also was concerned that the method of assigning angler endorsements under the January 5, 2010, final rule could result in an increase in fishing capacity the Council did not intend. The total number of angler endorsements that would be assigned to permits under the final rule potentially could enable a greater number of charter vessel anglers to catch and retain halibut under the limited access program than qualifying charter operators reported during the qualifying period.

The Council initiated this action to more closely align angler endorsements assigned to the second and subsequent permits issued to a business owner with the permit recipient's vessel-specific activity during the qualifying period. Using the previous example in which the applicant would receive three charter halibut permits, under this action, each permit's angler endorsement would be derived from the number of charter vessel anglers reported for each vessel the applicant used in the qualifying period, with a minimum endorsement of four. The applicant would receive one permit with an angler endorsement of six, and two permits with an angler endorsement of four. The Council reviewed the RIR/IRFA (see **ADDRESSES**) prepared for this action in April 2010, and selected a preferred alternative to revise the method of assigning angler endorsements to charter halibut permits issued to businesses receiving more than one permit for each area, Area 2C or Area 3A.

Angler Endorsements Under This Action

For applicants that qualify for more than one charter halibut permit, NMFS will determine the greatest number of charter vessel anglers the applicant reported for each vessel the applicant used in the qualifying period (2004 and 2005) for an area. Each of these numbers will equal a vessel-specific angler endorsement number that will be assigned to a transferable or non-transferable charter halibut permit issued to the applicant for that area. NMFS will assign a vessel-specific angler endorsement of four if the applicant's greatest number of reported anglers was fewer than four on that vessel in the qualifying period. A vessel-specific angler endorsement number will be used only once to assign an angler endorsement to a charter halibut permit for an area.

For each applicant that is issued more than one charter halibut permit for an area, NMFS will assign the vessel-specific angler endorsement numbers for that area to a permit in descending order, from the largest to the smallest number, beginning with transferable permits, if any. The greatest vessel-specific angler endorsement number derived from any vessel the applicant used in that area in the qualifying period will be assigned to the first permit the applicant receives for that area. Once this vessel-specific angler endorsement number is assigned to a charter halibut permit, that vessel-specific number will not be assigned to any additional charter halibut permits issued to the applicant for that area. The next greatest vessel-specific angler endorsement number will be assigned to the second permit the applicant receives for that area, and this process of assigning endorsement numbers to permits will continue until all permits an applicant receives in that area are assigned an angler endorsement. If the applicant receives charter halibut permits for both Area 2C and Area 3A, this process will be used to assign the vessel-specific angler endorsement to a charter halibut permit for each area.

Effects of This Action

The following briefly describes the effects of revising the method used to assign angler endorsements to charter halibut permits. Additional discussion of the rationale for and effects of this action is provided in the preamble to the proposed rule published on July 6, 2010 (75 FR 38758), and is not repeated here.

This action affects the number of angler endorsements that are assigned to charter halibut permits initially issued to applicants that receive more than one permit in an area. It will not affect the number of transferable and non-transferable charter halibut permits that are initially issued by NMFS under the limited access program prior to the start of the 2011 fishing season. The RIR prepared for this action (see **ADDRESSES**) estimates that approximately 89 qualified charter businesses would receive more than one charter halibut permit in Area 2C, which is approximately 39 percent of the 229 charter businesses that apparently qualify for one or more permit in that area. In Area 3A, approximately 69 apparently qualified charter businesses qualify for more than one charter halibut permit in Area 3A, which is approximately 24 percent of the 291 charter businesses that apparently qualify for one or more permits in that area. This final rule will result in approximately 2,618 angler endorsements assigned to 501 permits in Area 2C. This will be a reduction of approximately 13 percent from the 3,001 angler endorsements estimated to be assigned to charter halibut permits under the method used to assign angler endorsements under the former regulations. In Area 3A, this final rule will result in approximately 3,122 angler endorsements assigned to 410 permits. This will be a reduction of approximately 11 percent from the 3,524 endorsements estimated to be assigned to permits under the former regulations.

This action will reduce the angler endorsement numbers assigned to some charter halibut permits, while leaving other angler endorsement numbers unchanged from the status quo. A permit with fewer angler endorsements will authorize fewer charter vessel anglers to catch and retain halibut on a fishing trip. In general, this could reduce the revenue the charter halibut permit holder receives from using that permit. Transferable charter halibut permits with a reduced number of angler endorsements resulting from this action also likely will transfer for a lower value. Therefore, this action likely will adversely impact a charter halibut permit applicant receiving one or more charter halibut permits with a reduced number of angler endorsements relative to the status quo. However, as described in the RIR/FRFA (see **ADDRESSES**) prepared for this action, these impacts on affected operators are likely not significant. Charter vessel operators that receive a reduced number of angler endorsements under this action could mitigate the effect of this reduction by

increasing the average number of anglers on a charter vessel fishing trip, or by increasing the average number of charter vessel fishing trips associated with an individual permit. Changes in the average number of anglers on an individual charter vessel fishing trip likely would not significantly change the operator's costs and revenues for the trip, and on balance, are unlikely to have a significant economic impact on an individual charter vessel operator. Additionally, although applicants that are initially issued transferable charter halibut permits with a reduced number of angler endorsements resulting from this action likely would receive a lower price for the permit upon transfer, future holders of these charter halibut permits should not be affected. While these future permit holders may be able to generate less gross revenue from using the permit than they otherwise would have from a greater number of angler endorsements, they also should have to pay less for the permit. Overall, the reduced permit value likely will be balanced by the reduced purchase costs of affected permits.

Although this action will have distributional impacts on individual charter business owners, revising the method of assigning angler endorsements to charter halibut permits likely will not impact current charter industry capacity and the sector's ability to meet angler demand. The RIR (see **ADDRESSES**) determined that the number of angler endorsements that will be issued under this action likely will provide sufficient charter capacity to meet current angler demand, and even potentially some increase in demand. Similarly, this action is not expected to have a large impact on angler demand for charter vessel trips or the harvest of halibut by charter vessel anglers because of the action's limited impact on capacity in the charter vessel sector.

The Council intended for NMFS to revise angler endorsements before initially issuing charter halibut permits prior to the 2011 charter fishing season. This final rule will increase administrative costs for NMFS because it will require an appeals process (see Implementation of the This Action section below), in addition to the process established for charter halibut permits under the limited access program final rule (75 FR 554, January 5, 2010). This appeals process will result in NMFS initially issuing charter halibut permits closer to the anticipated start of the 2011 charter season on February 1 than it intended under the status quo. This later permit issuance schedule could create some uncertainty for affected charter halibut permit applicants with respect to planning for the 2011 season, particularly for those applicants who already have indicated they accepted the angler endorsement numbers assigned to their permits under the previous regulations.

Implementation of This Action

To implement this action, NMFS will create an official record of charter business participation in Areas 2C and 3A during the qualifying period and the recent participation period. 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 person(s) who 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. This is the same method that NMFS used to create an official record of charter business participation under the January 5, 2010, final rule implementing the limited access program. The official record also will include the angler endorsement assigned to each charter halibut permit using the method implemented by this final rule.

NMFS will notify all affected business owners of the revised angler endorsement(s) assigned to the charter halibut permit(s) they will be issued after the effective date of the rule. Affected business owners will have 30 days to challenge NMFS' determination. Charter business owners are allowed to submit documentation or further evidence in support of their claim during this 30–day evidentiary period. If NMFS accepts the business owner's documentation as sufficient to change the agency determination, NMFS will change the official record and issue a charter halibut permit with a revised angler endorsement accordingly. If NMFS does not agree that the further evidence supports the participant's claim, NMFS will issue an initial administrative determination (IAD) denying the participant's claim, and issue the participant's charter halibut permit(s) consistent with the official record. 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. In such cases, the applicant may not transfer any of the issued permits, even if a permit is otherwise transferable, until NMFS takes Final Agency Action on the applicant's claims. Unless the applicant appeals the IAD, the IAD becomes Final Agency Action 30 days after the IAD is issued.

Charter business owners will be able to appeal an IAD through the NOAA Office of Administrative Appeals (OAA). The OAA is a separate unit within the office of the Regional Administrator for the Alaska Region of NMFS. The OAA is charged with developing a record and preparing a formal decision on all appeals. The OAA decision is subject to review by the Regional Administrator. If the Regional Administrator does not intervene, the OAA decision becomes the Final Agency Action 30 days after the decision is issued. If the Regional Administrator affirms, reverses, or modifies the OAA decision within 30 days from the date the decision is issued, the Regional Administrator's decision is the Final Agency Action. An applicant who is aggrieved by the Final Agency Action may then appeal to the U.S. District Court. Regulations at 50 CFR 679.43 provide a regulatory description of the existing appeals process. NMFS will issue interim permits to applicants who filed timely applications and whose appeal is accepted by NOAA. These interim permits would be effective until Final Agency Action.

Proposed Rule

NMFS published a proposed rule to revise the method of assigning angler endorsements to charter halibut permits on July 6, 2010 (75 FR 38758). The comment period on the proposed rule ended on August 5, 2010. NMFS received five comments from two individuals and two organizations regarding the proposed rule. One comment was not directly related to the action. Two comments discussed specific technical aspects of the regulation, one comment addressed the impact of the regulation on affected entities, and one comment contained suggestions to NMFS for improving the process of developing fisheries management regulations. These comments did not raise new issues or concerns that have not been addressed in the RIR/FRFA prepared to support this action, the preamble to the proposed rule, or the EA/RIR/FRFA prepared to support the charter halibut limited access program (see **ADDRESSES**).

Response to Public Comments

Comment 1: The commenter raises general concerns about NMFS' management of fisheries, asserting that

fishery policies have not benefited American citizens. The commenter also asserts that NMFS is biased and should not be allowed to manage fisheries.

Response: This comment is not specifically related to the proposed rule. The comment recommends broad changes to fisheries management and provides opinions of the Federal Government's general management of marine resources that are outside of the scope of this action. The comment did not raise new relevant issues or concerns that have not been addressed in the RIR/FRFA prepared to support this action or the preamble to the proposed rule.

Comment 2: We understand that under the final rule implementing the limited access program that some angler endorsements included skipper and crew participation recorded in the logbooks. The skipper and crew were providing services to charter vessel anglers and should not be counted toward the history of the vessel for determining angler endorsements.

Response: NMFS used the "total clients" field in the logbook data received from ADF&G to determine the angler endorsement on a charter halibut permit under the former regulations. NMFS will continue to use the "total clients" field to determine the number of angler endorsements assigned to a charter halibut permit under this final rule. The 2004 and 2005 logbooks contained a "total crew" field for charter operators to record the number of crew fishing, and the logbook instructions directed operators not to combine client and crew information. NMFS did not use the "total crew" field for determining angler endorsements.

Comment 3: Two commenters supported the intent of the proposed rule to change the method of assigning angler endorsements under the former regulations. However, the commenters suggested that NMFS should change the method of assigning angler endorsements prior to initially issuing charter halibut permits to ensure that an angler endorsement number does not exceed the number of passengers that were allowed by U.S. Coast Guard (USCG) regulations on the vessel used to qualify for the charter halibut permit during the qualifying period (2004 and 2005).

One of the commenters also suggested that NMFS should not assign an applicant's greatest vessel-specific angler endorsement number to charter halibut permits beginning with transferable permits as described in the proposed rule. This commenter also indicated that these suggested changes should be reflected in the final rule for this action and implemented before permits are initially issued.

Response: No changes are made to the proposed rule. The March 2007 Council motion for the charter halibut permit program directed NMFS to use ADF&G logbook data to determine the angler endorsement number assigned to a charter halibut permit. The Council recommended that the angler endorsement number be equal to the number of charter vessel anglers the applicant reported on a logbook fishing trip in 2004 or 2005, subject to a minimum endorsement of four. The EA/RIR/FRFA prepared for the charter halibut permit program (see **ADDRESSES**) discusses this issue in section 2.5.12.4. This analysis, along with the final rule implementing the charter halibut limited access program (75 FR 554, January 5, 2010), and the RIR/FRFA prepared for this action (see **ADDRESSES**), also noted that the angler endorsement on a charter halibut permit would not supersede USCG licensing or other safety rules or regulations.

The proposed rule for this action is consistent with the Council's recommendation to use ADF&G logbook data as evidence of applicant participation for purposes of implementing the limited access program, including assigning angler endorsements to charter halibut permits. In the final rule implementing the limited access program (75 FR 554, January 5, 2010), NMFS also implemented the Council's recommendation that charter halibut permit applicants sign an affidavit attesting that all legal requirements were met. During the charter halibut permit application period (February 4, 2010, through April 5, 2010), NMFS required applicants to attest by signature on the permit application that "[t]he applicant complied with all legal requirements that pertained to the bottomfish logbook fishing trips in 2004 and 2005 and the halibut logbook fishing trips in 2008 that were reported under the applicant's ADF&G Business License."

Finally, at the April 2010 Council meeting, NMFS described its proposed method for assigning angler endorsements under this action to the Council. Specifically, NMFS proposed to assign an applicant's greatest vessel-specific angler endorsement number to charter halibut permits in descending order, from the largest to the smallest number, beginning with the first transferable permit the applicant would receive. NMFS proposed to assign the next greatest vessel-specific angler endorsement to the second transferable permit the applicant would receive, and continue this process until all transferable and non-transferable permits for an applicant were assigned an angler endorsement. The method also was described in section 1.6.3 of the RIR/IRFA (see **ADDRESSES**) prepared for this action.

Comment 4: The proposed rule states this action would adversely impact applicants who receive a reduced number of angler endorsements. Although this reduced number of angler endorsements is a reduction when compared to the status quo, i.e., the number of angler endorsements an applicant would receive under the current regulations, it is not an actual reduction when compared to historical practices.

Response: NMFS agrees that the impact of a reduced number of angler endorsements on charter halibut permits issued to affected applicants under this action, as discussed in the proposed rule (75 FR 38758, July 6, 2010) and the RIR/FRFA (see **ADDRESSES**), is relative to the status quo. NMFS notes that under both the status quo and this final rule, an angler endorsement number is determined by the applicant's past participation in the charter halibut fishery as reported in ADF&G logbooks, as recommended by the Council.

The proposed rule and the RIR/IRFA noted that this action likely would not have a significant adverse economic impact on applicants receiving a reduced number of angler endorsements, relative to the status quo. First, charter vessel operators receiving a reduced number of angler endorsements under this action may receive less revenue per charter vessel fishing trip relative to the status quo, because fewer anglers would be authorized to catch and retain halibut on each trip. Second, transferable permits with a reduced number of angler endorsements likely will transfer for a lower value relative to the status quo. The proposed rule and the RIR/IRFA also discussed that these impacts likely would not be significant because affected charter vessel operators could mitigate the reduction in angler endorsements by increasing the average number of anglers on a charter vessel fishing trip, or by increasing the average number of charter vessel fishing trips associated with an individual permit, without significantly affecting operating costs or revenues. Additionally, although applicants that are initially issued transferable charter halibut permits with a reduced number of angler endorsements resulting from this action likely would receive a lower price for the permit upon transfer, future holders of these charter halibut permits should not be affected. While

these future permit holders may generate less gross revenue from using the permit than they otherwise would have from a greater number of angler endorsements, they also should have to pay less for the permit. Overall, the reduced permit value likely will be balanced by the reduced purchase costs of affected permits.

Comment 5: One commenter suggested that NMFS implement an effective peer review process for developing proposed and final rules and implementing fishery management programs such as the charter halibut permit program. This review process should include a comparison of the rule to the requirements specified in the Council motion. This process also should include review of regulations by subject matter experts such as Council staff, ADF&G staff, and Council advisory committees.

Response: NMFS agrees that a robust review process is an important component of developing effective fisheries management regulations. NMFS, Alaska Region worked with the Council during the development of this action and considers the Council's recommendations during all stages of a rule's development. NMFS, Alaska Region also considers input by other relevant agency staff, affected stakeholders, and the public when promulgating a final rule. NMFS appreciates the commenter's suggestion for peer review of proposed and final rules and will consider how it might be incorporated in the existing process.

Changes From the Proposed Rule

NMFS did not make any changes from the proposed rule, published on July 6, 2010 (75 FR 38758), to the final rule.

Classification

Regulations governing the U.S. fisheries for Pacific halibut are developed by the IPHC, the Pacific Fishery Management Council, the Council, and the Secretary. Section 773c(c) of the Northern Pacific Halibut Act of 1982 (16 U.S.C. 773c) allows the Regional Council having authority for a particular geographical area to develop regulations governing the allocation and catch of halibut in U.S. Convention waters, as long as those regulations do not conflict with IPHC regulations. This action is consistent with the Council's authority to allocate halibut catches among fishery participants in the waters in and off Alaska.

Executive Order 12866

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

Executive Order 12962

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

Regulatory Flexibility Act

A FRFA was prepared as required by section 603 of the Regulatory Flexibility Act. The FRFA describes the economic impact this final rule will have 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 implemented by this action are described elsewhere in this preamble and are not repeated here.

The proposed rule was published in the **Federal Register** on July 6, 2010 (75 FR 38758). An IRFA was prepared and described in the classification section of the preamble to the rule. The public comment period ended on August 5, 2010. NMFS received five comments from two individuals and two organizations. Although none of the comments directly addressed the IRFA, Comment 4 discussed the economic impact of this regulation on affected entities.

The entities directly regulated by this action are guided charter businesses that qualify to receive more than one charter halibut permit in IPHC Areas 2C and 3A. NMFS estimates that under the status quo, 89 firms qualify to receive more than one charter halibut permit in Area 2C, and 69 firms qualify to receive more than one charter halibut permit in Area 3A. While quantitative information on individual charter business revenues is lacking, almost all of these firms are believed to be small entities under the terms of the Regulatory Flexibility Act. The only exceptions may be some lodge-based operations in Southeast Alaska.

The Small Business Administration (SBA) specifies that for marinas and charter/party boats, a small business is one with annual receipts less than $6.0 million. The largest of these charter operations, which are lodges, may be considered large entities under SBA standards, but that cannot be confirmed because NMFS does not collect economic data on lodges. All other charter operations likely are small entities based on SBA criteria, because they would be expected to have gross revenues of less than $6.0 million on an annual basis.

The RIR/FRFA (see **ADDRESSES**) prepared for this action did not identify any new projected reporting, recordkeeping, and other compliance requirements on directly regulated entities. Under this final rule, NMFS will notify affected applicants of the change to the angler endorsement assigned to a charter halibut permit that will be issued to an applicant.

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

The objective of this action is to more closely align angler endorsements assigned to the second and subsequent charter halibut permits issued to a business with the actual greatest number of anglers reported for each vessel that a business used to qualify for charter halibut permits. The Council's preferred alternative for this action, as implemented by this final rule, will reduce the total number of angler endorsements assigned to charter halibut permits from the number of endorsements that would be assigned under the status quo alternative.

As noted above, all or most of the entities that are directly impacted by this regulation are small entities. This action likely will not have a significant adverse impact on some of these entities relative to the status quo alternative. Generally, a reduction in the number of angler endorsements assigned to a charter halibut permit reduces the potential for profit from that permit, because a permit with fewer endorsements will authorize fewer charter vessel anglers on any given fishing trip. However, the RIR/FRFA (see **ADDRESSES**) prepared for this action notes that individual charter halibut permits could be used more or less intensively by charter vessel operators to meet angler demand. Charter vessel operators that receive a reduced number

of angler endorsements under this action could lessen the effect of this reduction by increasing the average number of anglers on a charter vessel fishing trip, or by increasing the average number of charter vessel fishing trips associated with an individual permit. Changes in the average number of anglers on an individual charter vessel fishing trip likely would produce relatively modest changes in the operator's costs and revenues for the trip. On balance, these changes are not likely to have a significant economic impact on an individual charter vessel operator.

The Council and NMFS considered two alternatives for this action. Alternative 1 was the status quo alternative, which was rejected because it did not achieve the Council's objectives for determining the number of angler endorsements assigned to charter halibut permits. Alternative 2 was the Council and NMFS' preferred alternative. The Council and NMFS considered three options for Alternative 2. Option 1 would have determined a vessel-specific angler endorsement for businesses receiving more than one charter halibut permit for all vessels used in one year of the qualifying period, rather than considering all vessel activity in both 2004 and 2005. Option 2 would have used the same one-year restriction for determining angler endorsements, but applied the action to all businesses that would qualify to receive charter halibut permits, rather than limiting the action only to charter businesses that would qualify to receive more than one charter halibut permit. The Council and NMFS rejected Options 1 and 2 because they would result in changes to the status quo method of assigning angler endorsements to the first charter halibut permit issued to affected businesses, in addition to changing the status quo method of assigning angler endorsements to the second and subsequent charter halibut permit issued to affected businesses. In recommending the preferred alternative (Alternative 2, Option 3), which is the alternative implemented by the rule, the Council clarified that it intended to revise the status quo method of assigning an angler endorsement only to the second and subsequent charter halibut permits received by a business receiving more than one permit. The Council did not intend to revise the status quo method of assigning an angler endorsement to the first charter halibut permit received by any qualifying business. Therefore, the preferred alternative, Alternative 2, Option 3, as implemented by this final rule, accomplishes the distributional objectives of the Council with the least adverse impact on directly regulated entities.

Data on cost structure, affiliation, and operational procedures and strategies in the halibut charter vessel sector are unavailable, and NMFS is unable to quantify the economic impacts of this action on affected small entities for any of the options analyzed. The qualitative analysis in the RIR/FRFA (see **ADDRESSES**) estimates that none of the options considered under this action are expected to have a significant impact on small entities. While there may be some costs imposed on small entities through impacts on permit flexibility and implementation expenses, these impacts are likely to be small, because of the limited impact of this action on the operational efficiency of an individual charter operator.

Collection of Information

This rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA), which has been approved by the Office of Management and Budget (OMB) under Control Number 0648–0592. Public reporting burden estimate per response for the charter halibut permit application is two hours. This estimate includes 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 *OIRA_Submission@omb.eop.gov*, or fax to 202–395–7285.

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

List of Subjects in 50 CFR Part 300

Fisheries, Fishing, Reporting and recordkeeping requirements, Treaties.

Dated: September 13, 2010.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

■ For the reasons set out in the preamble, NMFS amends 50 CFR part 300, subpart E as follows:

PART 300–INTERNATIONAL FISHERIES REGULATIONS

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

Authority: 16 U.S.C. 773–773k.

■ 2. In § 300.67:

■ a. Redesignate paragraphs (e)(1) and (e)(2) as paragraphs (e)(5) and (e)(6), respectively;

■ b. Revise paragraph (e) introductory text;

■ c. Add paragraphs (e)(1) through (e)(4); and

■ d. Revise newly redesignated paragraph (e)(5) to read as follows:

§ 300.67 Charter halibut limited access program.

* * * * *

(e) *Angler endorsement.* A charter halibut permit will be endorsed as follows:

(1) The angler endorsement number for the first transferable permit for an area issued to an applicant will be the greatest number of charter vessel anglers reported on any logbook trip in the qualifying period in that area.

(2) The angler endorsement number for each subsequent transferable permit issued to the same applicant for the same area will be the greatest number of charter vessel anglers reported by the applicant on any logbook trip in the qualifying period for a vessel not already used in that area to determine an angler endorsement, until all transferable permits issued to the applicant are assigned an angler endorsement.

(3) The angler endorsement number for the first non-transferable permit for an area issued to an applicant will be the greatest number of charter vessel anglers reported on any logbook trip in the qualifying period for a vessel not already used to determine an angler endorsement in that area.

(4) The angler endorsement number for each subsequent non-transferable permit issued to the same applicant for the same area will be the greatest number of charter vessel anglers reported by the applicant on any logbook trip in the qualifying period for a vessel not already used in that area to determine an angler endorsement, until all non-transferable permits issued to the applicant are assigned an angler endorsement.

(5) The angler endorsement number will be four (4) if the greatest number of charter vessel anglers reported on any logbook fishing trip for an area 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.

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[FR Doc. 2010–23267 Filed 9–16–10; 8:45 am]

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