

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Parts 300 and 679**

[Docket No. 161222999–7884–01]

RIN 0648–BG57

**Fisheries of the Exclusive Economic Zone Off Alaska; Authorize Recreational Quota Entity To Participate in the Halibut IFQ Program**

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

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

**SUMMARY:** NMFS issues a proposed rule that would authorize formation of a recreational quota entity (RQE) that could participate in the Pacific Halibut and Sablefish Individual Fishing Quota Program in International Pacific Halibut Commission Regulatory Areas 2C and 3A in the Gulf of Alaska. The RQE would be authorized to purchase and hold a limited amount of commercial halibut quota share that would yield additional pounds of recreational fishing quota on an annual basis to augment the amount of halibut available for harvest in the charter halibut fishery. The RQE would provide a mechanism for a compensated reallocation of a portion of commercial halibut quota share to the charter halibut fishery. This proposed rule is necessary to promote social and economic flexibility in the charter halibut fishery, and is intended to promote the goals and objectives of the Northern Pacific Halibut Act of 1982, and other applicable laws.

**DATES:** Submit comments on or before November 17, 2017.

**ADDRESSES:** You may submit comments on this document, identified by NOAA–NMFS–2016–0158, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to [www.regulations.gov](http://www.regulations.gov)#!/docketDetail;D=NOAA-NMFS-2016-0158, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.

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

*Instructions:* Comments sent by any other method, to any other address or

individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (e.g., name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

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

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this rule may be submitted by mail to NMFS at the above address; by email to [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov); or by fax to 202–395–5806.

**FOR FURTHER INFORMATION CONTACT:** Kurt Iverson, 907–586–7228, [Kurt.Iverson@noaa.gov](mailto:Kurt.Iverson@noaa.gov).

**SUPPLEMENTARY INFORMATION:****Authority for Action**

The International Pacific Halibut Commission (IPHC) and NMFS manage fishing for Pacific halibut (*Hippoglossus stenolepis*) through regulations established under authority of the Northern Pacific Halibut Act of 1982 (Halibut Act). The IPHC adopts regulations governing the Pacific halibut (halibut) fishery under the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the North Pacific Ocean and Bering Sea (Convention), signed at Ottawa, Ontario, on March 2, 1953, as amended by a Protocol Amending the Convention (signed at Washington, DC, on March 29, 1979). For the United States, regulations developed by the IPHC are subject to acceptance by the Secretary of State with concurrence from the Secretary of Commerce. After acceptance by the Secretary of State and the Secretary of Commerce, NMFS publishes the IPHC regulations in the **Federal Register** as annual management measures pursuant to 50 CFR 300.62. The final rule implementing IPHC regulations for the 2017 fishing season was published March 7, 2017 (82 FR 12730). IPHC regulations affecting sport

fishing for halibut and vessels in the charter fishery in IPHC Regulatory Areas 2C (Southeast Alaska) and Areas 3A (South Central Alaska) may be found in sections 3, 25, and 28 of that final rule (82 FR 12730, March 7, 2017).

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

The Halibut Act, at section 773c(c), also provides the North Pacific Fishery Management Council (Council) with authority to develop regulations, including limited access regulations, that are in addition to, and not in conflict with, approved IPHC regulations. Regulations developed by the Council may be implemented by NMFS only after approval by the Secretary of Commerce. The Council has exercised this authority in the development of halibut fishery management measures, codified at 50 CFR parts 300.65, 300.66, and 300.67. The Council also developed the Individual Fishing Quota (IFQ) Program for the commercial halibut and sablefish fisheries, codified at 50 CFR part 679. Management of halibut in the IFQ Program is authorized under section 773 of the Halibut Act.

**Management of the Halibut Fishery***Description of the Action Area*

This proposed action would change halibut fishery management in IPHC Regulatory Areas 2C and 3A. These regulatory areas are referred to as “IFQ Regulatory Areas” throughout the IFQ Program regulations at 50 CFR part 679 and as “Commission Regulatory Areas” throughout the halibut management regulations at 50 CFR parts 300.65, 300.66, and 300.67. These terms are synonymous with “IPHC Regulatory Areas” and may be used interchangeably throughout this document. This preamble uses the term “Area 2C” and “Area 3A” to refer to IPHC Regulatory Areas 2C and 3A, respectively. Additional information on the action area is provided in Section 2.3 of the Analysis.

*Background on the Halibut Fishery*

The harvest of halibut in Alaska occurs in three fisheries—the commercial, sport, and subsistence

fisheries. The commercial halibut fishery is managed under the IFQ Program. The sport fishery includes unguided and guided anglers. Guided anglers are commonly called “charter” anglers because they fish from chartered vessels. Throughout this preamble, the term “charter fishery” is used to refer to the fishery prosecuted by guided anglers. The subsistence fishery provides an opportunity for rural residents and members of an Alaska Native tribe to retain halibut for personal use or customary trade. The following sections of the preamble summarize charter fishery management and aspects of the commercial IFQ fishery that are relevant for the proposed RQE Program.

#### *Charter Halibut Fishery*

Sport fishing activities for halibut in Areas 2C and 3A are subject to different regulations, depending on whether those activities are guided or unguided. Guided sport fishing (charter fishing) for halibut is subject to charter restrictions under Federal regulations that are generally more restrictive than the regulations for unguided anglers. Charter fishery regulations apply if a charter vessel guide is providing assistance, for compensation, to a person who is sport fishing, to take or attempt to take fish during any part of a charter vessel fishing trip. Unguided anglers typically use their own vessels and equipment, or they may rent a vessel and fish with no assistance from a guide.

Over the years, the Council and NMFS have developed specific management programs for the charter fishery to achieve allocation and conservation objectives. The Council and NMFS have developed these management programs with the intent of maintaining stability and economic viability in the charter fishery by establishing: (1) Limits on the number of charter vessel operators; (2) allocations of halibut to the charter fishery that vary with abundance; and (3) a process for determining annual charter angler harvest restrictions to limit charter fishery harvest to the established allocations.

The charter fisheries in Areas 2C and 3A are currently managed under the Charter Halibut Limited Access Program (CHLAP) and the Catch Sharing Plan (CSP). The CHLAP limits the number of operators in the charter fishery, while the CSP establishes annual allocations to the charter and commercial fisheries and describes a process for determining annual management measures to limit charter harvest to the allocations in each management area. The CHLAP and the

CSP are summarized below and described in more detail in Section 4.4 of the Analysis.

#### *Historic and Current Management Measures for the Charter Fishery*

The CHLAP and CSP were developed in response to increasing harvests in the charter fisheries in Areas 2C and 3A over the past 20 years. Until 2003, charter and unguided anglers were managed under the same two-halibut daily bag limit in all IPHC Regulatory Areas in Alaska. Since 2003, charter management measures have become more restrictive in Areas 2C and 3A, where most charter fishing occurs, as NMFS and the IPHC have sought to limit charter harvests to specific harvest limits. In 2003, NMFS implemented a final rule to establish a guideline harvest level (GHL) that identified target harvest limits for the charter fishery in Areas 2C and 3A (68 FR 47256, August 8, 2003). After the GHL was implemented, NMFS and the IPHC implemented a variety of additional management measures in Areas 2C and 3A in an effort to constrain charter fishery harvests to the harvest limits established by the GHL. Section 4.4.2.2 of the Analysis describes historical catch limits, regulations, and harvest in the charter fisheries in Areas 2C and 3A.

In Area 2C, charter anglers have only been allowed to harvest a bag limit of one halibut per person, per day since 2009. Implementation of a one-halibut daily bag limit was intended to keep charter fishery harvests to approximately the Area 2C GHL. In the years following implementation of the one-fish bag limit, additional restrictions were required to maintain harvest near the Area 2C GHL, including a prohibition on halibut harvest by charter captains and crew, limits on the maximum number of lines that could be deployed, maximum size limits, and beginning in 2012, a reverse slot limit that allows charter vessel anglers to retain halibut that are either below or above a specific size range. With the implementation of the CSP in 2014, charter fishery management became more restrictive in Area 2C to maintain charter fishery harvests within the Area 2C CSP allocations. In 2017, the charter fishery in Area 2C has a catch limit of 915,000 pounds and is managed under a one-fish daily bag limit with a reverse slot limit that allows retention of a halibut of 44 inches or less, or 80 inches or more, and a prohibition on the harvest of halibut by skippers or crew. Charter management measures for Area 2C are summarized in Table 4–10 of the Analysis.

In Area 3A, a two-fish daily bag limit with no size limits was maintained until the CSP went into effect in 2014. Since 2014, the Area 3A charter fishery has continued to be managed under a two-fish daily bag limit, but management measures have become increasingly restrictive each year to maintain charter fishery harvests within the CSP allocation. In 2017, the charter fishery in Area 3A has a catch limit of 1,890,000 pounds and is managed under a two-fish daily bag limit with a 28-inch maximum size limit on one fish; a 4-fish annual limit for each charter fishery angler; closures to charter fishing on Wednesdays throughout the year; closures to charter fishing during three specific Tuesdays in the summer; a limit of only one charter trip per day per vessel (and per charter halibut permit); and a prohibition on the harvest of halibut by skippers or crew. Charter management measures for Area 3A are summarized in Table 4–11 of the Analysis.

#### *Charter Halibut Limited Access Program (CHLAP)*

NMFS implemented the CHLAP in January 2010 (75 FR 554, January 5, 2010). The CHLAP established Federal charter halibut permits (CHPs) that are required for operators in the charter halibut fishery in Areas 2C and 3A. NMFS determined the eligibility of applicants and issued CHPs in 2010. CHPs were required for participation in the charter halibut fishery beginning in 2011. NMFS implemented the CHLAP, based on recommendations by the Council, to meet allocation objectives in the charter halibut fishery. Specifically, this program provides stability in the fishery by limiting the number of charter vessels that may participate in Areas 2C and 3A. The CHLAP also issues a limited number of permits to non-profit corporations representing specified rural communities and to U.S. military morale programs for service members.

Since implementation of the CHLAP, all vessel operators in Areas 2C and 3A with charter anglers on board must have an original, valid permit on board during every charter vessel fishing trip on which halibut are caught and retained. CHPs are endorsed for the appropriate IPHC Regulatory Area (Area 2C or Area 3A) and the maximum number of anglers that may catch and retain halibut on a charter vessel fishing trip, ranging from 4 to 38 anglers.

Complete regulations for the CHLAP are published at §§ 300.65, 300.66, and 300.67. Additional details on the development and rationale for the CHLAP can be found in the proposed

rule for the CHLAP (74 FR 18178, April 21, 2009).

#### *Catch Sharing Plan for IPHC Regulatory Areas 2C and 3A*

The CSP was implemented by NMFS in January 2014 (78 FR 75844, December 12, 2013). The CSP replaced the GHL that was in place from 2004 through 2013 for managing the charter fisheries in Areas 2C and 3A. The CSP establishes commercial IFQ and charter fishery allocations that vary proportionally with changing levels of annual halibut abundance and that are intended to balance the differing needs of the commercial IFQ and charter fisheries over a wide range of halibut abundance in Areas 2C and 3A. Under the CSP, the IPHC divides a combined catch limit for Areas 2C and 3A into separate annual catch limits for the commercial IFQ and charter halibut fisheries pursuant to the CSP's allocation formulas.

The CCLs for Areas 2C and 3A are specified by the IPHC during an iterative process that takes place each year. In late November of each year, the IPHC begins the process of assessing the halibut resource, and provides a preliminary estimate of exploitable biomass of halibut. The exploitable biomass is the amount of halibut that could be available for harvest by commercial, sport, and subsistence fisheries. The IPHC determines the exploitable biomass using a combination of harvest data from the commercial, sport, and subsistence fisheries, and information collected during scientific surveys and sampling of halibut bycatch in other fisheries. The IPHC calculates the Total Constant Exploitation Yield (CEY), or the target level for total removals (in net pounds) for each IPHC regulatory area, by multiplying the estimate of exploitable biomass by the harvest rate specified for that IPHC regulatory area. For Areas 2C and 3A, the IPHC subtracts estimates of other removals from the Total CEY. Other removals include unguided sport harvest, subsistence harvest, and bycatch of halibut in non-target commercial fisheries. In Areas 2C and 3A, the remaining CEY, after other removals are subtracted, is the Fishery CEY. For Areas 2C and 3A, the Fishery CEY is equal to the annual combined catch limit for the commercial IFQ fishery and the charter fishery. This process is depicted in Figure 4–1 of the Analysis.

A fixed percentage of the annual CCLs for Area 2C and 3A is allocated to the commercial IFQ and charter fisheries (for additional detail see Figures 4–3 and 4–4 in the Analysis). The fixed

percentage allocation to each fishery varies with halibut abundance and differs between Areas 2C and 3A. Overall, the charter fishery's relative share of the CCL is higher when the CCL is lower, but lower when the CCL is higher. At current levels of abundance, the charter fishery is allocated approximately 18 percent of the CCLs for both Areas 2C and 3A, and the commercial IFQ fishery is allocated approximately 82 percent. The IPHC multiplies the CSP allocation percentages for Area 2C and 3A by the annual CCL in that area to calculate the commercial and charter halibut allocations in net pounds. Fishery-specific catch limits are calculated by deducting separate estimates of wastage (*i.e.*, the mortality of discarded fish) from the commercial IFQ and charter fishery allocations (see Figure 4–1 of the Analysis). NMFS publishes the CCLs and associated allocations in the **Federal Register** as part of the IPHC annual management measures pursuant to 50 CFR 300.62. The process for determining commercial IFQ and charter catch limits under the CSP is described in more detail in Section 4.4.1.2.1 of the Analysis.

Additional detail on the development and rationale for the CSP can be found in preamble for the CSP proposed rule (78 FR 39122, June 28, 2013), and in the final rule implementing the CSP (78 FR 75844, December 12, 2013).

#### *Process for Setting Annual Management Measures*

The CSP also describes a public process by which the Council develops recommendations to the IPHC for charter angler harvest restrictions (annual management measures) that are intended to limit harvest to the annual charter fishery catch limit in Areas 2C and 3A. The process for setting annual management measures is described in more detail in Section 4.4.1.2.2 of the Analysis. Key elements of the process are summarized below.

Each year in October, the Council's Charter Halibut Management Committee (Charter Committee) reviews charter harvest in Areas 2C and 3A during the current year in relation to the charter catch limit. Staff from the Alaska Department of Fish and Game, Council, and NMFS provide an analysis to predict harvest for the upcoming year under a range of alternative management measures. Some of these measures may directly restrict the number or size of fish that may be retained (*e.g.*, daily bag limits, trip limits, annual limits, and size limits). Some of these measures may indirectly restrict the number of halibut that may

be retained (*e.g.*, day of week closures, or prohibition on harvest by skipper and crew). After reviewing this analysis, the Charter Committee makes recommendations on possible management measures for Areas 2C and 3A to be analyzed for the coming year.

In December of each year, the Council considers the recommendations of the Charter Committee, the analysis on projected charter harvests under a range of management measures, and any additional information. After considering public input, the Council selects management measures to recommend to the IPHC that are intended to keep charter harvest within the charter fishery allocation in Area 2C and Area 3A under a range of different CCLs that may be established by the IPHC.

At its annual meeting in January of each year, the IPHC allocates the CCL for Area 2C and Area 3A between the commercial IFQ fishery and the charter fishery for that year based on the CSP regulations at 50 CFR 300.65. The IPHC takes into account Council recommendations, any additional information available to the IPHC, and input from the public and IPHC staff. After considering this information and other information on the abundance of the halibut resource in Areas 2C and 3A, the IPHC adopts CCLs for Areas 2C and 3A and charter halibut management measures designed to keep charter harvest in Area 2C and Area 3A within the catch limits specified under the CSP for the adopted CCLs. Once accepted by the Secretary of State with the concurrence of the Secretary of Commerce, NMFS publishes in the **Federal Register** the charter halibut management measures for each area as part of the IPHC annual management measures.

#### *Guided Angler Fish Program*

In 2014, as part of the CSP, NMFS implemented the Guided Angler Fish (GAF) Program to authorize limited annual transfers of commercial halibut IFQ as GAF to qualified CHP holders. The GAF Program provides additional harvest opportunities for charter anglers. Using GAF, qualified CHP holders may offer charter anglers the opportunity to retain halibut up to the limit for unguided anglers when charter management measures limit charter anglers to a more restrictive harvest limit. For example, if charter management regulations in Area 2C restrict charter anglers to a one-halibut daily bag limit, a charter angler could retain one halibut and use one GAF to retain a second halibut, bringing the retained amount to two halibut—the

same daily bag limit that applies to unguided anglers. The GAF Program is described in more detail in Section 4.4.1.2.4 of the Analysis and in the proposed rule for the CSP (78 FR 39122, June 28, 2013). Regulations implementing the GAF Program are at §§ 300.65, 679.5, 679.41, 679.42, and 679.45. A brief summary of the key elements of the GAF Program is provided below.

In order to receive GAF, an IFQ holder and a CHP holder receiving GAF must submit an application to NMFS for review and approval. Guided Angler Fish transfers may be between separate IFQ and CHP holders, or a person holding both IFQ and a CHP can transfer their IFQ to himself or herself as GAF. Upon approval of the transfer application, NMFS issues a GAF permit to the holder of the CHP. Once the transfer is approved, the GAF permit holder may offer additional GAF harvest opportunities to anglers on board the vessel on which the operator's GAF permit and the assigned CHP are used.

NMFS issues GAF in whole numbers of halibut based on a conversion factor from IFQ pounds. Conversion factors are based on the average net weights of GAF harvested in the applicable IPHC Regulatory Area (Area 2C or 3A) during the previous year. Average weights are determined from data that charter vessel guides report directly to NMFS. For 2017, 74 pounds of IFQ yields one GAF in Area 2C, and 42 pounds of IFQ yields one GAF in Area 3A. Based on self-reported data, CHP holders have paid more than \$5 per pound of IFQ transferred as GAF in Area 2C and 3A, making GAF quite expensive, especially in Area 2C (see Section 4.4.2.3 in the Analysis for additional detail). In part due to the high costs of leasing GAF, annual participation has been low, averaging about 48,000 pounds per year from 2014 through 2016.

Three restrictions on GAF transfers were implemented with the GAF Program. First, IFQ holders in Area 2C are limited to transferring up to 1,500 pounds or 10 percent, whichever is greater, of their initially-issued annual halibut IFQ for use as GAF. In Area 3A, IFQ holders may transfer up to 1,500 pounds or 15 percent, whichever is greater, of their initially-issued annual halibut IFQ for use as GAF. Second, no more than 400 GAF will be assigned during one year to a GAF permit assigned to a holder of a CHP that is endorsed for six or fewer anglers. Third, no more than a total of 600 GAF will be assigned during one year to a GAF permit assigned to a holder of a CHP endorsed for more than six anglers. The restrictions on transfers of GAF are

intended to prevent a particular individual, corporation, or other entity from acquiring an excessive share of halibut fishing privileges as GAF.

NMFS' costs associated with management, data collection, and enforcement of the GAF Program are recoverable through IFQ Program Cost Recovery fees. The IFQ permit holder is responsible for paying IFQ Program Cost Recovery fees on all pounds of IFQ landed as GAF. The fee calculation is based on the standard price calculated by NMFS, aggregated to IPHC Regulatory Area 2C or 3A.

#### *Commercial Individual Fishing Quota (IFQ) Fishery*

The commercial halibut and sablefish fisheries off Alaska are managed under the IFQ Program (November 9, 1993; 58 FR 59375). The IFQ Program was implemented in 1995. The commercial halibut fishery is also referred to as the "directed halibut fishery." The IFQ Program limits access to the commercial directed halibut fishery to those persons holding halibut quota share (QS) in specific management areas. A more detailed description of QS allocation and management is provided in Section 4.5.1 of the Analysis and summarized here.

The IFQ Program assigned QS by IPHC Regulatory Area based on certain thresholds of historical participation in the commercial halibut fishery. NMFS initially issued QS to qualified participants beginning in 1994. Once QS was issued, NMFS allows QS to be transferred from initial recipients to individuals meeting specific eligibility requirements. The GAF Program does not authorize the transfer of QS from the commercial IFQ fishery for use in the charter fishery. QS provides individual harvesting privileges that are allocated on an annual basis through the issuance of IFQ permits.

An annual IFQ permit authorizes the holder to harvest a specified amount of halibut in a designated IPHC Regulatory Area. The specific amount of IFQ (in net pounds) is determined by the number of QS units held, the total number of QS units issued in a specific IPHC Regulatory Area, and the total amount of the halibut catch limit allocated by the IPHC in a particular year. If the abundance of halibut decreases over time, the catch limit will decrease and, subsequently, the number of pounds on a person's annual IFQ permit also will decrease. By providing an exclusive privilege to harvest a certain amount of the catch limit at the beginning of the season, and by extending the season over a longer period, the IFQ Program allows QS holders to determine where

and when to fish, how much gear to deploy, and how much overall investment to make in harvesting.

The Council and NMFS developed the IFQ Program with several goals in mind. Particularly applicable to this proposed action, the IFQ Program was designed to preserve an owner-operated fleet and to limit consolidation of QS ownership. To accomplish these goals, the IFQ Program was designed to control transferability of QS through: (1) Limits on the amount of QS that can be owned or controlled by individuals and companies (QS transfer and use caps); (2) vessel size categories that limit the size of vessels that can use the annual allocations resulting from the QS; (3) restrictions on who can purchase catcher vessel QS; and (4) limitations on leasing certain categories of QS.

Halibut QS is designated as one of four QS categories (also called "vessel categories" or "size categories" of QS). The term "vessel class" is also sometimes used, but the term "category" will be used in this preamble to be consistent with the term used in regulation. These categories include A-category for freezer catcher-processor vessels; B-category for vessels greater than 60 ft length overall (LOA); C-category for vessels 36 ft to 60 ft LOA; and D-category for vessels 35 ft or less LOA. The term "catcher vessel QS" refers to QS that can be used to catch, but cannot be used to process, halibut at sea (*i.e.*, B-, C-, and D-category QS). Halibut QS also has a designation of "blocked" or "unblocked." Blocked QS must be sold as a unit, and cannot be separated. No person may hold more than three blocks of halibut QS in any IFQ regulatory area. The purpose of the QS block provision was to ensure that the smallest, most affordable QS would remain available to a part-time fleet of smaller operators in order to maintain some of the fleet diversity that existed prior to the IFQ Program's implementation, and to reduce potential disruption to isolated Alaska fishing communities. The preamble to the proposed rule for the IFQ Program, published on December 3, 1992 (57 FR 57130), describes the IFQ Program in more detail.

#### *Community Quota Entity Program*

After implementation of the IFQ Program, the total amount of QS held by residents of small, coastal communities and the number of IFQ holders substantially declined. To alleviate the social and economic impacts of this consolidation on rural communities, the Council revised the IFQ Program in 2004 to allow a distinct set of remote coastal communities with few economic

alternatives to purchase and hold catcher vessel QS in Areas 2C, 3A, and 3B (69 FR 23681, April 30, 2004). This action was implemented in order to help ensure access to and sustain participation in the commercial halibut and sablefish fisheries. Eligible communities can form non-profit corporations called Community Quota Entities (CQEs) to purchase catcher vessel QS. The IFQ resulting from the QS must be leased (*i.e.*, made available for fishing) to community residents annually.

NMFS determined that CQE eligibility applied to 46 Alaskan communities, based on certain criteria for size, accessibility, and historical participation in the halibut or sablefish fisheries. Eligible communities must establish a non-profit corporation to become a CQE. The non-profit corporation must submit an application to NMFS detailing its organization, structure, and proposed procedures for leasing IFQ to community residents (among other requirements). If NMFS approves the application, a CQE may form to represent that community and the CQE may obtain QS by transfer. Currently, 28 communities have formed non-profit corporations and have applied for and been approved to obtain QS by transfer. Of those 28 CQEs, 4 have purchased QS. Community Quota Entities may also apply to NMFS to be able to participate in the CHLAP by purchasing CHPs, and are authorized to receive Community Charter Halibut Permits which is similar to a CHP, but available only to CQEs. To date, 20 CQEs have applied for and been issued Community Charter Halibut Permits. Although CQE's may also receive CHPs by purchasing (*i.e.*, transferring) them from non-CQE permit holders, no CQE has received any CHPs by transfer to date.

Although CQEs are subject to different constraints than individual QS holders in the IFQ Program, in some cases, the CQE is subject to the same limitations as individual permit holders in the IFQ Program. For example, each CQE is held to the same QS use caps (*i.e.*, ownership caps) as an individual holder. In other cases, the CQE is subject to less restrictive measures to provide for the differing purpose and use of the QS when held by communities. For example, the vessel size categories do not apply to QS when held by CQEs. In yet other cases, the CQE is subject to more restrictive measures than individuals, in part to protect existing holders and preserve entry-level opportunities for fishermen residing in fishery-dependent communities that are not eligible to form a CQE. For

example, CQEs cannot purchase D-category halibut QS in Area 2C. In addition, there are caps on the amount of QS that all CQEs combined can purchase, and CQEs cannot lease more than 50,000 pounds of halibut IFQ to an individual resident. A detailed list of provisions specifically applicable to CQEs is provided in Section 4.5.2 of the Analysis.

#### **Purpose and Need for Proposed Rule**

Currently, the charter fishery is limited to harvesting its percentage of the Area 2C or 3A combined catch limit it is allocated under the CSP. Charter catch limits increase or decrease as total halibut abundance increases or decreases. When halibut abundance is relatively low, as it has been in recent years compared to abundance trends in the 1990s and 2000s, the charter allocations under the CSP are lower, resulting in more restrictive annual management measures.

The only way that charter operators can currently provide more opportunity to charter clients than the established management measures allow for in their area is through participation in the GAF Program by individual charter operators. Because of the current restrictions on charter harvests under the existing charter allocations under the CSP and the limited flexibility for charter operators to provide additional harvest opportunities to their clients, the charter fishery has expressed its desire to find a market-based mechanism to increase its overall allocation of the halibut resource.

Based on these concerns, in 2015, the Council initiated the analytic process to develop a "market-based mechanism" to allow a non-profit entity (similar to a CQE) to purchase and hold a limited amount of commercial halibut QS on behalf of charter anglers. The intent of the Council was to provide additional harvest opportunity and less restrictive annual harvest measures for charter anglers in times of low halibut abundance, while complying with total halibut removals under the catch limits established by the IPHC under the CSP. In initiating this effort, the Council sought to balance the objectives of participants in the charter fishery without undermining the goals of the IFQ Program or creating significant adverse impacts to other halibut sectors. A complete history of the development of this proposed action is described in Section 2.2 of the Analysis.

#### **Proposed Recreational Quota Entity for Area 2C and Area 3A**

##### *Overview*

In December 2016, the Council recommended the implementation of an RQE Program. This proposed RQE Program would provide a mechanism for the charter fishery to compensate the commercial IFQ fishery for halibut QS purchased from the commercial sector to increase the charter annual catch limits. The halibut RFQ that would result from that QS would provide potentially greater harvest opportunities to the clients of charter operators within Areas 2C and 3A.

The Council and NMFS considered a no-action alternative to maintain the status quo (no RQE Program) and an alternative to authorize an RQE Program. The Council and NMFS also considered a broad range of elements and options to determine: The number of RQEs that could form; the amount and type of QS that could be purchased and held by the RQE; the process for setting annual management measures; how the RQE Program should interact with the GAF and CQE Programs; how the RQE could use funds, the organizational structure of the RQE; and the appropriate reporting requirements for the RQE. The specific elements and options recommended by the Council and proposed by NMFS are described below. The entire suite of elements and options considered, and the predicted effects of those elements and options (including the no-action alternative) are evaluated in detail in the Analysis.

The Council stated that the principal objective of this proposed rule is to promote social and economic flexibility in the charter fishery by authorizing the development of an entity that would be eligible to purchase and hold commercial halibut QS in Areas 2C and 3A, thereby providing additional harvest opportunities to charter anglers. This proposed rule is intended to promote long-term efficiency in the use of the halibut resource by allowing transfers of QS between commercial QS holders and the charter fishery, through an RQE, under a "willing buyer and willing seller" approach.

##### *Description of Proposed Rule*

This proposed rule would allow an RQE to be established as an eligible entity to purchase halibut QS in Area 2C and Area 3A, with limitations, for use by the charter fishery as a whole. Using a structure similar to a CQE, the RQE would be an eligible participant in the IFQ Program and could purchase Area 2C and 3A halibut QS for use by all charter halibut anglers in the respective

area. Any halibut QS purchased by the RQE would be held by this entity for the common use of charter halibut anglers. If approved, Federal regulations would be amended to allow the RQE to acquire QS.

Halibut QS held by the RQE would generate annual pounds of recreational fishing quota (RFQ), a type of annual harvest privilege similar to IFQ that would have special requirements that pertain only to the RQE. RFQ would be calculated in the same manner as IFQ. Under this proposed rule, the specific amount of RFQ (in net pounds) would be determined by the number of QS units held by the RQE as of October 1 of the preceding calendar year, the total number of halibut QS units issued in Area 2C or 3A as of January 15 of the year the IFQ or RFQ is issued, and the total amount of halibut allocated to the commercial IFQ fisheries in Areas 2C and 3A for that year.

Although the amount of RFQ would be calculated in the same way as IFQ, it would be subject to different requirements. The additional pounds of RFQ for each regulatory area would be combined with the charter catch limit determined under the CSP to calculate an adjusted charter catch limit for the year for Area 2C or 3A. Annual charter management measures for Areas 2C and 3A would be analyzed, recommended to the IPHC, and adopted for implementation based on the estimated adjusted charter catch limits. Recreational Fishing Quota held by the RQE would be available for harvest by all charter anglers aboard registered charter vessels of any size, regardless of the QS category from which that RFQ originated. Under this proposed rule, RFQ could not be transferred as GAF. Unless specified in this proposed rule, regulations that refer only to IFQ permit holders would not apply to the RQE. Likewise, unless specified in this proposed rule, regulations that refer only to IFQ would not apply to RFQ.

This proposed rule would not change the underlying allocations to the commercial IFQ fishery and charter fishery specified in the CSP, and would not change the total QS pool. Therefore, the QS holders in the commercial IFQ fishery who do not transfer QS to the RQE would receive the same amount of IFQ pounds issued for their QS units regardless of the amount of QS transferred to, and held by, the RQE.

### Provisions of Proposed Rule

#### *RQE Organizational Structure*

The Council recommends and NMFS proposes to allow the establishment of an RQE as a qualified non-profit entity

registered under the laws of the State of Alaska and recognized as exempt from Federal income tax by the Internal Revenue Service (IRS) to purchase and hold halibut QS for use by the charter fishery. The QS held by an RQE could yield RFQ annually. This proposed rule would allow a single non-profit entity to form to represent and manage separate QS holdings for Areas 2C and 3A.

The Council and NMFS considered an option to allow formation of two RQEs, one to represent Area 2C and another in Area 3A, but ultimately decided that one RQE would provide administrative efficiencies for purchasing and managing commercial QS. The Council and NMFS initially considered allowing multiple RQEs within Area 2C and 3A, but recommended against that structure to avoid potential competition against each other to purchase QS, and to reduce potential administrative costs.

The structure of the RQE is proposed to be similar to non-profits established to hold QS under the CQE Program. The Council recommended and NMFS proposes that the RQE be a non-profit entity to help ensure it represents the interests of the charter operators, whereas a for-profit entity could result in increased costs. The Council has consistently recommended, and NMFS has consistently approved the use of non-profit entities for the purposes of holding QS in other limited access programs. The proposed RQE organizational structure is consistent with past practice. Also, a non-profit entity that is independent of the Federal or state governments could more quickly and more flexibly take advantage of favorable market conditions for purchasing QS than a program administered by the Federal or state governments. More information on the structure of the proposed RQE is provided in section 4.8.1.1 of the Analysis.

NMFS proposes new definitions in § 679.2 for “Recreational fishing quota (RFQ)” and “Recreational quota entity (RQE).”

#### *Eligibility*

The Council recommended establishment of a single RQE that is a qualified non-profit entity registered with the IRS to purchase and hold commercial halibut QS for use by the guided halibut sector.” To implement this recommendation, NMFS proposes requirements specifying that the RQE must be a qualified non-profit entity registered under the laws of the State of Alaska and recognized as exempt from Federal income tax by the IRS. Non-profit status is a state law concept and does not directly apply to Federal tax

law. A non-profit organization may be eligible for certain benefits, such as state sales, property and income tax exemptions. Although most Federal tax-exempt organizations are non-profit organizations, being recognized as a non-profit organization at the state level does not automatically grant the organization exemption from Federal income tax. To qualify as exempt from Federal income tax, an organization must seek recognition of exemption from Federal income tax under section 501(a) of the Internal Revenue Code.

This proposed rule would establish specific requirements for an entity to be authorized as the RQE. To be approved as the entity eligible to purchase and hold halibut QS, the applicant wishing to become the RQE would be required to demonstrate it is a non-profit entity registered under the laws of the State of Alaska by submitting to NMFS the articles of incorporation and management organization information, including bylaws and a list of key personnel including, but not limited to, the board of directors, officers, representatives, and managers.

Articles of incorporation are public documents that must be filed with the state agency where the corporation becomes incorporated (e.g., with Alaska’s Division of Corporations, Business, and Professional Licensing). NMFS proposes that the RQE would need to be incorporated within the State of Alaska consistent with incorporation requirements applicable to CQEs. Bylaws are private documents describing the organization’s operating procedures that are not filed with any government agency. The Council and NMFS chose to not specify how the board of directors of the RQE should be structured. The Council and NMFS considered options to require a certain number of board members representing different user groups, but ultimately decided that these decisions were best left to the RQE (see Section 4.8.1.6 of the Analysis). The Council intends that the RQE board should have the flexibility to tailor its composition in a way that best addresses the RQE’s needs. The Council noted that a representative of the Alaska Department of Revenue may sit as an *ex-officio* (non-voting) member of the RQE board, and the Commissioner of the Alaska Department of Fish and Game, or their designee, may sit as a voting member of the RQE board; however, the Council did not intend to be prescriptive with respect to RQE board membership. The Council intended for the RQE to determine whether these officials would be a member of the RQE board. For example, if funding for the RQE is

provided or administered by the State of Alaska, then a board member from the Alaska Department of Revenue might be beneficial; however, the Council intended for this determination to be at the discretion of the RQE. Because the Council intended for the RQE to have flexibility to select members of the RQE board, NMFS does not propose to specify the composition of the RQE board in regulation.

In addition to demonstrating it is a non-profit corporation recognized by the State of Alaska, the applicant wishing to become the RQE would be required to demonstrate it has been granted an exemption from Federal income tax by the IRS by submitting to NMFS the IRS acknowledgement of the entity's Federal tax exemption.

NMFS proposes to require the approved RQE to maintain its non-profit and tax-exempt status, as described above. If the approved RQE entity does not meet this requirement, NMFS would not issue the RFQ that would otherwise be issued to the RQE based on its QS holdings. In addition, NMFS would provide the approved RQE entity with an opportunity to reinstate its non-profit and/or tax-exempt status. If the approved RQE entity does not demonstrate to NMFS that it is a qualified non-profit entity registered under the laws of the State of Alaska and recognized as exempt from federal income tax by the IRS by the established deadline, NMFS would issue an Initial Administrative Determination (IAD) to revoke the entity's status as the approved RQE and to require the entity to divest its QS holdings. The entity would have the opportunity to appeal the IAD through the National Appeals Office under the provisions established at 15 CFR part 906. The application and procedures for approving the application to become an RQE would be modeled after the application and process for CQEs. The applicant would complete the "Application for a Non-profit Corporation to be Designated as a Recreational Quota Entity (RQE)" and submit it to NMFS Alaska Region for review and approval. The application form would be available on the NMFS Alaska Region Web site at <https://alaskafisheries.noaa.gov/> after the effective date of the final rule, assuming a final rule is published. NMFS would approve the first complete RQE application it receives. NMFS would notify the RQE when its application has been approved. Once approved, NMFS would establish an account for QS and RFQ holdings when the RQE acquires QS. If NMFS disapproves the application, that determination could be appealed to the NOAA Fisheries

National Appeals Office under the provisions established at 15 CFR part 906.

NMFS proposes adding a new paragraph § 679.41(n) to describe the application process and eligibility requirements for a prospective RQE.

#### *Restrictions on Transfers*

Under this proposed RQE Program, two-way transfers of QS would be allowed. Quota share acquired by the RQE could be transferred to an otherwise eligible participant in the commercial IFQ fishery. Because QS and the resulting IFQ used in the commercial IFQ fishery is subject to vessel categories and block designations on initially-issued QS—unlike the QS and resulting RFQ used by the RQE, which is exempt from such categories and designations—NMFS will track QS units, IFQ pounds, and vessel category and block designations that apply to ensure that original categories and designations for the commercial IFQ fishery are maintained during the transfer process.

The Council recommended and NMFS proposes two-way transfers because it is expected that there would be variability from year to year in the amount of QS the RQE would be interested in using as RFQ. For example, if halibut biomass increases, the RQE may hold QS that is not needed to yield RFQ to provide additional opportunities for participants in the charter fishery, and may decide to sell a portion of its QS to an eligible buyers in the commercial fishery sector.

NMFS proposes modifying § 679.42 to describe the QS transfer process for RQEs.

#### *Annual Limit on Transfers to an RQE*

This proposed rule would establish area-specific annual limits on the amount of halibut QS that can transfer to an RQE. The intended effect of these transfer limits is to limit the amount of halibut QS that could be transferred from the commercial IFQ fishery and used as RFQ in the charter fishery each year, and to minimize any abrupt negative impacts that may occur to participants in the commercial IFQ fishery or to CQEs due to additional competition in the QS market that could occur with the entry of an RQE. Annual transfer limits would allow users in the commercial IFQ and charter fisheries time to adapt business plans and personal strategies to changes in the composition of the fisheries.

The Council recommended and NMFS proposes an annual transfer limit equivalent to 1 percent of the commercial QS units in Area 2C based

on the 2015 pool of all QS categories (59,477,396 units). Based on the 2015 QS pool, the RQE would be limited to receiving by transfer a maximum of 594,774 units of Area 2C QS in a year. Even if the QS pool changes in future years, this proposed rule would fix the annual transfer limit in Area 2C at 594,774 QS units. This will clearly define the limit for fishery participants and prevent a change in the limit if there are future changes in the Area 2C or 3A QS pools. For example, in 2017, the QS:IFQ ratio is 14.1209 QS units per pound of IFQ, and the annual transfer limit would be 42,120 pounds of IFQ for Area 2C.

The Council recommended and NMFS proposes an annual transfer limit equivalent to 1.2 percent of the commercial QS pool in Area 3A based on the 2015 pool of all QS categories (184,893,008 units). For example, based on the 2015 QS pool, the RQE would be limited to receiving by transfer a maximum of 2,218,716 units of Area 3A QS in a year. Even if the QS pool changes in future years, this proposed rule would fix the annual transfer limit in Area 3A at 2,218,716 QS units. For example, in 2017, the QS:IFQ ratio is 23.8911 QS units per pound of IFQ, and the annual transfer limit would be 92,868 pounds of IFQ for Area 3A.

For both Area 2C and 3A, the Council and NMFS considered annual transfer limits between 0.5 and 5 percent and determined that 1 percent for Area 2C and 1.2 percent for Area 3A were the appropriate annual transfer limits because they would allow the RQE to reach the cumulative use limits on QS holding (discussed in the next section) in 10 years if the RQE purchased the maximum amount of QS in each area in each year after the RQE Program is implemented. The Council indicated that limiting annual transfers at these proposed limits and allowing the RQE to reach its maximum QS holdings over as few as 10 years would balance the desire to provide adequate additional harvest opportunity to charter anglers, while at the same time mitigating the potentially disruptive impacts on the QS market with the entry of the RQE. Therefore, the proposed annual limits are equal to 1/10 of the cumulative holdings limits. Annual transfer limits are discussed in further detail in Section 4.8.1.2.2 of the Analysis.

NMFS proposes adding a new paragraph at § 679.42(f)(8) to describe the annual transfer limits on QS for RQEs.

#### *Limit on Total QS Holdings by the RQE*

The Council recommended and NMFS proposes a limit on the total

amount of halibut QS that can be held by the RQE. This rule proposes that for Area 2C, the RQE could hold up to 10 percent of the 2015 commercial QS pool. This proportion would be calculated based on the entire QS pool, including categories and blocks of QS units that the RQE would be prohibited from purchasing (discussed in the next sections of this preamble). Ten percent of the 2015 commercial QS pool equates to 5,947,740 units.

This rule proposes a limit on QS holdings for Area 3A of 12 percent of the 2015 entire commercial QS pool, including categories and blocks of QS units that the RQE would be prohibited from purchasing. Twelve percent of the 2015 commercial QS pool equates to 22,187,161 units.

As described in the previous section for annual transfer limits for the RQE, this proposed rule would fix the limits on total QS holdings by the RQE in regulations so that they are clearly defined for fishery participants and will not fluctuate if there are future changes in the Area 2C or 3A QS pools.

The Council and NMFS considered limits that ranged from 5 to 20 percent of the 2015 QS pools in each area. The Council recommended and NMFS proposes 10 percent and 12 percent limits in Areas 2C and 3A, respectively, to provide a balance between providing ample opportunity for additional harvest opportunity for the charter fishery, while seeking to alleviate potential adverse impacts to commercial halibut participants from increased competition in the QS market and higher QS prices that could occur if the RQE were provided a higher limit on QS holdings by the RQE. The limits on RQE holdings of QS are discussed in further detail in Section 4.8.1.2.3 of the Analysis.

NMFS proposes adding a new paragraph at § 679.42(f)(8) to describe the QS holding limits for the RQE.

#### *Limit on GAF Transfers as RQE Holdings Increase*

As part of the RQE Program, the Council recommends and NMFS proposes to limit the total amount of GAF that could be used annually by CHP holders by limiting the amount of GAF that could be transferred to the charter fishery as RQE QS holdings increase.

Under existing regulations, a significant amount of GAF could be transferred to CHP holders each year. For example, based on 2015 data, if all QS holders transferred the maximum allowable amounts of IFQ as GAF to eligible CHP holders, 49.1 percent of the Area 2C IFQ and 35.5 percent of the

Area 3A could potentially be transferred as GAF. However, actual participation in the GAF Program has been relatively low. From 2014 through 2016, less than 1.25 percent of Area 2C IFQ, and less than 0.2 percent of Area 3A IFQ have been transferred as GAF in any year. Based on the cost to transfer IFQ as GAF noted earlier in this preamble, NMFS considers it very unlikely that participation in the GAF Program will increase substantially and approach the maximum allowable transfer limits.

Notwithstanding that unlikelihood, the Council determined and NMFS agrees that limiting the amount of GAF that could be transferred to the charter fishery as RQE QS holdings increase appropriately balances the objective of establishing an RQE to further increase harvest opportunity in the charter fishery while minimizing the negative impacts that may result in the commercial IFQ fishery from transfers of QS.

The Council recommended and NMFS proposes restricting GAF transfers so that in any year, the combined amount of RFQ and GAF transferred to CHP holders could not exceed a poundage equal to the maximum amount of pounds that could be issued as RFQ in Area 2C or 3A.

The following two examples describe how NMFS would administer this provision in Area 2C. Under this proposed rule, in Area 2C the RQE may hold a maximum of 10 percent of the 2015 Area 2C QS pool (5,947,740 units). These two examples use the 2017 QS:IFQ ratio for Area 2C (14.1209 QS units per pound of IFQ), and the 2017 conversion factor for IFQ to GAF for Area 2C (74 pounds of IFQ to yield one GAF). The first example assumes the RQE held the maximum amount of QS units (5,947,740 units) in Area 2C. Under this example, the RQE would be issued 421,201 pounds of RFQ (5,947,740 QS units/14.1209 QS:IFQ = 421,201 pounds), and NMFS would not approve any transfers of GAF to CHP holders in Area 2C during that calendar year because the combined amount of RFQ and GAF transferred by CHP holders would exceed the cumulative limit for RFQ and GAF in Area 2C (421,201 pounds). The second example assumes the RQE held 50 percent of the RQE's Area 2C cumulative QS limit (*i.e.*, 2,973,870 units). Under this example, the RQE would be issued 210,601 pounds of RFQ (2,973,870 QS units/14.1209 QS:IFQ = 210,601 pounds), and NMFS could approve GAF transfers to CHP holders equivalent to 210,601 pounds of IFQ, or 2,845 GAF (210,601 pounds/74 pounds of IFQ per GAF = 2,845 GAF) during that calendar year

before the combined amount of RFQ and GAF transferred to CHP holders would exceed as the cumulative limit for RFQ and GAF in Area 2C (421,201 pounds). Under this second example, NMFS would approve GAF transfers for CHP holders until 2,845 GAF had been transferred to CHP holders in Area 2C. Once 2,845 GAF had been transferred to CHP holders in Area 2C, NMFS would disapprove all subsequent transfers of GAF in Area 2C for the remainder of the calendar year.

The Council and NMFS considered options that would not have restricted transfers of GAF even if the RQE reached its cumulative use limit of QS. The Council recommended and NMFS proposes limiting the total amount of annual poundage that could be reallocated to the charter fishery as RFQ and GAF to the cumulative use limit on RQE holdings. This limit was chosen, as described in the previous section of the preamble, to balance the concerns of commercial fishery participants about the increased potential for reallocation to the charter fishery with the interests of charter operators to increase harvest opportunities. The limit on GAF transfers as RQE QS holdings increase is discussed in further detail in Section 4.8.1.2.4 of the Analysis.

NMFS proposes adding a new paragraph at § 300.65(c)(5)(ii)(D)(1)(iv) to limit the transfer of IFQ to GAF as the RQE increases its holdings of QS.

#### *Vessel Category Restrictions*

The Council recommended and NMFS proposes limits on the amounts of QS the RQE could hold by vessel category in Areas 2C and 3A. The RQE would be limited to holding an amount equal to 10 percent of D-category QS and an amount equal to 10 percent of B-category QS, based on the 2015 QS pools, in Area 2C. Translated to QS units, this proposed rule would prohibit the RQE from holding more than 889,548 units of D-category QS, and more than 265,524 units of B-category QS in Area 2C (see Table 4–40 of the Analysis).

Under this proposed rule, the RQE would be prohibited from purchasing or holding D-category QS in Area 3A. The RQE could purchase any amount, up to the annual transfer and cumulative use limits of A-, B-, and C-category QS in Area 3A.

The Council and NMFS considered the current composition of the QS pools in Areas 2C and 3A, and the potential impact on specific QS categories when proposing these regulations. D-category QS cannot be fished on vessels greater than 35 ft LOA in Area 3A or 2C. Thus, the proposed limits on the RQE

acquiring D-category shares is intended to maintain vessel size diversity in the commercial fleet. Additionally, the Council and NMFS noted that D-category QS tends to sell for a lower price and could therefore make it a desirable and accessible category of QS for the RQE to purchase (see Section 4.5 of the Analysis). Therefore, the limits are being proposed to reduce the potential for the RQE to obtain so much D-category QS as to impact the size diversity of the commercial IFQ fishery fleet by substantially reducing the amount of QS available for small vessels in the commercial fleet. The proposed limits on D-category QS purchases are also intended to protect the opportunity for new entrants in the commercial fishery because these participants often use vessels that are 35 ft LOA or less.

In Area 2C, B- and C-category QS also provide entry-level opportunities. A total prohibition on acquisition of D-category QS in Area 2C could put market pressure on other parts of the Area 2C QS market that are important for entry and diversity. While C-category QS makes up about 79 percent of the total Area 2C QS pool, B-category QS represents a relatively small percentage (4.5 percent, as shown in Table 4-19 of the Analysis). Therefore, the Council recommended and NMFS proposes limiting RQE QS purchases in Area 2C to 10 percent of the B-category QS pool (based on the 2015 QS pool). Because restrictions on B-category QS transfers would limit the QS market opportunity for the RQE in Area 2C, the Council recommended and NMFS proposes some limited opportunity in the D-category market to relieve some of the potential market pressure on the remaining C-category QS (10 percent of the D-category QS pool in Area 2C). These provisions would ensure that most of the B- and D-category QS are used in the commercial IFQ fishery and are intended to balance entry-level opportunities and fleet diversity in the commercial IFQ fishery, with potential benefits to the charter fishery from transfers of QS to the RQE. The proposed vessel category restrictions are discussed in more detail in Section 4.8.1.2.5 of the Analysis.

NMFS proposes adding a new paragraph at § 679.42(f)(8) describing RQE use limits for specific vessel categories of QS.

#### Block Restrictions

In addition to vessel category restrictions for the RQE, the Council recommended and NMFS proposes limits on the size of QS blocks that the RQE could purchase. The RQE would be prohibited from purchasing blocks of

QS by category that equate to 1,500 pounds or less (based on 2015 pounds). For Area 2C, this means that the RQE could not purchase blocked QS of 24,250 units or less. For Area 3A, the RQE would be prohibited from purchasing blocked QS of 35,620 units or less. The Council recommended and NMFS proposes these prohibitions to ensure that small and more affordable blocks of QS remain available for purchase by new entrants and small businesses in the commercial IFQ fishery. The prohibition on the transfer of small blocks of QS will have limited impact on the total available market of QS that the RQE could purchase. Block restrictions are discussed in more detail in Section 4.8.1.3 of the Analysis.

NMFS proposes to add a new paragraph at § 679.42(g)(1)(iii) to establish restrictions on the type and amount of blocked QS that the RQE can hold.

#### *Revisions for the Calculation of the Charter Catch Limit and Establishment of Annual Management Measures*

This proposed rule would also modify several regulations to facilitate the proper accounting of RFQ. This section describes the process that would be used annually to calculate the amount of RFQ and establish annual management measures.

On October 1 of each year, the RQE's QS holdings would be used as the basis for estimating the number of RFQ pounds to add to the charter allocation under the CSP for the following calendar year. This estimated combined allocation would be used to recommend the charter fishery management measures for the following year. The process and timeline for setting annual management measures would remain unchanged. Once the IPHC annual management measures are approved, typically in late February or early March, NMFS would issue pounds of RFQ to the RQE based on the number of QS units held by the RQE on October 1 of the previous year to augment the charter catch limit established under the CSP. The Council recommended and NMFS proposes establishing October 1 as the date for determining how many QS units would yield RFQ so that the Council's Charter Committee and the Council would be able to estimate the pounds of RFQ that the RQE would receive in the following year and be able to factor that amount into its recommendations for charter management measures in the following year.

The RFQ would not be issued to the RQE in the upcoming fishing year for any QS that the RQE received by

transfer after October 1. If the RQE transfers QS that it holds on October 1 to a recipient in the commercial IFQ fishery after that date, NMFS would not issue IFQ to the commercial recipient for that QS in the following calendar year. This approach is similar to the method used in the commercial fishery to allow the transfer of QS but not the IFQ once that IFQ has been used. In this case, NMFS would consider that RFQ is effectively "used" if it is assigned to the charter allocation for the following calendar year. If the RQE receives QS by transfer after October 1, that QS would not result in the issuance of RFQ for the following calendar year. However, if the RQE subsequently transferred any QS received by transfer after October 1 that did not result in RFQ back to the commercial IFQ fishery, NMFS would issue IFQ to the commercial recipient for that QS.

In late November of each year, NMFS would estimate the pounds of RFQ that the QS units held by the RQE on October 1 would yield in the upcoming year based on the current year's QS:IFQ ratio and the IPHC's preliminary estimate of the possible combined catch limits in Areas 2C and 3A.

In December of each year, the Council would recommend a range of potential charter management measures for Areas 2C and 3A that would be expected to limit charter harvests in an area to the estimated charter catch limit plus the estimated supplemental pounds provided by the RFQ.

NMFS proposes revising § 679.40(c)(2) to clarify that NMFS would use the QS pool for the IFQ regulatory area, including Areas 2C and 3A, on record with the Alaska Region, NMFS, on January 15 of that year for purposes of calculating the amount of IFQ and RFQ for that regulatory area for that year. This proposed revision to move the date of record from January 31 to January 15 of each year would ensure that the IPHC would be able to determine the amount of IFQ and RFQ and the total allocations that would be assigned to the commercial IFQ and charter fisheries, respectively, when it adopts annual management measures at its annual meeting in late January.

NMFS also proposes revising § 300.65(c) to authorize the use of RFQ in the charter fishery, and to describe how and when QS holdings by the RQE would be calculated and added to the charter catch limit under the CSP.

#### *Redistribution of Excess RFQ*

The Council recommended and NMFS proposes a temporary redistribution of RFQ from the RQE to the commercial IFQ fishery if the RQE

holdings of QS provide a charter harvest opportunity greater than the unguided recreational management measures in either Area 2C or 3A. The current management measure for unguided recreational anglers in both areas is a daily bag limit of two halibut of any size. Under this proposed rule, NMFS would not issue annual RFQ in excess of the adjusted charter catch limit (the sum of the annual guided sport catch limit under the CSP and RFQ from the RQE's QS holdings on October 1 of the previous year) needed for charter anglers to obtain the unguided recreational management measures for that area.

The Council and the Analysis use the term "reallocate" to describe the temporary (1-year) redistribution of excess RFQ to the commercial IFQ fishery. NMFS notes that the term reallocate is often used in other regulations to describe a permanent transfer of harvest privileges from one group of participants to another. NMFS uses the term redistribute in this proposed rule to clarify for fishery participants and the public that the distribution of excess RFQ to commercial IFQ fishery participants is in effect for one year, and is not a permanent reallocation.

The Council recommended and NMFS proposes the following process for the temporary redistribution of RFQ (as IFQ) to the commercial IFQ fishery, in the event that the RQE has QS holdings in excess of the amount needed to provide charter anglers with harvest opportunities equal to those for unguided recreational anglers. Each January, the IPHC will recommend charter fishery management measures for Areas 2C and 3A that are expected to limit charter harvest to the adjusted charter catch limit for each area (the sum of the annual guided sport catch limit under the CSP and the estimated amount of RFQ from the RQE's QS holdings on October 1 of the previous year).

After the IPHC recommends charter fishery management measures, NMFS will determine if a redistribution of excess RFQ is necessary. If the IPHC has adopted charter fishery management measures that are equivalent to the unguided recreational management measures in either Area 2C or 3A (e.g., a daily bag limit of two halibut of any size), NMFS would determine the amount of RFQ that would be needed to account for charter harvest in Area 2C and Area 3A under the recommended management measures and issue that amount as RFQ to supplement the charter fishery allocation under the CSP. The difference between the total amount

of available RFQ and the amount needed for the charter fishery would be excess RFQ. NMFS would redistribute the amount of excess RFQ using the process recommended by the Council.

Under this proposed rule, 50 percent of any RFQ in excess of the amount needed to achieve the unguided recreational management measures in either Area 2C or 3A would be redistributed as IFQ to all catcher vessel QS holders in the applicable area (Area 2C or Area 3A) who held not more than 32,333 QS units in Area 2C, and 47,469 QS units in Area 3A (i.e., the amount of QS that yielded 2,000 pounds of IFQ in 2015) in the year prior to the redistribution, and who also held that QS eligible for redistribution during the year that the redistribution occurs. This 50 percent would be redistributed among qualified QS holders in proportion to their QS holdings.

The Council's recommendation stated that 50 percent of excess RFQ should be redistributed "equally" to all qualified QS holders. During Council deliberations, NMFS staff and the Council clarified how NMFS would implement the Council's recommendation. NMFS proposes to implement this provision by dividing the amount of IFQ available for redistribution to qualified QS holders by the total amount of QS units held by all qualified QS holders. For example, if there were 50,000 pounds of excess RFQ to be redistributed as IFQ in Area 3A in calendar year 2025 among QS holders who held not more than 47,469 QS units in the year prior to the redistribution (2024), and in the year during which the redistribution occurs (2025), and the total sum of all QS held by those qualified QS holders was 500,000 units, then each of these qualified QS holders would receive an additional 1/10 of a pound of IFQ in 2025 for each QS unit held. NMFS does not issue IFQ in less than one pound increments, therefore NMFS would round the amount of redistributed IFQ to the nearest pound for each qualified QS holder. Section 4.8.1.3 of the Analysis provides additional information on the method NMFS would use to redistribute excess RFQ.

This proposed rule would require the QS holder to hold the QS in the year prior to the redistribution to meet the clear intent of the Council, as well as in the year that the redistribution occurs in order to ensure the proper administration of this provision. NMFS proposes this requirement to ensure that IFQ is issued to persons who hold the underlying QS eligible to receive the redistribution. If NMFS were to redistribute RFQ as IFQ only to QS

holders that held QS in the year prior to the redistribution, it is possible that a person could hold QS in the year prior to the redistribution, subsequently transfer that QS before NMFS issues IFQ for the following year, and receive IFQ from the redistribution even though that person does not hold QS. Issuing IFQ to persons who do not currently hold QS would be contrary to the current functioning of the IFQ Program (i.e., IFQ is issued to persons who hold QS).

Under this proposed rule, the remaining 50 percent of RFQ in excess of the amount needed to achieve the unguided sport management measures in either Area 2C or 3A would be redistributed equally among all CQEs that held halibut QS in the applicable area (Area 2C or Area 3A) in the year prior to the redistribution as well as in the year that the redistribution occurs. If no CQE held QS in the applicable area (Area 2C or Area 3A) in the preceding year and in the year that the redistribution occurs, this 50 percent of the excess RFQ would not be redistributed in that area. In other words, the excess RFQ would be unfished or "left in the water" for conservation. The rationale for requiring the CQE to hold QS in the year prior to the redistribution, and in the year the redistribution occurs is the same as the rationale for the redistribution to catcher vessel QS holders described above. NMFS solicits comments from the public on whether excess RFQ should be redistributed to eligible catcher vessel QS holders and CQEs based on this proposed methodology.

The Council and NMFS considered options that would not have required a redistribution of RFQ as only IFQ, and alternative methods to redistribute RFQ as IFQ. The Council recommended and NMFS proposes the reallocation procedures in this rule to provide additional harvest opportunity among holders of small amounts of QS as well as to CQEs who hold QS on behalf of coastal community residents. Section 4.8.1.4 of the Analysis describes the options considered by the Council and NMFS and notes that based on the current levels of halibut abundance and the cumulative use limits in Area 2C and 3A, it is unlikely that the RQE could hold an amount of QS that would result in the need for redistribution of excess RFQ.

NMFS proposes to add regulations under § 679.40(c) to describe how excess RFQ would be redistributed.

#### Cost Recovery Fees

The Magnuson-Stevens Act at section 304(d)(2)(A) requires that cost recovery fees be collected for the costs directly

related to the management, data collection, and enforcement of any limited access privilege programs. This includes programs such as the commercial halibut IFQ Program, under which a dedicated allocation is provided to IFQ permit holders. Fees owed are a percentage, not to exceed 3 percent, of the ex-vessel value of fish landed and debited from IFQ permits. Each year, NMFS sends fee statements to IFQ holders whose annual IFQ was landed; those holders must remit fees by January 31 of the following year. Under this proposed rule, the RQE would be responsible for all cost recovery fees on their annual RFQ.

NMFS calculates IFQ cost recovery fee assessments in November each year. To determine cost recovery fees for IFQ holders, NMFS uses data reported by Registered Buyers to compute annual standard ex-vessel IFQ prices by month and port (or, if confidential, by port group). NMFS publishes these standard prices in the **Federal Register** each year. For example, NMFS published the 2016 standard ex-vessel IFQ prices in the **Federal Register** on December 13, 2016 (81 FR 89990). NMFS uses the standard prices to compute the total annual fishery value of the IFQ fisheries. NMFS determines the fee percentage by dividing management, data collection, and enforcement costs for the IFQ Program by total IFQ fishery value. In recent years, IFQ costs have exceeded 3 percent; therefore, the cost recovery fee percentage has been set at the maximum of 3 percent. Unlike commercial IFQ, which is only subject to cost recovery fees when landed, the RFQ held by the RQE would be considered “used” when issued, because management measures will be based on the combined amount of the RFQ and charter fishery catch limit in each regulatory area.

In years when the RQE holds QS and the RFQ is issued to augment the charter fishery’s catch limit, the charter fishery would be effectively using all of this RFQ; therefore, the RQE would pay cost recovery fees on all of its RFQ. Since all annual RFQ issued to the RQE would be considered “used,” NMFS would levy the fee calculated for the RQE’s annual RFQ pounds that are issued, rather than estimating RFQ harvest at each point of charter landings. The fee would be calculated using the standard price calculated for Area 2C or 3A and the RFQ held by the RQE. This is similar to the method used to apply an ex-vessel value for GAF. The IFQ cost recovery fee could be levied on the RQE each year the RQE holds QS, and the resulting RFQ is issued to augment the catch limit in the charter fishery. All holdings acquired by the RQE on

October 1 of the prior year would be subject to the IFQ cost recovery fee.

For purposes of cost recovery, the RQE would pay fees on all resulting pounds of RFQ, even if the charter fishery’s harvest was under its catch limit in Area 2C or 3A for that year. In December of each year, NMFS would (1) determine the standard prices and the cost recovery fee percentage; (2) announce the standard prices and the cost recovery fee percentage in the **Federal Register**; and (3) issue the RQE a fee assessment. The RFQ fee assessment would be based on the number of RFQ pounds added to either the Area 2C or 3A charter catch limit based on QS holdings as of October 1 of the prior year multiplied by the standard price for Area 2C or Area 3A, and multiplied by the cost recovery fee percentage (around 3 percent in recent years). The cost recovery fee payment from the RQE to NMFS would be due by January 31 of each year.

Based on NMFS policy, only “incremental” costs, *i.e.*, those incurred as a result of IFQ management, are assessable as cost recovery fees. The costs to develop the regulations, accounting, and reporting systems for the RQE Program would be considered incremental and extensions of the IFQ Program and would be recoverable under cost recovery. Agency costs related to development of the RQE Program will be included in the IFQ cost recovery fee assessment. Recently, the costs to administer the IFQ Program has been at or above the 3 percent cost recovery fee limit; therefore, additional costs due to the development of the RQE Program would likely not increase the cost recovery fee percentage for IFQ permit holders. Additional information about assessing cost recovery fees for an RQE is provided in Section 4.8.1.5.1 of the Analysis.

NMFS proposes revising regulations throughout § 679.45 to incorporate the RQE into the IFQ Program cost recovery fee estimation and collection process.

#### *General Reporting*

Because all RFQ would be considered landed or used by the RQE in the year for which it is issued and the standard prices would be applied to pounds of RFQ, the RQE would not be required to complete the recordkeeping and reporting requirements described for the IFQ Program at § 679.5(1). The RQE would be exempt from submitting the IFQ Prior Notice of Landing, Product Transfer, IFQ Landing, IFQ Transshipment Authorization, and IFQ Departure reports.

#### *Annual Report*

The Council recommended and NMFS proposes that the RQE file an annual report with the Council by January 31 of each year that details the administrative activities and business operations of the RQE during the prior year for each year that it holds commercial QS. Although not specifically requested by the Council, NMFS proposes that the annual report also be submitted to NMFS for reasons described below.

The RQE would be required to include the following general information in its annual report: (1) Any changes to the bylaws, board of directors, or other key management personnel of the RQE during the preceding year; (2) amounts and descriptions of annual administrative expenses; (3) amounts and descriptions of funds spent on conservation, research, and promotion of the halibut resource and a summary of the results; and (4) amounts and descriptions of all other expenses. Additionally, the RQE would be required to submit the following information by regulatory area: (1) The total amount of halibut QS by vessel category and block held by the RQE at the start of the calendar year, on October 1, and at the end of the calendar year; (2) a list of all transfers (purchases, sales, and any other transfers) of halibut QS, including transaction prices if applicable; and (3) the number of CHPs and associated angler endorsements purchased and held by the RQE.

The Council did not specify what would happen if the RQE did not submit a timely and complete annual report. Section 679.41(c)(10)(ii) requires a CQE to submit a timely and complete annual report to NMFS before a transfer of QS will be approved or IFQ will be issued. NMFS proposes a similar requirement for the RQE at new paragraph § 679.41(c)(11)(i). If the RQE held QS in the previous year and has not submitted a timely and complete annual report by the January 31 deadline, NMFS would not approve a transfer of QS or issue RFQ until the report is submitted. To confirm receipt of the report, NMFS is proposing that the RQE submit the annual report to both the Council and NMFS. NMFS seeks public comment on whether these requirements, similar to those for CQEs, should apply to the RQE.

NMFS proposes adding § 679.5(v) to include the RQE annual report requirements.

#### **Other Regulatory Changes**

NMFS proposes revisions throughout the IFQ regulations at 50 CFR part 679

that refer to “an IFQ permit holder” to also include the term “RQE” where applicable.

NMFS proposes revisions throughout 50 CFR part 679 that refer to the IFQ permit that also pertain to the RQE to include the term “RFQ permit account.” NMFS proposes these revisions because the RQE would not be issued an IFQ fishing permit. Instead, NMFS proposes establishing an RFQ permit account for the RQE that would be used to administer RFQ as described in this proposed rule.

NMFS also proposes revisions throughout 50 CFR part 679 that refer to IFQ to include the term “RFQ” when the regulations refer to IFQ and RFQ.

These minor changes are shown in the proposed regulatory text.

#### *Appeals*

This proposed rule would change several references within §§ 679.41 and 679.45 that describe the former procedure for appealing an IAD to the NOAA Fisheries’ Alaska Office of Administrative Appeals. Those procedures were described at to § 679.43. NOAA Fisheries has centralized the appeals process in the National Appeals Office, which operates out of NOAA Fisheries’ headquarters in Silver Spring, MD. The National Appeals Office is now charged with processing appeals that were filed with the Office of Administrative Appeals, Alaska Region. The procedure for appealing an IAD through the National Appeals Office is at 15 CFR part 906 (79 FR 7056, February 6, 2014). This proposed rule would update the regulations referring to appeals procedures for the IFQ Program to refer to 15 CFR part 906 instead of to § 679.43.

#### **Council Intent Regarding the Functioning of the RQE**

During the development of the RQE Program, the Council and NMFS considered, but did not propose regulations that would address RQE funding, limits on the use of RQE funds, and the purchase of CHPs by the RQE. This section of the preamble provides the public with a description of the overall intent of the Council regarding RQE funding and limits on the use of RQE funds, and notes that NMFS would regulate the purchase of CHPs by the RQE consistent with existing regulations.

#### *RQE Funding*

The Council did not recommend and NMFS does not propose regulations that would define the specific type of incorporation (e.g., a 501(c)(3) non-

profit corporation) for the RQE. Likewise, the Council did not recommend and NMFS does not propose regulations regarding the acquisition of funds the RQE may use to purchase QS. Section 4.8.1.1 of the Analysis describes the different types of non-profit structures that an RQE could use, and how those non-profits may use and receive funds.

#### *Limit on Use of RQE Funds*

The Council did not recommend and NMFS does not propose regulations regarding the use of funds obtained by the RQE. However, the Council did indicate how funds obtained by the RQE could be used to meet the objectives of the RQE Program. The Council indicated that it intended for the RQE to use funds primarily for the acquisition of commercial halibut QS; halibut conservation and research; promotion of the halibut resource; and administrative costs. NMFS notes that this proposed rule would require the RQE to submit an annual report describing its annual expenditures (described in a previous section of this preamble) to NMFS and the Council. Based on information received in this annual report, the Council could choose to initiate a subsequent action that would limit the use of funds held by the RQE in the future if the RQE’s annual reports indicate that RQE funds are being used in a manner that is contrary to the Council’s intent described above.

#### *Purchase of Charter Halibut Permits by an RQE (§ 300.67)*

The Council did not specify limits on the acquisition of CHPs by the RQE; therefore, the RQE would be subject to regulations that apply to any other person, as defined at § 300.61, for purposes of purchasing and holding CHPs. Section 300.67(j) states that a person may not own, hold, or control more than five CHPs, with limited exceptions. The RQE would be authorized to purchase and hold up to five transferable CHPs in both regulatory areas combined. Any purchases or sales of CHPs by the RQE would be required to be reported in the RQE’s annual report to the Council and NMFS.

#### **Classification**

Regulations governing the U.S. fisheries for Pacific halibut are developed by the IPHC, the Pacific Fishery Management Council, the North Pacific Fishery Management Council, and the Secretary of Commerce. Section 5 of the Halibut Act (16 U.S.C. 773c) allows the Regional Council having authority for a particular geographical area to develop regulations governing

fishing for halibut in U.S. Convention waters as long as those regulations do not conflict with IPHC regulations. The Halibut Act, at sections 773c(a) and (b), provides the Secretary of Commerce with the general responsibility to carry out the Convention with the authority to, in consultation with the Secretary of the department in which the U.S. Coast Guard is operating, adopt such regulations as may be necessary to carry out the purposes and objectives of the Convention and the Halibut Act. This proposed rule is consistent with the Halibut Act and other applicable laws.

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

#### *Regulatory Impact Review (RIR)*

An RIR was prepared to assess all costs and benefits of available regulatory alternatives. The RIR considers all quantitative and qualitative measures. A copy of this analysis is available from NMFS (see **ADDRESSES**). The Council recommended and NMFS proposes this rule based on those measures that maximized net benefits to the Nation. Specific aspects of the economic analysis are discussed below in the Initial Regulatory Flexibility Analysis section.

#### *Initial Regulatory Flexibility Analysis*

An Initial Regulatory Flexibility Analysis (IRFA) was prepared for this action, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. The IRFA describes the action; the reasons why this action is proposed; the objectives and legal basis for this proposed rule; the number and description of directly regulated small entities to which this proposed rule would apply; the recordkeeping, reporting, and other compliance requirements of this proposed rule; and the relevant Federal rules that may duplicate, overlap, or conflict with this proposed rule. The IRFA also describes significant alternatives to this proposed rule that would accomplish the stated objectives of the Magnuson-Stevens Act, and any other applicable statutes, and that would minimize any significant economic impact of this proposed rule on small entities. The description of the proposed action, its purpose, and the legal basis are explained in the preamble and are not repeated here. A summary of the IRFA follows. A copy of the IRFA is available from NMFS (see **ADDRESSES**).

The Small Business Administration (SBA) criteria for determining whether

an entity is “small” for purposes of the RFA are discussed in more detail in Section 5.3 of the Analysis. The SBA has established a small business size standard for businesses, including their affiliates, whose primary industry is “finfish fishing” (see 50 CFR 200.2). Commercial halibut QS holders are considered finfish fishers under the RFA. A business primarily involved in finfish fishing (North American Industry Classification Systems code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual gross receipts not in excess of the applicable size standard for all its affiliated operations worldwide. On December 29, 2015, NMFS issued a final rule establishing the small business size standard of \$11 million in annual gross receipts for all businesses in the commercial fishing industry (80 FR 81194). This new size standard applies to all businesses included under the North American Industry Classification Systems code 11411 for purposes of RFA compliance only. The new size standard became effective July 1, 2016, and was used to estimate the number of directly regulated small entities in this IRFA.

For this proposed action, the pool of small, directly regulated entities would be limited to those entities that would be engaging in QS transfer (*i.e.*, QS holders, including CQEs, and a future RQE). CQEs and the proposed RQE would be considered a small entity, or more specifically, a small organization as defined by the RFA. A small organization is “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.” In addition, no CQE has more than \$11 million in annual gross receipts. The RQE that is proposed under this action would not be expected to have \$11 million in annual gross receipts because it does not currently hold halibut QS that would yield \$11 million in annual gross receipts. Commercial halibut QS holders would also be considered directly regulated. Most of the QS holders in the halibut IFQ Program are small entities.

#### *Number and Description of Small Entities Regulated by This Proposed Rule*

NMFS considers commercial halibut fishing vessels as proxies for small entities because IFQ from more than one QS holder is often fished from the same vessel. NMFS estimates that 812 vessels across all IPHC regulatory areas landed halibut in 2014, the most recent year of complete data on the value of halibut

landings by vessel. Of those, 11 vessels would be considered large entities because they showed revenues that exceeded the \$11 million threshold. The remaining 801 vessels would be considered directly regulated small entities for this proposed rule. See Section 5.6 of the Analysis for more information.

#### *Description of Significant Alternatives That Minimize Adverse Impacts on Small Entities*

This proposed action is expected to have distributional impacts to the identified directly regulated small entities. Transfers of QS would be voluntary among all the small, directly regulated entities identified in the IRFA. The preferred alternative is the only alternative considered that would give current halibut QS holders an additional opportunity to transfer their QS and the RQE an opportunity to form and obtain QS. As noted earlier in this preamble, the Council and NMFS considered the status quo and the preferred alternative. However, under the preferred alternative, the Council and NMFS considered a wide range of potential limitations on the amount and type of QS that could be held by the RQE. The wide variation in the options considered under the preferred alternative provided the Council and NMFS with a broad range of potential policy choices to minimize the adverse impacts.

Under the preferred alternative, the RQE representing the charter fishery would not be expected to participate in the IFQ Program (and purchase halibut QS) if it did not benefit the charter fishery as a whole. QS holders, including CQEs, would not be expected to engage in a QS transaction with the RQE if it did not benefit from that transfer. However, there is a potential for the RQE to affect the QS market by increasing competition in the market. This increased competition could limit the ability for persons in the commercial IFQ fishery to expand their QS holdings by increasing the market price of QS or limiting the amount of QS available to commercial QS holders and CQEs. This potential negative impact is considered in the Regulatory Impact Review (Section 4.8.2 of the Analysis). To mitigate the expected effects on the QS market, the Council recommended and NMFS proposes provisions to limit the amount and types of QS that could be acquired by the RQE, annually and cumulatively.

Specifically, the Council’s preferred alternative (and this proposed rule) would create an annual transfer limitation of 1 percent of the QS in Area 2C and an annual transfer limitation of

1.2 percent of the QS in Area 3A. Cumulative use limits for the charter fishery are proposed to limit the combined amount of commercial QS held by RQE and transferred under GAF (10 percent in Area 2C and 12 percent in Area 3A). Proposed transfer limits include prohibiting the RQE from purchasing D-category QS in Area 3A and limiting it to holding 10 percent of D-category QS in Area 2C, and restricting purchase of B-category QS to no more than 10 percent in Area 2C and 10 percent of B-category QS in Area 2C. Block restrictions would prohibit the RQE from purchasing small blocks of QS. This proposed rule would seek to derive the greatest net benefit for small regulated entities by increasing market opportunities in the charter fishery while ameliorating adverse impacts that could occur for QS holders and CQEs in the commercial IFQ fishery if QS holdings by the RQE were not limited. Overall, the net benefits to directly regulated small entities are expected to be positive.

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

NMFS has not identified any duplication, overlap, or conflict between this proposed action and existing Federal rules.

#### *Recordkeeping, Reporting, and Other Compliance Requirements*

The RFA requires a description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record. This proposed rule would require new information collections from an RQE. Under this proposed rule, a non-profit entity that wants to become an RQE would need to complete an application and submit it to NMFS for approval. This application would require submission of the entity’s articles of incorporation, the corporate by-laws, a list of key personnel, including the Board of Directors, officers, representatives, and managers. NMFS would approve the first complete RQE application it receives.

If the RQE wants to receive or transfer halibut QS, it would need to use the “Application for Transfer QS To or From an RQE” available on the NMFS Alaska Region Web site at <https://alaskafisheries.noaa.gov/>. Additionally, the RQE would be required to submit an annual report detailing its activities to NMFS and the Council. The RQE would also be subject to cost recovery fees so

it would need to comply with the existing cost recovery fee payment requirements for IFQ permit holders. These recordkeeping and reporting requirements are expected to be administrative in nature.

*Collection-of-Information Requirements*

This proposed rule contains collection-of-information requirements subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). NMFS has submitted these requirements to OMB for approval under a temporary new information collection, to be merged after approval with OMB Control Number 0648-0272. Public reporting burden is estimated to average per response: 200 hours for Application for a Non-Profit Corporation to be Designated as a Recreational Quota Entity; 2 hours for Application for Transfer of QS To or From an RQE; 40 hours for RQE Annual Report; 1 minute for electronic submission of cost recovery fee; and 30 minutes for non-electronic fee submission for IFQ Permit Holder Fee Submission Form. Public comment is sought regarding: Whether these proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden statement; ways to enhance quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information, to NMFS (see ADDRESSES), and by email to *OIRA\_Submission@omb.eop.gov* or fax to 202-395-5806.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to penalty for failure to comply with, a collection of information subject to the requirement of the PRA, unless that collection of information displays a currently valid OMB control number. All currently approved NOAA collections of information may be viewed at [http://www.cio.noaa.gov/services\\_programs/prasubs.html](http://www.cio.noaa.gov/services_programs/prasubs.html).

**List of Subjects**

*50 CFR Part 300*

Administrative practice and procedure, Antarctica, Canada, Exports, Fish, Fisheries, Fishing, Imports, Indians, Labeling, Marine resources, Reporting and recordkeeping

requirements, Russian Federation, Transportation, Treaties, Wildlife.

*50 CFR Part 679*

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: September 25, 2017.

**Samuel D. Rauch, III,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR parts 300 and 679 are proposed to be amended as follows:

**PART 300—INTERNATIONAL FISHERIES REGULATIONS**

**Subpart E—Pacific Halibut Fisheries**

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

**Authority:** 16 U.S.C. 773–773k.

■ 2. In § 300.65:

- a. Add paragraph (c)(1)(iii);
- b. Revise paragraph (c)(4)(i); and
- c. Add paragraphs (c)(4)(iii) and (c)(5)(ii)(D)(1)(iv) to read as follows:

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

\* \* \* \* \*

- (c) \* \* \*
- (1) \* \* \*

(iii) Authorizes the use of

Commission regulatory areas 2C and 3A RFQ resulting from halibut QS held by the RQE as authorized in part 679 to this title to supplement the annual guided sport catch limit in the corresponding area, pursuant to paragraph (c)(4) of this section.

\* \* \* \* \*

- (4) \* \* \*

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

\* \* \* \* \*

(iii) The amount of QS held by the RQE for Commission regulatory area 2C and 3A as of October 1 each year will be the basis for determining the amount of RFQ pounds that will be added to the annual guided sport catch limit for the corresponding area in the upcoming year.

- (5) \* \* \*
- (ii) \* \* \*
- (D) \* \* \*
- (1) \* \* \*

(iv) In the applicable Commission regulatory area, either Area 2C or Area 3A, the sum of IFQ halibut equivalent pounds, as defined in § 679.2 of this title, from the transfer of IFQ to GAF and the pounds of RFQ issued to the RQE during a calendar year does not exceed an amount that is greater than the amount derived from:

- (A) 5,947,740 units of Area 2C QS; or
- (B) 22,187,161 units of Area 3A QS.

\* \* \* \* \*

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

■ 3. 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; Pub. L. 111–281.

■ 4. In § 679.2, add definitions for “Recreational Fishing Quota (RFQ)” and “Recreational Quota Entity (RQE)” in alphabetical order to read as follows:

**§ 679.2 Definitions.**

\* \* \* \* \*

*Recreational Fishing Quota (RFQ)* means the pounds of halibut issued annually to a Recreational Quota Entity to supplement the annual guided sport catch limit under the catch sharing plan for IFQ regulatory areas 2C and 3A pursuant to § 300.65(c) of this title.

*Recreational Quota Entity (RQE)* means a non-profit entity incorporated under the laws of the State of Alaska, recognized as exempt from federal income tax by the Internal Revenue Service, and authorized by NMFS to participate in the Halibut IFQ Program to hold commercial halibut quota share to supplement the annual guided sport catch limit in IFQ regulatory areas 2C and 3A under the catch sharing plan pursuant to § 300.65(c) of this title. NMFS will authorize only one RQE at a time.

\* \* \* \* \*

■ 5. In § 679.4, add paragraph (d)(1)(iv) to read as follows:

**§ 679.4 Permits.**

\* \* \* \* \*

- (d) \* \* \*
- (1) \* \* \*

(iv) *RFQ permit account.* An RFQ permit account identifies the amount of RFQ authorized for use by charter vessel anglers in Area 2C or Area 3A. The number of pounds of RFQ allocated to the RFQ permit account will be added to the annual guided sport catch limit under the catch sharing plan (described at 50 CFR 300.65(c)) for the appropriate IFQ regulatory area, Area 2C or Area 3A.

\* \* \* \* \*

- 6. In § 679.5:
  - a. Revise paragraphs (l)(7)(ii)(A) and (l)(7)(ii)(C) and (D); and
  - b. Add paragraphs (l)(9) and (v) to read as follows:

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

\* \* \* \* \*

- (l) \* \* \*
- (7) \* \* \*
- (ii) \* \* \*

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

\* \* \* \* \*

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

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

\* \* \* \* \*

(9) An annual report on RQE activities must be submitted to NMFS by the RQE as required at § 679.5(v).

\* \* \* \* \*

(v) *Recreational Quota Entity Program Annual Report—(1) Applicability.* The RQE must submit a timely and complete annual report on the RQE's administrative activities and business operation for each calendar year that it holds halibut recreational fishing quota (RFQ) and quota shares (QS). The RQE may combine annual reports on its holdings of halibut QS and RFQ for IFQ regulatory areas 2C and 3A into one report. The RQE must submit annual report data for the halibut QS and RFQ it held during the calendar year. The RQE is not required to submit an annual report for any calendar year in which it did not hold any halibut QS or RFQ.

(2) *Time limits and submittal.* By January 31, the RQE must submit a complete annual report for the prior calendar year to the North Pacific

Fishery Management Council, 605 West 4th Ave., Suite 306, Anchorage, AK 99501–2252, and to NMFS-Alaska Regional Administrator, P.O. Box 21668, Juneau, AK 99802–1668.

(3) *Complete annual report.* A complete annual report contains all general report requirements described in paragraphs (v)(4)(i) through (v)(4)(iv) of this section, and all information specific to IFQ regulatory areas 2C and 3A described in paragraphs (v)(5)(i) through (v)(5)(iii) of this section.

(4) *General report requirements.* The RQE must annually report the following information:

- (i) Any changes to the bylaws, board of directors, or other key management personnel of the RQE from the preceding year;
- (ii) Amount and description of annual administrative expenses;
- (iii) Amount and description of funds spent on conservation and research, including a summary of the results of those expenditures; and
- (iv) Amount and description of all other expenses incurred by the RQE.

(5) *Information by IFQ regulatory area.* For each IFQ regulatory area represented by the RQE, the RQE must annually report the following information:

- (i) The total amount of halibut QS by category and blocks held by the RQE at the start of the calendar year, on October 1, and at the end of the calendar year;
- (ii) A list of all transfers (purchases or sales) of halibut QS, including the transaction price; and
- (iii) A description of the number of charter halibut permits and number of angler endorsements purchased and held by the RQE.

■ 7. In § 679.7, add paragraph (f)(3)(i)(C) to read as follows:

**§ 679.7 Prohibitions.**

\* \* \* \* \*

- (f) \* \* \*
- (3) \* \* \*
- (i) \* \* \*

(C) Use fixed gear as defined in § 679.2 to retain halibut RFQ.

\* \* \* \* \*

■ 8. In § 679.40:

- a. Revise paragraph (b);
- b. Revise paragraph (c) heading and paragraph (c)(2);
- c. Add paragraphs (c)(4) and (g)(2)(iii);
- d. Revise paragraph (h)(3) introductory text; and
- e. Add paragraph (h)(3)(iii) to read as follows:

**§ 679.40 Sablefish and halibut QS.**

\* \* \* \* \*

(b) Annual allocation of IFQ and RFQ. The Regional Administrator shall assign

halibut or sablefish IFQs to each person, except the RQE, holding unrestricted QS halibut or sablefish, respectively, up to the limits prescribed in § 679.42(e) and (f). Each assigned IFQ will be specific to an IFQ regulatory area and vessel category, and will represent the maximum amount of halibut or sablefish that may be harvested from the specified IFQ regulatory area and by the person to whom it is assigned during the specified fishing year, unless the IFQ assignment is changed by the Regional Administrator within the fishing year because of an approved transfer or because all or part of the IFQ is sanctioned for violating rules of this part. The Regional Administrator shall assign RFQ to the RQE pursuant to paragraph (c)(4) of this section.

(c) *Calculation of annual IFQ and RFQ allocations.*

\* \* \* \* \*

(2) *QS amounts.* For purposes of calculating IFQs and RFQ for any fishing year, the amount of a person's QS and the amount of the QS pool for any IFQ regulatory area will be the amounts on record with the Alaska Region, NMFS, on January 15 of that year.

\* \* \* \* \*

(4) *RFQ allocation to RQE—(i) RQE QS amounts.* For purposes of calculating RFQ for any fishing year, the amount of halibut QS held by the RQE for either IFQ regulatory area 2C or 3A for the corresponding IFQ regulatory area will be the amounts on record with the Alaska Region, NMFS on October 1 of the year prior.

(ii) *Calculation of RFQ.* The annual allocation of RFQ halibut to an RQE (person r) in IFQ regulatory area 2C or 3A (area a) will be equal to the product of the annual commercial catch limit as defined in § 300.61 of this title, and the QS held by the RQE (specified in paragraph (c)(4)(i) of this section) divided by the QS pool for that area (specified in paragraph (c)(2) of this section). No overage or underage adjustments will be applied to the RQE's annual RFQ. Expressed algebraically, the annual RFQ halibut allocation formula is as follows:

$$RFQ_{ra} = [\text{fixed gear } TAC_a \times (QS_{ra}/QS_{\text{pool}_a})]$$

(iii) *Excess RFQ.* NMFS will not issue the RQE any excess RFQ. Excess RFQ is the difference between the amount of RFQ based on the QS held by the RQE and the amount of RFQ needed to provide charter fishery management measures that are equivalent to unguided recreational fishery management measures. If the annual management measures published

pursuant to § 300.62 of this title specify charter fishery management measures that are equivalent to the unguided recreational management measures, NMFS will:

(A) Calculate the annual allocation of halibut RFQ to the RQE as specified in paragraph (c)(4)(ii) of this section;

(B) Determine the amount of RFQ needed to supplement the annual guided sport catch limit from the CSP in Area 2C and Area 3A (described in § 300.65(c)) to account for charter fishery harvests under the charter fishery management measures specified in the annual management measures and issue that amount of RFQ to the RFQ permit account.

(C) Calculate the amount of excess RFQ by subtracting the amount of RFQ issued as determined in paragraph (c)(4)(iii)(B) of this section from the annual calculation of RFQ halibut to the RQE as calculated in paragraph (c)(4)(iii)(A) of this section.

(iv) *Redistribution of excess RFQ.* Excess pounds of RFQ will be redistributed as IFQ as follows:

(A) 50 percent to all catcher vessel QS holders in the applicable area who held not more than 32,333 QS units in Area 2C, and 47,469 QS units in Area 3A in the current calendar year and in the calendar year prior to the redistribution, in proportion to their QS holdings; and

(B) 50 percent divided equally among all CQEs that held halibut QS in the applicable IFQ regulatory area (Area 2C or Area 3A) in the current calendar year and in the calendar year prior to the redistribution. If no CQE held QS in the applicable IFQ regulatory area (Area 2C and Area 3A) in the current calendar year and in the calendar year prior to the redistribution, that RFQ will not be redistributed as IFQ and will not be available for use by any CQE, IFQ permit holder, or RQE in that calendar year.

\* \* \* \* \*

(g) \* \* \*

(2) \* \* \*

(iii) The fish will not be calculated as part of the recreational harvest of halibut and will not be debited against the RFQ permit account or the annual guided sport catch limit as defined in § 300.61 of this title.

\* \* \* \* \*

(h) \* \* \*

(3) *Source of debit.* NMFS will use the following sources (see paragraphs (h)(3)(i), (ii) and (iii) of this section) of information to debit a CDQ halibut, IFQ halibut, IFQ sablefish, or RFQ permit account:

\* \* \* \* \*

(iii) All annual RFQ halibut issued to an RQE will be considered landed in the year for which it is issued.

■ 9. In § 679.41:

■ a. Redesignate paragraph (c)(11) as (c)(12);

■ b. Add new paragraph (c)(11);

■ c. Revise paragraphs (d)(1) and (g)(1); and

■ d. Add paragraphs (g)(9) through (11), and (n) to read as follows:

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

\* \* \* \* \*

(c) \* \* \*

(11) If the person applying to receive or transfer QS is an RQE, the following determinations are required:

(i) The RQE applying to receive or transfer QS, has submitted the timely and complete annual report required by § 679.5(v);

(ii) The RQE applying to receive QS is eligible to hold QS on behalf of the charter halibut sector in IFQ regulatory area 2C or 3A; and

(iii) The RQE applying to receive QS has received notification of approval of eligibility to receive QS on behalf of the charter halibut sector in IFQ regulatory area 2C or 3A as described in paragraph (d)(1) of this section.

\* \* \* \* \*

(d) \* \* \*

(1) *Application for Eligibility.* All persons applying to receive QS or IFQ must submit an Application for Eligibility to Receive QS/IFQ (Application for Eligibility) containing accurate information to the Regional Administrator. An Application for Eligibility to Receive QS/IFQ (Application for Eligibility) is not required for a CQE if a complete application to become a CQE, as described in paragraph (l)(3) of this section, has been approved by the Regional Administrator on behalf of an eligible community. An Application for Eligibility to Receive QS/IFQ (Application for Eligibility) is not required for the RQE if a complete application to become an RQE, as described in paragraph (n)(2) of this section, has been approved by the Regional Administrator. The Regional Administrator will not approve a transfer of IFQ or QS to a person until the Application for Eligibility for that person is approved by the Regional Administrator. The Regional Administrator will provide an Application for Eligibility form to any person on request.

\* \* \* \* \*

(g) \* \* \*

(1) Except as provided in paragraph (f), paragraph (g)(2), paragraph (l), or

paragraph (n) of this section, only persons who are IFQ crew members, or who were initially issued QS assigned to vessel categories B, C, or D, and meet the eligibility requirements in this section, may receive by transfer QS assigned to vessel categories B, C, or D, or the IFQ resulting from it.

\* \* \* \* \*

(9) For transfers of QS to an RQE, the RQE may only receive halibut QS that is assigned to IFQ regulatory area 2C or 3A.

(10) For transfers of QS from an RQE:

(i) Quota category and block designations at time of purchase by an RQE are retained if QS is transferred to an eligible QS holder for use in the IFQ program.

(ii) NMFS will not issue any IFQ from any QS transferred from an RQE to a QS holder for use in the IFQ program for a calendar year if that QS resulted in the issuance of RFQ to an RQE during that calendar year.

(11) *RQE eligibility.* (i) To maintain eligibility as the RQE authorized by NMFS, the RQE must be a non-profit entity incorporated under the laws of the State of Alaska and recognized as exempt from federal income tax by the Internal Revenue Service as required by paragraph (n)(1)(i) of this section.

(ii) If the Regional Administrator determines the RQE approved by NMFS does not meet the requirement specified in paragraph (n)(1)(i) of this section, NMFS will notify the RQE of the Regional Administrator's determination and specify that the RQE has 60 days to meet the requirement in paragraphs (n)(1)(i) of this section to maintain eligibility as the RQE authorized by NMFS.

(iii) If the RQE demonstrates to NMFS within 60 days of notification that it meets the requirement in paragraphs (n)(1)(i) of this section, NMFS will notify the RQE that it remains the authorized RQE.

(iv) If the RQE does not demonstrate to NMFS within 60 days of notification that it meets the requirement in paragraphs (n)(1)(i) of this section, NMFS will issue an initial administrative determination (IAD):

(A) Revoking authorization of the RQE;

(B) Disallowing the RQE from receiving any QS by transfer;

(C) Requiring the CQE to divest of any QS that it holds; and

(D) Withholding the issuance of RFQ based on any QS that the RQE holds.

(v) The RQE would have the opportunity to appeal the IAD through the National Appeals Office under the

provisions established at 15 CFR part 906.

\* \* \* \* \*

(n) *Transfer of halibut QS to an RQE*—(1) *RQE Organizational Structure.*

(i) The RQE will be a single entity representing IFQ regulatory Areas 2C and 3A.

(ii) The RQE will be a non-profit entity incorporated under the laws of the State of Alaska and recognized as exempt from federal income tax by the Internal Revenue Service; and

(iii) The RQE will submit an annual report to NMFS and the Council detailing RQE activities during the prior year according to § 679.5(v).

(2) *Application for Eligibility.* Prior to initially receiving QS by transfer, a non-profit entity that intends to participate in the Halibut IFQ Program and purchase and hold halibut QS in Area 2C and Area 3A as the RQE must have approval from the Regional Administrator. To receive that approval, the non-profit entity seeking to become an RQE must submit a complete “Application for a Non-Profit Entity to be Designated as a Recreational Quota Entity (RQE)” (available on the NMFS Alaska Region Web site at <https://alaskafisheries.noaa.gov/>). NMFS will approve only one entity as the RQE. A complete application to become an RQE must include:

(i) The articles of incorporation under the laws of the State of Alaska for that non-profit entity;

(ii) Acknowledgement from the Internal Revenue Service that the non-profit entity is exempt from federal income tax under section 501(a) of the Internal Revenue Code;

(iii) Management organization information, including:

(A) The bylaws of the non-profit entity;

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

(C) A description of how the non-profit entity is qualified to manage QS on behalf of charter fishery participants and a demonstration that the non-profit entity has the management, technical expertise, and ability to manage QS and RFQ;

(D) The name of the non-profit organization, taxpayer ID number, NMFS person number, permanent business mailing addresses, name of contact persons and additional contact information of the managing personnel for the non-profit entity, resumes of management personnel, name and notarized signature of applicant, and

Notary Public signature and date when commission expires;

(iv) A statement describing the procedures that will be used to determine the acquisition of funds to purchase QS.

(3) *Address for submittal of application:* Regional Administrator, NMFS, P.O. Box 21668, Juneau, AK 99802.

(4) *Approval.* NMFS will approve the first complete application received. If an application is approved, NMFS will notify the RQE by mail, unless another mode of communication is requested on the application.

(5) *Disapproval.* If an application is disapproved, that determination may be appealed under the provisions established at 15 CFR part 906.

■ 10. In § 679.42:

■ a. Add paragraph (a)(2)(v);

■ b. Revise paragraph (f)(1) introductory text; and

■ c. Add paragraphs (f)(8) and (g)(1)(iii) to read as follows:

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

(a) \* \* \*

(2) \* \* \*

(v) In IFQ regulatory areas 2C and 3A, RFQ held by an RQE may be harvested aboard charter vessels as defined at 50 CFR 300.61 of any size, regardless of the QS category from which that RFQ originated.

\* \* \* \* \*

(f) \* \* \*

(1) Unless the amount in excess of the following limits was received in the initial allocation of halibut QS, no person other than a CQE representing the community of Adak, AK, individually or collectively, or an RQE, may use more than:

\* \* \* \* \*

(8) *RQE use limits*—(i) *Annual transfer limits.* The RQE may not receive by transfer more than 594,774 units of Area 2C halibut QS and more than 2,218,716 units of Area 3A halibut QS in a year.

(ii) *Cumulative use limits.* The RQE may not hold more than 5,947,740 units of Area 2C halibut QS and more than 22,187,161 units of Area 3A halibut QS.

(iii) *Vessel category restrictions.* (A) The RQE may not hold more than 889,548 units of halibut QS in IFQ regulatory area 2C that is assigned to vessel category D.

(B) The RQE may not hold halibut QS in IFQ regulatory area 3A that is assigned to vessel category D.

(C) The RQE may not hold more than 265,524 units of halibut QS that is assigned to vessel category B in IFQ regulatory area 2C.

(g) \* \* \*

(1) \* \* \*

(iii) The RQE is limited to receiving:

(A) Transfers of halibut QS blocks of less than or equal to 24,250 quota share units in IFQ regulatory area 2C.

(B) Transfers of halibut QS blocks of less than or equal to 35,620 quota share units in IFQ regulatory area 3A.

\* \* \* \* \*

■ 11. In § 679.45:

■ a. Revise paragraphs (a)(1), (a)(2)(i) introductory text, and (a)(2)(i)(A);

■ b. Add paragraphs (a)(2)(i)(B)(3) and (a)(2)(i)(D); and

■ c. Revise paragraphs (a)(3), (a)(4)(i), (b)(1), and (f)(2) to read as follows:

**§ 679.45 IFQ cost recovery program.**

(a) \* \* \*

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

(2) \* \* \*

(i) *General.* IFQ fee liability means a cost recovery liability based on either the value of all landed IFQ and GAF derived from the permit holder’s IFQ permit(s), or the value of all RFQ issued to an RQE.

(A) Each year, the Regional Administrator will issue each IFQ permit holder a summary of his or her IFQ equivalent pounds landed as IFQ and GAF and will issue an RQE a summary of its RFQ pounds issued as part of the IFQ Landing and Estimated Fee Liability page described at § 679.5(l)(7)(ii)(D).

(B) \* \* \*

(3) All RFQ issued to an RQE in IFQ regulatory area 2C or 3A will be assessed at the IFQ regulatory area 2C or 3A IFQ standard ex-vessel value.

\* \* \* \* \*

(D) An RQE may not challenge the standard ex-vessel value used to determine the fee liability for all RFQ issued to the RQE.

\* \* \* \* \*

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

(ii) An RQE is responsible for collecting its own fees during the calendar year in which the RFQ is issued to the RQE.

(4) \* \* \*

(i) *Payment due date.* An IFQ permit holder or RQE must submit its IFQ fee liability payment(s) to NMFS at the address provided at paragraph (a)(4)(iii) of this section not later than January 31 of the year following the calendar year in which the IFQ or GAF landings were made or the RFQ was issued to the RQE.

(b) \* \* \*

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

vessel value that correlates to landed IFQ in IFQ equivalent pounds.

(ii) An RQE must use the IFQ standard ex-vessel value derived by NMFS for all RFQ issued to the RQE.

\* \* \* \* \*

(f) \* \* \*

(2) After the expiration of the 30-day period, the Regional Administrator will evaluate any additional documentation submitted by an IFQ permit holder or RQE in support of its payment. If the Regional Administrator determines that the additional documentation does not meet the burden of proving the payment is correct, the Regional Administrator will send the IFQ permit holder or RQE an IAD indicating that the IFQ permit holder or RQE did not meet the burden of proof to change the IFQ fee liability

as calculated by the Regional Administrator based upon the IFQ standard ex-vessel value. The IAD will set out the facts and indicate the deficiencies in the documentation submitted by the IFQ permit holder or RQE. An IFQ permit holder or RQE who receives an IAD may appeal the IAD, as described in paragraph (h) of this section.

\* \* \* \* \*

**§§ 679.41 and 679.45 [Amended]**

■ 12. In the table below, for each section indicated in the “Location” column, remove the title indicated in the “Remove” column from wherever it appears in the section, and add the title indicated in the “Add” column:

| Location   | Remove  | Add   |
|--|---|---|
| § 679.41(l)(3) introductory text, and (l)(3)(v)(E)(3).               | 50 CFR 679.43   | 15 CFR part 906   |
| § 679.41(m)(5)(ii) .....   | § 679.43  | 15 CFR part 906   |
| § 679.45(b)(2) .....   | landed as GAF.  | landed as GAF or issued as RFQ.   |
| § 679.45(b)(3)(ii) .....   | landed GAF  | landed GAF and RFQ issued to an RQE.  |
| § 679.45(b)(3)(v) introductory text .....                            | aggregated IFQ regulatory area 2C or 3A, to GAF landings. | aggregated by IFQ regulatory area 2C or 3A, to GAF landings and RFQ issued to an RQE. |
| § 679.45(d)(2)(i)(A) and (B) .....                                   | IFQ and GAF   | IFQ, RFQ, and GAF   |
| § 679.45(d)(2)(i)(C) .....   | include GAF costs.  | include RQE and GAF costs.  |
| § 679.45(d)(2)(ii) .....   | as commercial catch or as GAF                             | as commercial catch, RFQ, or GAF  |
| § 679.45(d)(4) .....   | IFQ and GAF   | IFQ, RFQ, and GAF   |
| § 679.45(d)(4), (e)(1) introductory text, (e)(1)(ii), and (f)(1)(i). | IFQ permit holder   | IFQ permit holder or RQE  |
| § 679.45(e)(1)(i), and (e)(1)(ii) .....                              | IFQ permit holder   | IFQ permit holder or RQE  |
| § 679.45(e)(1)(i) .....  | the IFQ permit holder’s estimated fee liability           | the estimated fee liability   |
| § 679.45(e)(2) .....   | IFQ fishing permit held                                   | IFQ fishing permit or RFQ permit account held   |
| § 679.45(e)(2), (f)(1)(ii), and (f)(5) .....                         | IFQ permit holder   | IFQ permit holder or RQE  |
| § 679.45(f)(1) introductory text .....                               | IFQ permit holder has                                     | IFQ permit holder or RQE has  |
| § 679.45(f)(3) .....   | § 679.43  | 15 CFR part 906   |
| § 679.45(f)(4) .....   | the IFQ permit holder must pay                            | the IFQ permit holder or RQE must pay   |
| § 679.45(g) .....  | IFQ permit holder unless the permit holder requests       | IFQ permit holder or RQE unless the IFQ permit holder or RQE requests                 |
| § 679.45(g) .....  | IFQ permit holder’s                                       | IFQ permit holder’s or RQE’s  |
| § 679.45(h) .....  | § 679.43  | 15 CFR part 906   |