the requirements of the Clean Air Act (Act).

DATES: Comments must be received on or before May 21, 2009.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2007–1045, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: mooney.john@epa.gov.*
3. *Fax:* (312) 886–5824.
4. *Mail:* John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery:* John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Christos Panos, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8328, *panos.christos@epa.gov.*

SUPPLEMENTARY INFORMATION: In the Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: March 30, 2009.

Walter W Kovalick Jr.,

Acting Regional Administrator, Region 5.

[FR Doc. E9–9043 Filed 4–20–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 080630798–9258–01]

RIN 0648–AW92

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

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

ACTION: Proposed rule; request for comments.

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

DATES: Written comments must be received by June 5, 2009.

ADDRESSES: Send comments to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments identified by 0648–AW92 by any one of the following methods:

- Electronic submissions: Submit all electronic public comments via the Federal eRulemaking Portal website at *http://www.regulations.gov*.
- Mail: P.O. Box 21668, Juneau, AK 99802–1668.
- Fax: 907–586–7557.
- Hand delivery: 709 West 9th Street, Room 420A, Juneau, AK.

All comments received are part of the public record and will be posted to *http://www.regulations.gov* without change. All personal identifying information (such as name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file format only.

Written comments regarding the burden-hour estimates or other aspects of the collection–of–information requirements contained in this proposed rule may be submitted to NMFS at the above address and by e–mail to *David_Rostker@omb.eop.gov* or fax to 202–395–7285.

Copies of the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis prepared for this action may be obtained from the Alaska Region, NMFS at the address above or from the Alaska Region website at *http://www.fakr.noaa.gov/*.

FOR FURTHER INFORMATION CONTACT: Jay Ginter, 907–586–7228.

SUPPLEMENTARY INFORMATION: The IPHC and NMFS manage fishing for Pacific halibut (*Hippoglossus stenolepis*) through regulations established under authority of the Northern Pacific Halibut Act of 1982 (Halibut Act). The IPHC promulgates regulations governing the Pacific halibut fishery under the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the North Pacific Ocean and Bering Sea (Convention), signed at Ottawa, Ontario, on March 2, 1953, as amended by a Protocol Amending the Convention (signed at Washington, D.C., on March 29, 1979). Regulations developed by the IPHC are subject to approval by the Secretary of

State with concurrence from the Secretary of Commerce (Secretary). After approval by the Secretary of State and the Secretary, the IPHC regulations are published in the **Federal Register** as annual management measures pursuant to 50 CFR 300.62. The most recent IPHC regulations were published March 7, 2008 at 73 FR 12280. IPHC regulations affecting sport fishing for halibut and charter vessels in Areas 2C and 3A may be found in sections 3, 25, and 28 (73 FR 12280, March 7, 2008).

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

The Halibut Act at, Section 773c(c), also provides the North Pacific Fishery Management Council (Council) with authority to develop regulations, including limited access regulations, that are in addition to, and not in conflict with, approved IPHC regulations. Such Council–developed regulations may be implemented by NMFS only after approval by the Secretary. The Council has exercised this authority most notably in the development of its Individual Fishing Quota (IFQ) Program, codified at 50 CFR part 679, and subsistence halibut fishery management measures, codified at 50 CFR 300.65. The Council also has been developing a regulatory program to manage the guided sport charter vessel fishery for halibut. This action is proposed as a step in the development of that regulatory program.

Management of the Halibut Fisheries

The harvest of halibut occurs in three basic fisheries—the commercial, sport, and subsistence fisheries. Additional fishing mortality occurs as bycatch or incidental catch while targeting other species and wastage of halibut that are caught but cannot be used for human food.

The IPHC annually determines the amount of halibut that may be removed from the resource without causing biological conservation problems on an area–by–area basis in all areas of Convention waters. It imposes catch limits, however, only on the commercial sector in areas in and off of Alaska. The IPHC estimates the exploitable biomass of halibut using a combination of harvest data from the commercial, recreational, subsistence fisheries, and information collected during scientific surveys and sampling of bycatch in other fisheries. The target amount of allowable harvest for a given area is calculated by multiplying a fixed harvest rate by the estimate of exploitable biomass. This target level is called the total constant exploitation yield (CEY) as it represents the target level for total removals (in net pounds) for that area in the coming year. The IPHC subtracts estimates of all non–commercial removals (sport, subsistence, bycatch, and wastage) from the total CEY. The remaining CEY, after the removals are subtracted, is the maximum catch or ''fishery CEY'' for an area's directed commercial fixed gear fishery.

This method of determining the commercial fishery's catch limit in an area results in a decrease in the commercial fishery's use of the resource as other non–commercial users increase their proportion of the total CEY. As conservation of the halibut resource is the overarching goal of the IPHC, it attempts to include all sources of fishing mortality of halibut within the total CEY. This method for determining the limit for the commercial use of halibut has worked well for many years to conserve the halibut resource, provided that the other non–commercial uses of the resource have remained relatively stable and small. Although most of the non–commercial uses of halibut have been relatively stable, growth in the guided sport charter vessel fishery in recent years has resulted in this fishery harvesting a larger amount of halibut than it did in earlier years. Increases in the halibut harvest of any non–commercial fishery reduce the amount available to the commercial fishery.

History of Charter Vessel Fishery Management

Until 2007, guided sport fishing for halibut on charter vessels was governed only by regulations developed by the IPHC that were applicable to all halibut sport fishing. Current IPHC sport fishing regulations may be found in the annual management measures referenced above (at in sections 3, 25, and 28 (73 FR 12280, March 7, 2008)). In summary, the basic IPHC sport fishing rules for Alaska stipulate the following:

- A single line with no more than two hooks attached or a spear;
- A daily bag limit of two halibut of any size (except for charter vessel anglers in Area 2C, as explained below);
- A possession limit of two daily bag limits;
- A sport fishing season of February 1 through December 31;
- A prohibition on sale, trade, or barter of sport–caught halibut; and
- A prohibition on filleting, mutilating, or otherwise disfiguring halibut on board a fishing vessel except that each halibut may be cut into no more than two ventral, two dorsal pieces and two cheeks with skin on.

The IPHC first adopted sport halibut fishing rules in 1973, in response to Federal, state, and provincial agencies seeking consistency and uniformity in sport fishing regulations in all IPHC areas. The IPHC bag limit rule was first established as three fish per day per person in 1973, was reduced to one fish per day in 1974, and raised to two fish per day in 1975, where it has remained until present. Similarly, the IPHC established the sport fishing season for halibut originally from March 1 through October 31 in 1973, and changed it for several years until the current 11-month season was set in 1986. Finally, during the years 1984 through 1997, the IPHC required sport charter vessels to have IPHC licenses.

The Council has discussed the expansion of the guided sport charter vessel fishery for halibut, and the need to manage it, since 1993. A guideline harvest level (GHL) for Area 2C and a separate GHL for Area 3A were adopted by the Council in 1997. The GHLs by themselves do not limit the charter vessel fisheries. Although the Council's policy is that the charter vessel fisheries should not exceed the GHLs, no constraints were initially recommended by the Council or imposed on the charter vessel fisheries for exceeding a GHL. The Council stated its intent to maintain a stable charter vessel fishing season without a mid–season closure. The Council envisioned ''framework'' regulations of increasing restrictiveness depending on the extent to which a GHL was exceeded. Proposed framework regulations were published in 2002 (January 28, 2002; 67 FR 3867); however, NMFS informed the Council later that year that its framework regulations could not be implemented as envisioned. Hence, proposed and final rule notices were published (January 28, 2002, 67 FR 3867 and August 8, 2003, 68 FR 47256, respectively) establishing the GHLs without restrictive regulations and codified at 50 CFR 300.65(c).

The GHLs represent a pre–season specification of acceptable annual halibut harvests in the charter vessel fisheries in Areas 2C and 3A. To accommodate some growth in the charter vessel sector while approximating historical harvest levels, the Council recommended GHLs based on 125 percent of the average 1995 through 1999 charter vessel harvest. For Area 2C the GHL was set at 1,432,000

lb (649.5 mt) net weight, and in Area 3A the GHL was set at 3,650,000 lb (1,655.6 mt) net weight.

When the Council recommended these GHLs, halibut stocks were considered to be near record high levels of abundance. To accommodate decreases and subsequent increases in abundance, the Council recommended a system of step–wise adjustments in each GHL based on a predetermined uniform measure of stock abundance. The measure used was the total CEY determined annually by the IPHC. Specifically, the Council linked a step–wise reduction in the GHL in any one year to the decrease in the total CEY as compared to the 1999 through 2000 average CEY. For example, if the halibut stock in Area 2C were to fall from 15 to 24 percent below its 1999 through 2000 average CEY, then the GHL for Area 2C would be reduced by 15 percent. Conversely, as the CEY increased from low levels, the GHL also would increase in the same step–wise manner. However, regardless of how high the total CEY may rise above its 1999 through 2000 average, the GHLs were not designed to increase above their maximum amounts.

Annually in October, the Alaska Department of Fish and Game (ADF&G) informs the Council and IPHC of the guided (charter vessel) and non–guided sport harvest of halibut in Areas 2C and 3A during the previous year. These estimated harvests are based on a survey of anglers who report numbers of fish harvested and the estimated average weight of fish harvested in each sport fishery. Because the sport harvest in one year is estimated and reported in the following year, the Council does not know the amount of the sport harvest of halibut in a particular year until close to the end of the following year.

Charter vessel harvests of halibut have steadily increased in recent years especially in Area 2C and to a lesser extent in Area 3A. Sport fishing statistics from ADF&G for Area 2C indicate an annual increase in charter vessel halibut harvests from 0.939 million pounds in 1999 to 1.952 million pounds in 2005. In 2006, the Area 2C harvest declined 7.6 percent to 1.804 million pounds. In 2007, the most recent year of charter vessel harvest estimates, however, the Area 2C harvest increased again by 6.3 percent to 1.918 million pounds. The GHL for Area 2C was first implemented in regulations in 2003 at 1.432 million pounds, and remained at that amount through 2007. The charter vessel harvest of halibut in Area 2C in 2003 was 1.412 million pounds, slightly under the GHL. However, the annual harvest in the following four years (2004 through 2007) averaged 1.856 million pounds, 0.424 million pounds or about 30 percent in excess of the GHL.

Charter vessel harvests of halibut in Area 3A during the same time period (1999 through 2007) indicate a slower but steady growth since 2003 when the Area 3A GHL was first implemented at 3.65 million pounds. The harvest in 2003 was 3.382 million pounds. This amount was under the GHL, but harvests the following four years (2004 through 2007) averaged 3.756 million pounds. This annual average harvest in the most recent four years of charter vessel harvest statistics is slightly less than three percent above the GHL for Area 3A. In 2007, the Area 3A harvest increased to 4.002 million pounds which exceeded the GHL for this area by 9.6 percent.

Although the charter vessel halibut fishery in Area 3A has been at or slightly above its GHL, the Area 2C fishery clearly has been exceeding its GHL in recent years. A management response to the excess halibut harvests in Area 2C was initiated in 2007 by the IPHC, NMFS, ADF&G, and subsequently by the Council. At its annual meeting in January 2007, the IPHC adopted a motion to recommend reducing the daily bag limit for anglers on charter vessels in Areas 2C and 3A from two halibut to one halibut during certain time periods. Specifically, for Area 2C, the IPHC recommended that the one–fish daily bag limit should apply to charter vessel anglers from June 15 through July 30. The IPHC recommended this temporary bag limit reduction because it believed its management goals were at risk by the magnitude of the charter halibut harvest in excess of the GHL, especially in Area 2C. The IPHC's action was not explicitly designed to manage the charter fishery to the Council's GHLs but rather to initiate some control on what appeared to be an ever increasing charter vessel harvest.

In a letter to the IPHC on March 1, 2007, the Secretary of State, with concurrence from the Secretary, rejected the recommended one–fish daily bag limit in Areas 2C and 3A, and indicated that appropriate reduction in the charter vessel harvest in these areas would be achieved by a combination of ADF&G and NMFS regulatory actions. For Area 2C, the State of Alaska Commissioner of Fish and Game (State Commissioner) issued an emergency order to prohibit retention of fish by charter vessel guides and crew members (No. 1–R–02–07). This emergency order was similar to one issued for 2006. This action was intended, in conjunction with other measures to be implemented by the Secretary, to reduce the 2007 charter vessel harvest of halibut to levels comparable to the IPHC–recommended bag limit reduction which was estimated to range from 397,000 (180.1 mt) pounds to 432,000 pounds (195.9 mt).

Regulatory action to remedy this problem by June 2007, the seasonal beginning of the principal sport fishing effort, required the Secretary, through NMFS, to develop regulations independent of the Council process. The preferred alternative selected by NMFS maintained a two–fish daily bag limit provided that at least one of the harvested halibut has a head–on length of no more than 32 inches (81.3 cm). If a charter vessel angler retains only one halibut in a calendar day, that fish may be of any length. NMFS published regulations implementing this partial maximum size limit on June 4, 2007 (72 FR 30714).

The Council also during the first half of 2007 was considering management alternatives for the charter vessel halibut fishery in Area 2C. Unlike the IPHC, ADF&G, and NMFS actions, however, the Council's alternatives were designed specifically to maintain the charter vessel fishery to its GHL. In June 2007, the Council adopted a preferred alternative that contained two options. The Council recommended that the selection between the options should depend on whether the CEY decreased substantially for 2008. As explained above, the GHLs for Area 2C and 3A are linked to the total CEY determined annually by the IPHC as a basis for setting the commercial fishery catch limits in these areas. A sufficient decrease in the total CEY causes the GHL for Area 2C to decrease from its previous level. The Council did not know in June 2007 how the GHL would be affected by IPHC action in January 2008. Hence, the Council recommended a suite of charter vessel fishery restrictions if the GHL in Area 2C were to remain the same in 2008 (Option A) and a different, more restrictive, suite of restrictions if the GHL were to decrease in 2008 (Option B). The Council recommended no change in management of the charter vessel fishery in Area 3A because that fishery appeared stable at about its GHL. A proposed rule was published December 31, 2007 (at 72 FR 74257) soliciting comments on both options for management of the charter vessel fishery in Area 2C

At its annual meeting in January 2008, the IPHC set the 2008 total CEY for Area 2C at 6.5 million pounds (2,948.4 mt). This was a 4.3 million pound (1,950.4

mt) reduction from the 2007 total CEY of 10.8 million pounds (4,899.0 mt), which triggered a reduction in the Area 2C GHL to 931,000 pounds (422.3 mt). This reduction in the GHL compelled selection of the more restrictive Option B for the Area 2C final rule. Option B imposed a daily bag limit of one halibut for each charter vessel angler, prevented charter vessel guides, operators and crew from harvesting halibut, restricted the number of lines used to fish for halibut on a charter vessel, and added certain recordkeeping and reporting requirements. These regulations were published in the Area 2C final rule on May 28, 2008 (73 FR 30504) that was effective on June 1, 2008.

The May 28, 2008, final rule was enjoined by U.S. District Court for the District of Columbia on June 10, 2008, (see Order Granting Plaintiffs' Motion for a Temporary Restraining Order (TRO), dated June 11, 2008, and Order Granting Plaintiffs' Motion for a Preliminary Injunction (PI), dated June 19, 2008, *Van Valin, et al. v. Gutierrez*, Civil Action No. 1:08–cv–941). Instead of the one–halibut daily bag limit contained in the May 28, 2008 rule, the court ordered that the previous (2007) rule become effective, which allowed a two–fish daily bag limit provided that at least one of the harvested halibut had a head–on length of no more than 32 inches (81.3 cm).

In its Order Granting the Plaintiffs' Motion for a Preliminary Injunction, dated June 19, 2007, the U.S. District Court determined that the Plaintiffs had met the burden for granting a preliminary injunction, including demonstrating a likelihood of success on the merits of their claims. The Plaintiffs argued that NMFS, by referencing the 2003 GHL rule (68 FR 47256, August 8, 2003) in the May 28, 2008, final rule, bound itself to use certain procedures found in the preamble to the 2003 GHL rule, including the requirement that a GHL had to be exceeded in order for management measures to be implemented. Although such a result arguably could be read into the rulemaking discussion found in the preamble to the 2003 GHL rule, as evidenced by the U.S. District Court's granting of the TRO and PI, NMFS specifically repudiates such a ''policy.''

To further clarify NMFS' position on repudiating the above policy, NMFS subsequently withdrew the May 28, 2008, rule that was the basis for the *Van Valin* lawsuit (73 FR 52795), and on December 22, 2008, proposed a separate rulemaking to implement the one fish daily bag limit (73 FR 78276). This new proposal would give effect to the Council's intent to keep the harvest of charter vessel anglers as close to the established GHL as the Council's proposed management measures will allow.

This brief history of management of the charter vessel fishery for halibut demonstrates its contentiousness. Charter vessel operators and anglers strongly resist anything more restrictive than a two–fish daily bag limit, but open access in the charter vessel fleet has resulted in virtual unlimited increases in charter halibut harvests. The IPHC balances such increases by decreases in the commercial halibut catch limit. To assure the future productivity of the halibut resource, the IPHC must maintain the total halibut harvest within the total CEY. The limited access program recommended by the Council and proposed by this action is designed to be a step toward establishing a comprehensive program of allocating the halibut resource between the commercial and charter vessel fisheries.

Limited Access Management for the Charter Vessel Fishery

A problem statement adopted by the Council to guide its decision making during the 1995 through 2000 period cited as a concern the overcrowding of productive halibut grounds due to the growth of the charter vessel sector as a concern. In April 1997, during its initial review of an analysis of management alternatives, the Council added a potential cut–off date or ''control date'' of April 15, 1997—a date after which new entrants into the charter vessel fishery are not assured of qualifying for participation under a moratorium on new entry or other limited access program. The next time the Council considered charter vessel management issues was in September 1997. At that meeting, however, it backed away from further development of a limited access policy and instead recommended improved recordkeeping and reporting requirements and a GHL for Area 2C and 3A designed to give the charter vessel fleet 125 percent of its 1995 harvest in each of these areas.

The Council revisited limited access management for the charter vessel fishery for halibut in February 2000. At that meeting the Council made a final decision on its GHL policy. It also (a) established a committee to develop a program that would integrate the charter vessel fishery into the existing IFQ program for the commercial fishery, and (b) decided not to proceed with a moratorium for the charter vessel fishery in Areas 2C and 3A in deference to the State of Alaska developing localized moratoria within the local area management plan process. In April 2000, the Council unanimously decided to begin analysis of alternatives for integrating the charter vessel fishery into the commercial IFQ program. The Council also accepted its committee's recommendation that the new charter/commercial IFQ program would replace the GHL program but clarified that the GHL program must be implemented first.

In February 2001, the Council revised its problem statement for expansion of the IFQ program to charter vessels and added a moratorium alternative to the analysis, among other changes. Finally, in April 2001, the Council adopted the IFQ program alternative for the charter vessel fishery, culminating eight years of debate and Council consideration of ways to manage the guided sport charter vessel fishery for halibut. The pool of halibut that would be allocated under the charter IFQ program was to be the same as the GHL—that is 125 percent of the 1995 through 1999 average harvest.

In June 2001, however, the State of Alaska representative on the Council notified the Council of the State's intention to move to rescind the Council's April 2001 action. The motion to rescind was made and considered by the Council at its October 2001 meeting and it failed. The State's objections were based in part on its concerns about the State charter vessel logbook data on which initial allocations of charter vessel fish to individual operators in the charter vessel sector would be based. The State was concerned that data from its 1999 and 2000 charter vessel logbooks did not accurately reflect halibut harvest and should not be used in any management decision–making process. After months of additional analysis by the State and review by the Council's Scientific and Statistical Committee (SSC), the Council, in January 2003, accepted its SSC report that the charter vessel logbook data were suitable as a basis for determining eligibility and initial allocation of charter vessel quota shares.

In August 2003, NMFS published a final rule implementing the Council's recommended GHL policy (68 FR 47256, August 8, 2003). Following the Council's request to implement its GHL policy before its IFQ policy, NMFS developed regulations and administrative systems to integrate the charter vessel fishery into the commercial IFQ program. After extensive development and review of a proposed rule for the IFQ program during 2003 and 2004, NMFS sought confirmation of the Council's continued support for the program. In a letter to the Council dated August 3, 2005, the

NOAA Assistant Administrator for Fisheries requested the Council to confirm its 2001 decision to incorporate the charter vessel sector into the commercial IFQ program. In December 2005, after two days of hearing public testimony, the Council failed to confirm its 2001 decision. The Council decided, however, to create a charter halibut stakeholder committee to examine a suite of options proposed by the State of Alaska representative on the Council. In addition, the Council established a new control date of December 9, 2005, to notice the charter vessel industry that anyone entering the fishery after the control date would not be assured of future access should a moratorium or other limited access system be developed and implemented that limits participants in the charter vessel halibut fishery.

In April 2006, the Council initiated an analysis for a moratorium on the entry of new participants in the charter vessel fishery for halibut in Areas 2C and 3A using the December 9, 2005 control date. A year later on March 31, 2007, the Council adopted a moratorium motion to recommend to the Secretary. The motion is available at *http://www.fakr.noaa.gov/npfmc/current_issues/halibut_issues/CharterHalibutMotion307.pdf*. The essence of the proposed moratorium is to limit entry in the charter vessel fishery to charter halibut permit holders. The moratorium is a limited access system in which permits would be initially limited to those businesses that have historically and recently participated in the fishery according to certain criteria. The following describes these proposed criteria, conditions for transfer of permits, and other aspects of the program in detail.

The Proposed Action

This action proposes regulations that would limit the entry of additional charter vessels into the guided sport fishery for Pacific halibut in waters of IPHC Regulatory Areas 2C (Southeast Alaska) and 3A (Central Gulf of Alaska). For purposes of this action, a charter vessel is a vessel that is registered, or should be registered, as a sport fishing guide vessel with the Alaska Department of Fish and Game. This definition is consistent with the current definition of ''charter vessel'' at 50 CFR 300.61. If approved, any person operating a charter vessel engaged in halibut fishing in Area 2C or Area 3A would be required to have on board the vessel a charter halibut permit designated for that area.

A charter halibut permit would be issued to an applicant based on the applicant's participation in Area 2C or Area 3A during the qualifying period and recent participation period. Qualifications for a permit in each area would be determined independently. To receive a permit endorsed for Area 2C, NMFS would only examine that applicant's participation in Area 2C. To receive a permit endorsed for Area 3A, NMFS would only examine that applicant's participation in Area 3A. A charter halibut permit would be transferrable or not transferrable based on certain minimum participation criteria. Each permit would have an angler endorsement that specifies the maximum number of anglers authorized to catch and retain halibut under the authority of the permit under which the vessel is operating.

This action also proposes two special permits: a community charter halibut permit and a military charter halibut permit. A community charter halibut permit would be issued to a Community Quota Entity (CQE) as defined at 50 CFR 679.2. A military charter permit would be issued to a United States Military Morale, Welfare and Recreation (MWR) Program. The unique features of these permits are described below.

Qualifications for Charter Halibut Permit

The Council recommended participation requirements for permit qualification that take into account historic participation during a qualifying period and during a recent participation period. Participation during both periods would demonstrate a qualifying dependence on the charter vessel fishery for halibut. Charter halibut permits would be awarded only to persons who participated as owners of a charter halibut business that was licensed by the ADF&G. The proposed rule would adopt the Council's recommendation and award permits to applicants that participated as ADF&G licensed fishing guide business owners in a qualifying period and a recent participation period.

Qualifying period and recent participation period. The qualifying period would be the sport fishing season established by the IPHC in 2004 and 2005. The sport fishing season in both of those years was February 1 through December 31. The recent participation year would be the year prior to implementation of this proposed action. In recommending this action, the Council was not certain exactly what year this proposed action, if approved, would be implemented; hence, the year prior to that also was unknown.

The Council contemplated that the year prior to implementation could be 2007 or 2008. If approved, the final rule for this action will specify the year prior to implementation and the rationale for that specification. In specifying this year, NMFS will take into account the most recent year for which data are available, among other things. This proposed rule does not attempt to define the start of the program and thereby the year prior to it, but instead refers to the Council's ''year prior to implementation'' as the ''recent participation period'' or ''recent participation year.'' Hence, the proposed rule text that follows does not specify the recent participation year. That specification will occur in the final rule, pending approval of this action.

To qualify for a permit, an applicant would have to have reported at least five logbook trips during the qualifying period and five logbook trips during the recent participation period. The Council wanted to ensure that permits went only to persons who were active in the charter halibut fishery at or above a minimal level in both periods. The Council concluded that a five–trip level of participation showed active participation in the charter halibut fishery. The purpose of requiring active participation in both periods is to make sure that the applicant is an historical participant and a recent participant in the charter halibut fishery. The Council did not intend a permit to be issued to an applicant to operate in this fishery unless the applicant met both criteria. Thus, an applicant that operated a charter halibut fishing business during the recent participation period, but not the qualifying period, would not qualify for a charter halibut permit. Conversely, an applicant that operated a charter halibut fishing business during the qualifying period, but not the recent participation period, would not qualify for a charter halibut permit.

Charter halibut permits would not be awarded to persons who purchased a charter fishing business that met some or all of the participation requirements but who themselves do not meet the participation requirements. The Council did not recommend that NMFS award permits based on business purchase agreements and therefore it did not analyze criteria to recognize such agreements. Hence, NMFS does not propose to recognize private agreements for the following reasons: (a) the Council did not recommend this policy; (b) a person who met all the participation requirements for a transferable permit could apply for the permit and transfer it to another person, if that is required by their private agreement; (c) a person who meets only the requirements for a nontransferable

permit, should not be able to transfer that permit; and (d) awarding a permit based on one person meeting the participation requirements in the qualifying period and another person meeting the participation requirements in the recent period would increase the total number of permits which would be contrary to the Council's intent. NMFS concluded that if one person did not participate in both periods—the qualifying period and the recent participation period—that person should not receive a charter halibut permit in the initial award of permits. To enter the fishery, that person would have to buy a permit from a person that met the participation requirements in both periods.

Number of permits. If an applicant for a charter halibut permit meets the minimum participation requirements during a qualifying year and the recent participation year, NMFS would determine how many permits the applicant would receive and how many of those, if any, would be transferable permits.

If an applicant qualified for any permits, NMFS would issue to the applicant the number of permits equal to (a) the applicant's total number of bottom fish logbook fishing trips in a qualifying year, divided by 5, or (b) the number of vessels that made those trips, whichever number is lower. The Council recommended that the number of permits issued to a charter fishing business would be ''based on the number of trips summed for all vessels in [its] best year of the qualification period.'' Further, ''[a] business would be limited to the number of permits equal to the highest number of vessels used in any one year during the qualifying period.'' NMFS interprets this to mean that the number of permits would be the number of bottomfish logbook trips in 2004 or 2005 divided by five or the number of charter vessels operated by a business during 2004 or 2005, whichever number is lower. The applicant would select which year in the qualifying period—2004 or 2005—NMFS would use.

A conservative interpretation is reasonable because an objective of limited access programs, including this one, is to reduce the amount of fishing effort in a fishery. Hence, NMFS would issue the number of permits equal to the lesser of (a) bottom fish logbook fishing trips divided by five (the minimum number of trips to qualify for a non–transferable permit) or (b) the number of charter vessels that made those trips in one of the qualifying years.

Although the Council motion refers to an applicant's ''best year of the qualification period,'' the Council was silent on how an applicant's ''best year'' is determined. NMFS proposes that the applicant should select its best year. Thus, the proposed rule uses the term ''applicant–selected year'' rather than the applicant's ''best year.'' The ''applicant–selected year'' means the year in the qualifying period—2004 or 2005—that the applicant selects for NMFS to use in determining how many permits the applicant will receive and whether the permits will be transferable or non–transferable. NMFS proposes that the applicant select the applicant's best year because applying the rules for the number of permits and transferable permits could have different results. For example, an applicant may receive a greater number of permits using the applicant's participation in one year but a greater number of transferable permits using the applicant's participation in another year. Because the year selected could make a difference, the applicant should choose which outcome is more important to the applicant.

To determine the number of permits an applicant may be awarded and whether those permits are transferable or nontransferable, NMFS would create the official charter halibut record. This record would contain the information about participation in the charter halibut fishery that NMFS would use to evaluate applications for charter halibut permits. NMFS would derive the official record from ADF&G logbook records. For each applicant, NMFS would make two determinations for each of the two qualifying years based on the official record. First, NMFS would determine the number of trips that the applicant reported, divide that number by five, and round it down to the nearest whole number. Second, NMFS would determine the number of vessels that made those trips. NMFS would then inform the applicant of these numbers for the years 2004 and 2005.

The applicant would select 2004 or 2005 as the year that NMFS should use to determine the applicant's permits. Using the applicant–selected year, NMFS would award the applicant the number of permits that is equal to the lower of the first determination—the total number of trips reported in the applicant–selected year, divided by five and rounded down to the nearest whole number, or the second determination—the number of vessels that made those trips in the applicant–selected year. For example, an applicant in its selected qualifying year reported 23 logbook trips using three vessels. One vessel made 16 trips, another vessel made five trips, and another vessel made only two trips. Under the proposed rule, NMFS would calculate $23 \div 5 = 4.6$ which would be rounded down to four. But this number of permits would be limited by the number of vessels that made all the logbook trips in the applicant–selected year which was three. Hence, the applicant would be awarded three permits.

A limit on the number of permits equal to the number of vessels used in the applicant–selected year is necessary to prevent expansion in the number of vessels that could operate in the charter halibut fishery if this program were approved. If the number of permits were based only on the number of trips divided by five, the number of vessels could exceed the number of vessels that participated before adoption of this limited access program, which would be antithetical to the purposes of this program.

Designation of transferable permits. After determining the total number of permits, NMFS would determine which permits are transferable and which are nontransferable. An applicant would receive a transferable permit for each vessel that made at least 15 trips in the applicant–selected year and at least 15 trips in the recent participation year. The rest of the applicant's permits, if any, would be non–transferable permits.

Under the proposed rule, NMFS would issue to an applicant the number of transferable permits equal to the number of vessels that made at least 15 logbook fishing trips or more in the applicant–selected year and at least 15 trips in the recent participation year. Applicants that do not have the minimum of 15 logbook fishing trips in each period but qualify for one or more permit(s) with a minimum of five logbook fishing trips, would receive only non–transferable permit(s). Hence, in the example above of an applicant with 23 logbook trips using three vessels, that applicant would receive three permits. Based on the 15–trip minimum criterion, however, this applicant would receive only one transferable permit and the other two permits would be non–transferable.

This two–tiered qualification criterion would create two types of permits: a nontransferable permit that would cease to exist when the entity that holds the permit no longer exists and a transferable permit that would have value as an asset that could be transferred to another business when the permit holder decided to leave the fishery. The Council recommended transferable permits to establish a market–based system of allocating access to the fishery after the initial allocation of permits. Persons wanting to enter the charter halibut fishery could

obtain permits from persons leaving the fishery. The Council concluded this would be more reasonable and efficient than a continual permit–application–and–permit–award process by the government. But the Council did not recommend that all permits be transferable. The Council recommended two types of permits—transferable and non–transferable—as proposed by this action.

This part of the Council's recommendation reflects a balance of the Council's objective to reduce fishing effort and its objective to minimize disruption to the charter fishing industry. Requiring a high minimum number of logbook fishing trips would result in a sudden reduction of charter halibut operations because many existing charter vessel operators would not be able to qualify. On the other hand, requiring a low minimum number of logbook fishing trips would result in little or no reduction in potential harvesting capacity. The two–tiered qualification criterion is designed to allow a business with relatively less participation in the charter halibut fishery to continue its operation while reducing potential harvesting capacity over time by not allowing that permit to be transferred to another entity.

Angler endorsement on permits. Each charter halibut permit would have an angler endorsement number. The angler endorsement number on the permit would be the maximum number of anglers who are catching and retaining halibut that a vessel operator can have on board the vessel. The angler endorsement would not limit the number of passengers that a charter vessel operator could carry, only the number who may catch and retain halibut.

The Council recommended that the angler endorsement number on an applicant's permits would be the highest number of clients that the applicant reported on any logbook fishing trip in 2004 or 2005, subject to a minimum endorsement of four. The proposed rule adopts that recommendation, except that it uses the term ''angler'' rather than ''client.'' The term ''angler'' includes all persons, paying or non–paying, who use the services of the charter vessel guide. The charter halibut permit, once issued, would limit the number of charter vessels anglers—paying or non–paying persons who use the services of a charter vessel guide—who can catch and retain halibut. Thus, under the proposed rule, the ''angler endorsement number'' on the permit would be the highest number of anglers who caught and retained halibut reported on any of the applicant's logbook fishing trips in 2004 or 2005.

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

The rationale for the proposed angler endorsement is that this proposed action is designed to limit the number of charter vessels participating in the charter halibut fishery; not to prevent all expansion of effort by charter vessel operators. This provision allows permit holders to increase their effort somewhat by increasing the number of anglers that permit holders take on some charter vessel fishing trips, assuming that vessel operators did not take their historical maximum number of anglers out on every trip in the qualifying period. This expansion would be constrained by factors such as the maximum number of anglers recorded in an ADF&G logbook during 2004 or 2005, the size of the charter vessel using the permit, the market for charter trips, and any safety or other regulations that limit the number of anglers that may be on board a vessel.

The rationale for the minimum angler endorsement number of four, regardless of a lower number reported for an applicant's logbook fishing trip, is that this provision would not increase the number of permits in the fishery, and an angler endorsement of less than four may not allow economically viable fishing trips.

The applicant–selected year, as it is described above, would not apply to the determination of angler endorsements for the number and type of permits. NMFS would endorse the permits with an angler endorsement number equal to the highest number of anglers on any of the applicant's logbook trips in 2004 or 2005, except as noted above for a minimum angler endorsement. This would be consistent with the Council's motion. Thus, the applicant's selected year—2004 or 2005—that NMFS would use to determine the number and type of permits may not be the same year that NMFS would use to determine the angler endorsement number on those permits. For example, an applicant may select 2004 for purposes of determining the number and type of permits, but the highest number of anglers recorded on any trip during the qualification period may have occurred in 2005. In this case, NMFS would award the applicant the number and type of permits based on the applicant's 2004 trips and would endorse the permits with an angler endorsement number based on a 2005 trip.

Standards for Initial Allocation

A person would be required to meet several basic standards to initially receive a charter halibut permit. These standards include (a) timely application for a permit, (b) documentation of participation in the charter vessel fishery during the qualifying and recent participation periods by ADF&G logbooks, and (c) ownership of a business that was licensed by the State of Alaska to conduct the guided sport fishing reported in the logbooks.

Timely application. The application process is discussed more fully below; however, a basic standard for eligibility to receive an initial charter halibut permit would be to apply for the permit during an application period. An application period of no less than 60 days would be announced in the **Federal Register**. Applications submitted by mail, hand delivery, or facsimile would be accepted if postmarked or hand delivered or faxed no later than the last day of the application period. Electronic submissions other than facsimile would not be acceptable.

Logbook documentation. The documentation to prove qualifying participation in the charter vessel fishery would be limited to saltwater charter vessel logbooks issued by the ADF&G. There are several reasons for relying only on the ADF&G charter vessel logbook database. First, ADF&G has regulated saltwater charter fishing in the State of Alaska through registrations, licenses, and logbooks since 1998. These requirements apply to all charter fishing, including vessels targeting halibut. Although ADF&G regulations use the term ''sport fishing services,'' the business activity that ADF&G regulates is essentially the same as the guided sport charter vessel fishery for halibut that is the subject of this proposed rule. Second,ADF&G supplied aggregated charter vessel logbook data to the Council to assist it in its analysis of past participation in the charter halibut fishery in Areas 2C and 3A. Third, the Council relied on these data in part to make its decision to recommend limiting entry into this fishery and NMFS, in turn, has relied on

the Council's analysis of alternatives to approve publication of this proposed rule.

The basic unit of participation for receiving a charter halibut permit would be a logbook fishing trip. As defined in the proposed rule, a ''logbook fishing trip'' would be a bottom fish logbook fishing trip during the qualifying years, 2004 and 2005, and a halibut logbook fishing trip in the recent participation year. A logbook fishing trip would be an event that was reported to ADF&G in a logbook in accordance with the time limit required for reporting such a trip that was in effect at the time of the trip. The required time limit differed in minor ways in 2004, 2005, 2007, and 2008, and depended on when the trip occurred; however, the latest date for reporting a trip was January 15 of the year after it occurred. If a trip was not reported within those time limits, NMFS would not consider it a logbook fishing trip for purposes of this proposed rule, and it would not serve as the basis for NMFS to issue a charter halibut permit. Hence, a permit applicant could not add a trip to the official record years after the trip should have been reported to the State.

The proposed rule, like the Council's preferred alternative, relies on the same method of counting trips that was used in the Council's analysis. In the analysis, each trip in a multi–trip day counts as one logbook trip, and each day on a multi-day trip counts as one logbook trip. For example, a business owner who had two trips in one day would be considered to have had two logbook trips. Another business owner that had a trip that lasted two days also would be considered to have had two logbook trips. This accounting of trips deviates from the ADF&G method of counting logbook trips when fishing continues over multiple days. ADF&G required a business that took anglers on a multiday trip to submit logbook information at the end of the trip, not at the end of the day. Hence, a trip could represent different measures of effort depending on the number of days a charter vessel fished with the same group of anglers. The Council analysis standardized the measure of effort of a trip by separating each day fished on a multi-day trip and counted each day as a trip. The Council relied on its analysis in adopting its preferred alternative. Therefore, the proposed rule is based on the same method of counting trips that was used in the analysis.

The same issue does not exist for half-day trips. ADF&G required business owners to submit a logbook trip entry after a half-day trip. Hence, ADF&G logbook data, the Council's analysis, and the proposed rule count a half day trip as one trip.

This action proposes additional definitions for a ''bottomfish logbook fishing trip'' and a ''halibut logbook fishing trip.'' To document participation in 2004 and 2005, an applicant must prove bottomfish logbook fishing trips, and to prove participation in the recent participation year an applicant must prove halibut logbook fishing trips. The Council anticipated the distinction between these terms in its moratorium motion. The reason for this distinction is that in 2004 and 2005, ADF&G did not require businesses to report the number of halibut that were kept, or kept and released, for each logbook fishing trip. In 2004 and 2005, ADF&G required businesses to report bottomfish effort for each logbook fishing trip. The bottomfish effort data was (1) the State statistical area where bottomfish fishing occurred, (2) the boat hours that the vessel engaged in bottomfish fishing and (3) the number of rods used from the vessel in bottomfish fishing. ADF&G attached instructions to each logbook that stated that bottomfish fishing effort included effort targeting halibut. Therefore, for purposes of this action, NMFS would count any of these three types of bottomfish information about a trip in the qualifying period as a bottomfish logbook fishing trip for purposes of qualifying for one or more permit(s). As with the reporting of the trip itself, the business owner would have had to report these data within ADF&G time limits. An applicant could not change or add data that would make a trip a bottomfish logbook fishing trip or halibut logbook fishing trip after the trip should have been reported to ADF&G.

In 2006, ADF&G changed its required logbook report to specify halibut data for each logbook fishing trip. The required logbook data included the number of halibut kept, the number released, and the boat hours that the vessel engaged in bottomfish fishing. Because these data will be more specific to halibut in the recent participation year, NMFS intends to rely on the halibut logbook data as proof of an applicant's participation during the recent participation year. If a business owner, within ADF&G time limits, reported to ADF&G the number of halibut kept or caught and released, NMFS would count that trip as a halibut logbook fishing trip and the trip would count toward the applicant's participation requirement in the recent participation year.

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

Licensed business owner. Charter halibut permits would be issued to the ADF&G licensed business owner. The Council's moratorium recommendation and this action propose eligibility for a charter halibut permit to be limited to the holder of an ADF&G business owner license because information on participation in the charter vessel fishery for halibut is organized by this license. Hence, a person would not meet this standard and qualify for a charter halibut permit if he or she held only a guide license or owned a charter vessel but did not hold an ADF&G business owner license during the qualifying and recent participation years.

Issuing charter halibut permits only to qualified holders of ADF&G business owner licenses is appropriate for several reasons. First, the owner of the charter vessel fishing business had to obtain a business owner license from ADF&G. Second, the business owner was required to register with ADF&G the vessel to be used as a charter vessel. Third, the ADF&G business owner license number was required to be recorded on each sheet of the logbook because this license authorized the guide to provide fishing guide services to the charter vessel anglers. Finally, the business owner was responsible for submitting the logbook sheets to ADF&G within the required time limits. In summary, every charter vessel fishing trip was authorized by, and made pursuant to, an ADF&G business owner license. This license has been variously referred to as a sport fishing operator license, a sport fish business owner license, an ADF&G sport fish business license, or simply an ADF&G business license. This action proposes the term ''ADF&G business owner license'' exclusively to refer to this license issued by ADF&G.

Application and Issuance Process

As noted above, an application period of no less than 60 days would be officially announced in the **Federal Register**. NMFS would use other media in addition to the **Federal Register** to announce the application period and encourage potential applicants to submit applications for charter halibut permits. A finite application period of reasonable length is necessary to resolve potential claims for permits by two or more persons for the same logbook fishing trip history. NMFS would not credit the same logbook fishing trip to more than one applicant, and would not allow the participation history of one business owner to support issuance of a permit(s) to more than one applicant.

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

Official record. Before the start of the application period, NMFS would create an official record of charter vessel participation in Area 2C and 3A during the qualifying and recent participation years. The official record would be based on data from ADF&G because the State of Alaska has regulated charter fishing in the past and has the data on past participation in the charter halibut fishery. The official record would link each logbook fishing trip to an ADF&G business owner license and to the person—individual, corporation, partnership or other entity—that obtained the license. Thus, the official record would include information from ADF&G on the persons that obtained ADF&G Business Owner Licenses in the qualifying period and the recent participation period; the logbook fishing trips in those years that met the State of Alaska's legal requirements; the business owner license that authorized each logbook fishing trip; and the vessel that made each logbook fishing trip.

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

Appeals. An applicant may appeal the IAD to the Office of Administrative Appeals (OAA) pursuant to 50 CFR 679.43. NMFS would issue interim permits to applicants that filed timely applications and whose appeal is accepted by OAA. All interim permits would be non–transferable. NMFS would limit interim permits on appeal to applicants who applied for charter halibut permits within the application period specified in the **Federal Register**. This means that an applicant that is denied a permit because its application was late would not receive an interim permit. This limitation is necessary for NMFS to know the universe of applications at the end of the application period. The grounds for treating a late application as timely filed are extremely narrow. Hence, NMFS would not issue an interim permit to an applicant that filed a late application if that applicant has an extremely limited chance of prevailing on appeal.

When an appeal is accepted by OAA, interim permits would be issued as follows. If, according to the official record, the applicant should receive no permits, the applicant on appeal would receive one interim permit with a angler endorsement of four. If, according to the official record, the applicant on appeal should receive some permits, the applicant on appeal would receive the number of permits and the angler endorsement number on those permits that are substantiated by the official record as it exists when the applicant appeals, not the number and types of permits that applicant claims on appeal.

All permits issued during an appeal would be interim, non–transferable, permits. Until NMFS makes a final decision on the appeal, the permit holder would not be able to transfer any permits. Potentially, a recalculation of one variable for an applicant could result in a redetermination of the number and type of permits. For example, if, as a result of an appeal, an applicant selects 2004 as its best year rather than 2005, NMFS would recalculate an applicant's number of permits or type of permits. Making permits that are under appeal non–transferable until the appeal is resolved would prevent an applicant from transferring a permit for which it ultimately may not qualify. This is necessary to prevent undermining the purpose of the proposed limited access system.

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

Generally, the entity that applies for one or more charter halibut permits would be the same entity that held the ADF&G business owners license that authorized the trips that met the participation requirements in the qualifying period and in the recent participation period. The only exception to this requirement is if the entity that held these licenses is an individual who has died, or a non–individual entity, such as a corporation or partnership, that has dissolved.

If an individual who met the participation requirements for a charter halibut permit has died, the personal representative of the individual's estate may apply for the permit in place of the deceased individual. The applicant who applies as a personal representative must provide documentation of the individual's death and documentation that the applicant has been appointed by a court as the personal representative of the deceased individual's estate. If the decedent would have received any permits, the personal representative can instruct NMFS as to who, according to

the applicant's duties as personal representative, should receive those permits.

If a non–individual entity, such as a corporation or partnership, met the requirements for a permit but that entity has dissolved, the successors–in–interest to the entity may apply for that permit or permits. The applicant who is applying as a successor–in–interest to a corporation or partnership or other dissolved entity must provide documentation that the entity has dissolved and that the applicant is a successor–in–interest to the dissolved entity. If more than one applicant proves that he or she is a successor–in–interest to the dissolved entity, NMFS would issue the permits for which the dissolved entity qualifies in the names of all applicants that submit timely applications and that prove they are successors–in–interest. For example, a partnership has dissolved and two former partners submit separate and timely applications. If each applicant proves that they are a successor–in–interest to the partnership, NMFS would award the permits in the names of the two successors–in–interest that applied. Similarly, if a corporation qualifies for permits but has dissolved and three former shareholders of the corporation submit timely applications, each proving that they are a successor–in–interest to the corporation; NMFS would award the permits in the names of the three former shareholders. If only two of the three former shareholders submit timely applications, however, NMFS would award the permits in the names of the two former shareholders that submitted timely applications.

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

The proposed rule makes explicit a guiding principle NMFS would apply in evaluating applications for charter halibut permits. The logbook fishing trip activity of one person that is used for permit qualification cannot lead to more than one person receiving a charter halibut permit. The only possible exception is described above, when NMFS might award a permit in the name of several persons who are successors–in–interest to a dissolved entity. Even then, NMFS would not issue multiple permits, but only issue permits in the names of several persons the number of permits for which the dissolved entity qualified. Subject to that exception, the proposed rule prohibits NMFS from crediting the same logbook fishing trip to more than one applicant, from crediting logbook fishing trips made pursuant to the same ADF&G Business Owners License to more than one applicant, and from allowing participation by one person in the charter halibut fishing business to support issuance of permits to more than one applicant.

Unavoidable Circumstances

The Council and NMFS recognize that certain unavoidable circumstances could prevent an applicant from participating in either the qualifying period or recent participation period despite the applicant's intention. In developing a limited exception to allow for unavoidable circumstances, NMFS was guided in part by the unavoidable circumstance provisions in the License Limitation Program (LLP) for groundfish and crab fisheries at 50 CFR 679.4(k). This action proposes similar criteria for an unavoidable circumstance as used in the LLP regulations (50 CFR 679.4(k)(8) and (9)). Basically, an applicant must demonstrate that:

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

Missed recent participation period. An applicant who meets the participation requirements for the qualifying period (2004 and 2005) may claim that it did not meet the participation requirement in the recent participation period year due to an unavoidable circumstance. Assuming the applicant is able to successfully demonstrate that it meets the criteria for an unavoidable circumstance, NMFS proposes to award the applicant the number and type of permits that the applicant would have received if its participation during the recent participation period had been the same as its participation during the qualifying period. The Council did not address this issue. However, NMFS determined that substituting the qualifying period participation for actual participation during the recent participation period best reflects what the Council was trying to achieve by recommending that an unavoidable circumstance exception be included in this program.

Missed qualifying period participation. Similarly, an applicant who met the recent participation requirement may claim that it did not meet the qualifying period (2004 or 2005) participation requirement because of an unavoidable circumstance. Assuming the applicant is able to successfully demonstrate that it meets the criteria for an unavoidable circumstance, NMFS could not use logbook data from the qualifying period to determine the applicant's number of permits, whether the permits would be transferable, or the area and the angler endorsements on the permits, because the applicant would have either no logbook data from the qualifying period or insufficient logbook trips to receive any permits. NMFS proposes that the applicant who proves an unavoidable circumstance in the qualifying period would receive one non–transferable permit with an angler endorsement of four, unless the applicant demonstrates that it likely would have met the participation requirements for more permits, one or more transferable permits, or a higher angler endorsement. In that case, the applicant would receive the number and type of permits, and the angler endorsement on those permits, that result from the level of participation that the applicant demonstrates that it likely would have attained.

The proposed rule, in essence, adopts a default provision for an applicant that successfully demonstrates that it meets the criteria for unavoidable circumstances, namely a non–transferable permit with an angler endorsement of four. This provision, at a minimum, would allow an applicant to participate in the fishery. This provision also would allow an applicant to receive more permits, or transferable permits, or an angler endorsement greater than four, only if the applicant shows that it likely would have participated at that higher level but for the unavoidable circumstance.

For example, if an applicant states that it should receive one transferable charter halibut permit with an angler endorsement of six, then the applicant must show that the applicant likely would have reported at least 15 logbook fishing trips with a vessel in 2004 or 2005 and would have taken six anglers on one of those trips. The applicant would be required to show this by a preponderance of the evidence. This means that the applicant must show that it is more likely than not that it would have met that participation requirement, were it not for the unavoidable

circumstance. In the example, if the applicant experienced an unavoidable circumstance in 2004, the applicant could introduce evidence of its participation in 2003. Or if the applicant already had bookings in 2004, it could introduce evidence of those bookings. These are just examples and are not intended to indicate that any of these submissions would be sufficient to demonstrate unavoidable circumstances.

Limitation on unavoidable circumstance provision. NMFS is proposing that the unavoidable circumstance exception be limited to persons who would be excluded from the fishery entirely unless their unavoidable circumstance was recognized. The unavoidable circumstance exception is not intended to upgrade the number or type of permits an applicant could receive. For example, NMFS would not accept an unavoidable circumstance claim to upgrade a non–transferable permit to a transferable permit based on an anticipated 15 logbook trips in 2005 that did not occur. NMFS concluded that the proposed unavoidable circumstance exception should be narrow, and that, if an applicant could get any charter halibut permit based on the applicant's actual participation, the applicant would be limited to that permit.

Military exemption. This action proposes a military exemption from the participation requirement during the qualifying period. This exception is designed to benefit persons assigned to active military duty in the qualifying period. An applicant for the military exception would have to meet the recent participation requirement, i.e., at least five halibut logbook trips in the recent participation period.

To qualify for a military exemption, a person would have had to be assigned to active military duty as a member of the National Guard or a reserve component. This limitation stems from public testimony to the Council about the need for a military exemption for persons called up to serve during the qualifying period as a member of the National Guard or a reserve component. This exemption would not apply to persons in the regular armed forces. The rational for not including persons in the regular armed forces is that a person's decision to enlist in the regular armed services is a voluntary career choice and is not unavoidable. Hence, such a person serving during the qualifying period chose a military occupation in lieu of a charter vessel occupation. NMFS recently considered a similar issue in the context of allowing a temporary military transfer of IFQ Quota Share and, for similar reasons, only allowed such a transfer by a member of the National Guard or a member of a reserve component (73 FR 28733, May 19, 2008).

In addition, to receive a military exemption, an applicant would have to demonstrate that the applicant intended to participate in the charter halibut fishery and that the applicant's intent was thwarted by the applicant's order to report for military service. The Council motion stated that a military service applicant would have to show intent to participate before the qualifying period. NMFS concludes, however, that the Council did not intend to exclude a military applicant who could show an intent to participate during the qualifying period. Therefore, NMFS would treat an applicant who can show an intent to participate during the qualifying period the same as it would treat an applicant who could show an intent to participate before the qualifying period, as requested by the Council, as long as an applicant could demonstrate their intent to participate was thwarted by their order to report for military service.

The military exemption is designed to benefit persons who would otherwise be completely excluded from receiving any charter halibut permits despite their intention to meet the participation requirement during the qualifying period. If a military exemption applicant could receive any permits based on the applicant's actual participation in the qualifying period, the applicant would be limited to that number and type of permits and could not use the military exemption. An applicant may not claim a military exemption to excuse lack of participation in the qualifying period and an unavoidable circumstance to excuse a lack of participation in the recent participation period.

The proposed rule adopts the Council recommendation that an applicant receiving a permit under the military service exemption receive a charter halibut permit with an angler endorsement of six. The Council was silent, however, as to whether the permit should be transferable or non–transferable. This action proposes to treat a military exemption applicant the same as other unavoidable circumstance applicants. The military exemption applicant would receive one non–transferable permit with an angler endorsement of six unless the applicant could demonstrate that it likely would have met participation requirements for a transferable permit or a higher angler endorsement.

Transfers

After charter halibut permits are initially distributed by NMFS, a person holding a transferable permit could transfer the permit to another individual or non–individual entity with certain limitations. Transferability of permits would allow limited new entry into the charter vessel sector while the limited access program generally would prevent an uncontrolled expansion of the charter vessel fishing sector and provide for some consolidation in the sector. However, limits would be placed on consolidation to prevent any one person from holding an excessive share of charter vessel privileges.

To enforce limitations on the transfer of charter halibut permits, no transfer of a permit would be effective unless it is first approved by NMFS. NMFS would provide a transfer application to the person transferring and the person receiving the transferred permit. Completion of the transfer application would be required. Generally, NMFS would approve any transfer that is consistent with the following standards.

Transferable permit. NMFS would approve the transfer of only transferable charter halibut permits. Nontransferable permits could not be transferred to any entity different from the one to which it is initially issued. Hence, a nontransferable permit could not be transferred from the name of the individual once the individual dies. A nontransferable permit could not be transferred from a non–individual permit holder (a corporation, partnership or other entity) if the non–individual permit holder dissolves or changes. The proposed regulation incorporates the definition of ''change'' in a corporation or partnership from the IFQ program at 50 CFR 679.42(j)(4)(i). This paragraph in the IFQ regulations defines ''a change'' for corporations, partnerships, or other non–individual entity to mean ''the addition of any new shareholder(s) or partner(s), except that a court appointed trustee to act on behalf of a shareholder or partner who becomes incapacitated is not a change in the corporation, partnership, association, or other non–individual entity.''

Citizenship. The Council recommended that the charter vessel fishery under limited access should be primarily owned and controlled by United States citizens. The Council's authority under the Halibut Act at section 773c(c), however, is limited to developing regulations ''...applicable to nationals or vessels of the United States....'' Hence, the development of regulations that include non–citizens of

the U.S. is not authorized by section 773c(c) of the Halibut Act. The Secretary, however, has general responsibility and authority to adopt regulations as may be necessary under section 773c(a) and (b) of the Halibut Act. Therefore, the Secretary is exercising this authority in proposing the citizenship requirements recommended by the Council.

Based on the Council's recommendation, the Secretary is proposing two different eligibility standards. First, for initial allocation of charter halibut permits, this action proposes no distinction between U.S. citizens and nationals of other countries. Any person that meets the standards for initial allocation described above would be issued a charter halibut permit or permits according to those standards. No citizenship standards would apply to the initial allocation of charter halibut permits to avoid excluding persons who had legitimately participated in the charter vessel fishery during the qualifying and recent participation years. Second, for transfers of charter halibut permits, this action proposes to allow transfers only to U.S. citizens. That is, a transfer to an individual would be approved only if the individual is a U.S. citizen, and a transfer to a corporate entity would be approved only if it is a U.S. business with at least 75 percent U.S. citizen ownership of the business. This proposal adopts the 75 percent U.S. ownership criterion for a U.S. business from the American Fisheries Act (111 Stat. 2681, Oct. 21, 1998), which is a key piece of federal legislation designed to Americanize the fleet fishing off American waters. Hence, as non–U.S. citizens leave the fishery their charter halibut permits either would cease to exist (if the permits were nontransferable) or they would be replaced by U.S. citizens or U.S. businesses.

Excessive share limit. Although the proposed limited access system would allow for some consolidation in the charter vessel sector, a concern about too much consolidation caused the Council to recommend that a person should be prevented from holding more than five permits by transfer. Hence, five permits would be the excessive share limit and NMFS would not approve a transfer that would result in the person receiving the transferred permit holding more than five permits.

Two important exceptions to this excessive share limit, however, would allow a person to hold more than five permits. First, a person that is the initial recipient of more than five permits would be able to continue to hold all of the permits for which the person initially qualified. No approval would be granted for additional permits to be transferred to a person holding more than five permits under this exception. Also, this exception would not apply if an individual permit holder dies or a corporate permit holder dissolves or changes its ownership by adding one or more new owner(s) or partner(s). In this event, NMFS would consider a successor–in–interest or a changed corporate structure to be a different entity from the one that was the initial recipient of the permits and the exception to the excessive share limit would not apply to the new entity.

Under the second exception, NMFS would approve a transfer that resulted in the person receiving the transfer holding more than five permits if the person were to meet the following three conditions:

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

In making this recommendation, the Council reasoned that these exceptions would not increase the number of charter vessel businesses beyond those existing at the start of the limited access program. Allowing the transfer of a group of permits in excess of the excessive share limit along with an entire business would be simply substituting one business for another one and would not add to the overall charter fishing sector. These exceptions essentially ''grandfather'' businesses that would receive more permits, at the initial allocation of permits, than the excessive share limit would otherwise allow. Further, these exceptions allow the transfer of this grandfather right to a new business. A transfer of anything less than all the permits and assets, however, would end the grandfather right.

The Council and NMFS recognize that a corporate entity at the excessive share limit of five permits may be closely affiliated with another corporate entity that is under the limit and could apply to receive a transferred permit. To prevent a permit holder from exceeding the limit by affiliation, this action proposes to apply the 10 percent ownership criterion used for implementing the American Fisheries Act and defined at 50 CFR 679.2. Under this definition, two entities are considered the same entity if one entity owns or controls 10 percent or more interest in the other entity.

Owed penalties. Finally, this action proposes to prevent the transfer of a charter halibut permit to or from any person that owes NMFS any fines, civil penalties, or other payments. In addition, a transfer of a permit would not be approved if it would be inconsistent with any sanctions resulting from federal fishing violations. NMFS concluded that this was a reasonable way to enforce fishing sanctions and payment of fines, penalties, and payments owed to NMFS by parties to a proposed transfer.

Special Permits

In developing its charter vessel limited access policy, the Council was faced with a goal of constraining development of the charter vessel fishery for halibut on one hand while on the other hand recognizing the potential importance of this fishery to the economic development of some rural communities. The Council recommended providing a special permit to allow development of a charter vessel fishery in certain rural communities. In addition, the Council recognized charter vessels operated by the U.S. Military's Morale, Welfare and Recreational (MWR) programs for recreational use by service members, and recommended no limited access limitations on these military charter vessels. Hence, two types of special permits are proposed—one for community development and one for military use.

Community charter halibut permit. The Council recommended and this action proposes to allow for a special community charter halibut permit that would be awarded, at no cost, to Community Quota Entities (CQEs) representing communities that do not currently have a fully developed charter halibut fleet. The CQE provision was developed by the Council originally to help rural communities become more involved in the commercial fisheries for halibut and sablefish (84 FR 23681, April 30, 2004). In that context, CQEs are already defined at 50 CFR 679.2. The Council recommended that existing or future CQEs could serve a similar purpose in developing the charter vessel sector in certain rural communities.

This action proposes that a CQE representing a community or communities in Area 2C could receive a maximum of four community charter

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

This action proposes to limit the communities eligible for community charter halibut permits based on the Council's rationale that eligible communities should be those that have an emerging but not a fully developed charter vessel fleet because they could most benefit from the permits and from the economic benefits of new charter businesses. The Council recommended that eligible communities are those CQE communities (listed in Table 21 to part 679) in which 10 or fewer ''active'' charter vessel businesses terminated charter vessel trips in the community in each of the qualifying years (2004 and 2005). The term ''active'' means at least five logbook fishing trips per year. The five–trip criterion is based on the basic qualification proposed for a charter halibut permit of five logbook trips in each of two years. Communities with more than 10 active charter vessel businesses were considered developed enough to not require the benefit of the community permit program. Communities with no active charter vessel businesses were not considered likely prospects for developing future charter vessel businesses. In addition, the Council specifically named the communities that would meet these criteria. Therefore, this action proposes eligibility of the specific communities named by the Council. To add or subtract a community from the proposed list would require separate Council action and a regulatory amendment.

The list of communities proposed to be eligible for community charter halibut permits under a CQE are a subset of those listed in Table 21 to part 679. In Area 2C, the following 18 communities would be eligible for a community charter halibut permit: Angoon, Coffman Cove, Edna Bay, Hollis, Hoonah, Hydaburg, Kake, Kassan, Klawock, Metlakatla, Meyers Chuck, Pelican, Point Baker, Port Alexander, Port Protection, Tenakee, Thorne Bay and Whale Pass. In Area 3A, the following 14 communities would be eligible for a community charter halibut permit: Akhiok, Chenega, Halibut Cove, Karluk, Larsen Bay, Nanwalek, Old Harbor, Ouzinkie, Port Graham, Port Lions, Seldovia, Tatitlek, Tyonek, and Yakutat.

In addition to the community charter halibut permits available to a CQE under this proposed action, a CQE could acquire other charter halibut permits through transfer as described above. Therefore, this action proposes a unique excessive share limitation recommended by the Council to apply specifically to CQEs as potential permit holders. The limitation for a CQE representing Area 2C communities would be four community charter halibut permits per eligible community. Additional permits that the CQE may acquire by transfer would be limited to an additional four per eligible community for Area 2C. Hence, the overall limit of permits that such a CQE may hold would be eight per eligible community for Area 2C. This overall area–wide limit would apply to all community charter halibut permits issued to a CQE or to community charter halibut permits in combination with charter halibut permits acquired through transfer. For example, a CQE representing two eligible communities in Area 2C could request and receive four community charter halibut permits for one community and four community charter halibut permits for the other community. The CQE could receive an additional four charter halibut permits acquired by transfer for each community. The total number of permits—eight community charter halibut permits plus eight acquired charter halibut permits by transfer—would be the limit for the CQE to hold in Area 2C. However, if the CQE subsequently represents another community in Area 2C, the limit would change based on the number of communities that the CQE represents in that area.

A similar excessive share limitation would apply also to a CQE representing communities in Area 3A. The overall limit on the number of permits that a CQE representing eligible communities in Area 3A may hold would be 14 per eligible community the CQE represents in that area. Hence, the overall limit for any one CQE in any area would be two times the number of community charter halibut permits it may hold per eligible community.

The proposed limit on the number of community charter halibut permits that can be held by a CQE is intended to assist the development of an emerging charter halibut fishery in eligible communities without undermining the purpose of the limited access system proposed by this action. Also, the Council recommended that a charter vessel fishing trip for halibut that is authorized by a community charter halibut permit would be required to either begin or end within the community designated on the community charter halibut permit. The purpose of this requirement is to assure that the charter vessel anglers on such a fishing trip have an opportunity to use the goods and services of the community. This requirement would apply only to community charter halibut permits and not to any additional charter halibut permits that a CQE may acquire by transfer.

Military charter halibut permit. The proposed action would grant permits for charter vessels operated by any U.S. Military Morale, Welfare, and Recreation (MWR) program in Alaska. The only MWR program in Alaska that currently offers recreational charter halibut fishing to service members is the Seward Resort based at Fort Richardson in Anchorage, Alaska. To operate a charter vessel, the MWR program must obtain a special military charter halibut permit by application to NMFS. Each military charter halibut permit would be non–transferable and valid only in the regulatory area designated on the permit.

Prohibitions

This action proposes eight prohibitions. Six prohibitions mirror the requirements of the rule and need not be discussed separately. These six are prohibitions against:

- Fishing for halibut in violation of this program;
- Failing to comply with the requirements of this program;
- Failing to submit or submitting inaccurate information that is required to be submitted;
- A charter vessel operating with charter vessel anglers on board the vessel that are catching and retaining halibut in Area 2C or Area 3A without a charter halibut permit designated for that area;
- Having a number of anglers on board a charter vessel that exceeds the total angler endorsement number on the permit or permits that are on board the vessel; and
- Having a number of anglers on board a charter vessel that exceeds the total angler endorsement number on the community permit or permits that are on board the vessel.

Two additional prohibitions are proposed. First, a charter vessel operator would be prohibited from operating a charter vessel in Area 2C and Area 3A during a single charter vessel trip. The Council recommended this limitation on the use of permits. The analysis

indicated that few vessels operate in both areas. The prohibition therefore would not significantly undermine existing business operations in the charter fishery. This prohibition would aid in collection of harvest and logbook data and simplify compliance monitoring. Further, because each permit would have its own angler endorsement number, this prohibition would facilitate enforcement of the maximum angler endorsement designation on the permit.

Second, a charter vessel operator would be prohibited from operating a charter vessel where anglers are catching and retaining halibut, without having on board the vessel a State of Alaska Saltwater Charter Vessel Logbook issued to the person named on the charter halibut permit or permits on board the vessel. The Council recommended this prohibition. This prohibition would not conflict with any State of Alaska logbook requirement and it would likely promote involvement by the permit holder with the operation of the charter halibut fishing operation and with the collection of accurate logbook data.

The proposed rule does not have a prohibition against leasing although the Council recommended a prohibition against leasing. The proposed rule does not contain a comprehensive prohibition on leasing because such a prohibition would not lead to a permit holder being on board the vessel or having any direct connection with the charter operation. Under the proposed rule, a permit holder would not have to own a vessel or operate a vessel. A permit holder could legitimately allow a vessel operator to use the permit holder's permit as authority for the vessel operator to take anglers out charter halibut fishing, even though the permit holder does not own or operate the vessel and has nothing directly to do with the charter vessel fishing operation. The vessel operator may pay the permit holder for the right to use the permit or the permit holder may pay the vessel operator to take out anglers organized by the permit holder. The charter industry has a variety of business models and the way some of these business models function is substantially similar to a lease between the permit holder and the vessel operator.

Further, it would be difficult to enforce a prohibition on leasing. NMFS would have to collect additional information attendant to a transfer. Simply prohibiting a transfer called ''a lease'' would result in the prohibition being enforced only against legally unsophisticated persons who did not draft their document to avoid such a term. For NMFS to examine the substance of any transaction would be difficult, time–consuming and undermine the principle that the permits are relatively freely transferable. In light of this difficulty, the Council recommended three specific measures to discourage leasing:

- Prohibit the charter halibut permit from being used on board a vessel unless that vessel is identified in an ADF&G Saltwater Charter Logbook;
- Require that a charter vessel operator have on board the vessel an ADF&G Saltwater Charter Logbook issued in the name of the charter halibut permit holder; and
- Require the authorizing charter halibut permit number to be recorded in the ADF&G Saltwater Charter Logbook for each trip.

This action proposes all of these Council recommendations as part of the requirement to have the Saltwater Charter Logbook on board. The requirement to identify the vessel in the logbook is intended to be consistent with an existing State of Alaska requirement that a charter vessel operator have on board the vessel an ADF&G Saltwater Charter Logbook. This logbook must be specific to the vessel on which it is used.

Technical Regulatory Change

This action proposes a technical change relevant to the definition of the term ''charter vessel'' at 50 CFR 300.61. The definition for this term was revised by a final rule published September 24, 2008 (73 FR 54932) for purposes of a prohibition against using a charter vessel for subsistence fishing for halibut. This action proposes to integrate the definition into the prohibition language to which it directly applies at 50 CFR 300.66(i) to clarify that the definition does not apply universally to all other regulations. The universal definition of charter vessel would continue to be that used by the IPHC and appearing in the annual management measures required by 50 CFR 300.62. The most recent annual management measures were published March 7, 2008 (73 FR 12280).

Classification

The NMFS Assistant Administrator has determined that this proposed rule is necessary for the conservation and management of the halibut fishery and that it is consistent with the Halibut Act and other applicable law, subject to further consideration after public comment.

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

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

The number of businesses that submitted ADF&G logbooks for bottomfish activity in IPHC Area 2C between 1999 and 2005, and that may be directly regulated by this action, ranged from 412 in 2000 to 352 in 2002. The number of businesses over the same time in IPHC Area 3A period ranged from 455 in 2000 to 402 in 2003. The proposed limited access program (Alternative 2) would issue permits based on whether a business achieved a specified level of participation during 2004 or 2005, and in the year prior to implementation of the program. The Council's preferred alternative would issue an estimated maximum of 689 permits to 380 businesses in Area 2C and 611 permits to 471 businesses in Area 3A. These represent maximum estimates because a business also would have to meet the qualifying criteria in the recent participation period year, which is likely 2007 or 2008. Thus, the exact number of businesses that may qualify for a permit cannot be determined until the implementation of the program.

The SBA specifies that for marinas and charter/party boats, a small business is one with annual receipts less than $6.0 million. The largest of these charter operations, which are lodges, may be considered large entities under SBA standards, but that cannot be confirmed because NMFS does not collect economic data on lodges. All of the other 800–plus charter operations would likely be considered small entities, based on SBA criteria, because they would be expected to have gross revenues of less than $6.0 million on an annual basis.

Regulations that directly regulate communities are included in the permit allotment part of this action. That part seeks to help small, remote communities in Areas 2C and 3A to develop charter businesses by mitigating the economic barrier associated with purchasing a charter halibut permit and

creating a number of non–transferable permits that can only be held by the non–profit entity representing the eligible community. Under the preferred alternative, 18 Area 2C communities could be eligible to each receive up to 4 halibut charter permits at no cost; 14 Area 3A communities could be eligible to each receive up to 7 halibut charter permits at no cost. Note that their eligibility is also conditioned on the fact that they must form an approved non–profit community quota entity through NMFS; thus, the permits available for eligible communities at no cost are maximum estimates. All of these communities would be considered small entities under the SBA definitions.

This action would impose new recordkeeping requirements. Permit applications would be required to be submitted before the start of the program. The application would require information about the business applying for the permit including the ownership structure of the business and information on the charter activities of the business. After submitting the initial permit application, additional applications would not be required. NMFS would require additional reports only when the structure of the business owning the permit changes or the permit is transferred. NMFS also may require some additional reports, depending on how well the current ADF&G logbooks meet their management and enforcement needs and the level of access NMFS has to those data. In addition, communities eligible to receive permits at no cost would be required to submit information to NMFS: (1) on application for a charter halibut permit, and (2) on the use of the permit on an annual basis. In and of itself, the proposed recordkeeping and reporting requirements would not likely represent a ''significant'' economic burden on the small entities operating in this fishery.

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

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

The status quo alternative specifies the GHL as a target amount of halibut that the charter fleet can harvest, but the number of charter vessels that can enter the fishery is not limited. NMFS is authorized to implement management measures to keep the charter fleet to approximately the GHL. Absent decreases in demand for charter fishing created by restrictions on harvest, increases in the charter fleet could undermine these restrictions and prevent long–term stability of the charter sector and continue the need for further restrictions on harvest.

The Council considered options to the preferred alternative that presented a range for various aspects of the program. In particular, ten options for minimum qualification requirements for receipt of a permit under the program were considered in each area. These options varied depending on the number of trips needed to qualify for a permit, and whether the trips for boats in a multi–boat operation had to be considered individually, or whether the business's total trips could be averaged over vessels. The Council chose the option that distributed the second largest number of permits possible among the range of options. One option, a one trip threshold for permit issuance would have distributed more permits; seven options would have distributed fewer permits in each area. The analysis noted that it was unlikely that a one–trip minimum qualification requirement would reduce the number of permits to 2005 participation levels. Additional numbers of permits would make it harder to meet the objectives of this action to stabilize this fleet and its fishing capacity. Hence, the Council chose the option that best met its objectives with the least impact to affected entities.

This proposed rule contains a collection–of–information requirement subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been submitted to OMB for approval. Public reporting burden estimates per response for these requirements are: Two hours for charter halibut permit application; two hours for community charter halibut permit application; two hours for military charter halibut permit application; two hours for transfer of a charter halibut permit; and four hours for appeal of permit denial. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection–of–information.

Public comment is sought regarding: whether this proposed collection–of–information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS at the **ADDRESSES** above, and e–mail to *David_Rostker@omb.eop.gov*, or fax to 202–395–7285.

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

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

List of Subjects in 50 CFR Part 300

Fisheries, Fishing, Reporting and recordkeeping requirements, Treaties.

Dated: April 15, 2009.

Samuel D. Rauch III,

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

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR part 300, subpart E as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

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

Authority: 16 U.S.C. 773–773k.

2. In § 300.61, as proposed to be amended on December 22, 2008, at 73 FR 78282 is further amended by:

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

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

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

The revisions and additions read as follows:

§ 300.61 Definitions.

* * * * *

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

Charter vessel angler, for purposes of §§ 300.66, and 300.67, means a person, paying or non–paying, using the services of a charter vessel guide.

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

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

Charter vessel operator, for purposes of §§ 300.65(d), and 300.67, means the person in control of the vessel during a charter vessel fishing trip.

* * * * *

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

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

* * * * *

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

* * * * *

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

* * * * *

3. In § 300.66, as proposed to be amended on December 22, 2008, at 73 FR 78283 is further amended by:

A. Revising paragraphs (b), (i), (o), and (p).

B. Adding paragraphs (r), (s), (t), (u), (v), and (w).

The revisions and additions read as follows:

§ 300.66 Prohibitions.

* * * * *

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

* * * * *

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

* * * * *

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

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

* * * * *

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

(s) Operate a vessel with more charter vessel anglers on board catching and retaining halibut than the total angler endorsement number specified on the charter halibut permit or permits on board the vessel.

(t) Operate a vessel with more charter vessel anglers on board catching and retaining halibut than the angler endorsement number specified on the community charter halibut permit or permits on board the vessel.

(u) Operate a vessel in Area 2C and Area 3A during one charter vessel fishing trip.

(v) Operate a vessel in Area 2C or Area 3A with one or more charter vessel anglers on board that are catching and retaining halibut without having on board the vessel a State of Alaska Department of Fish and Game Saltwater Charter Logbook that specifies the following:

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

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

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

(w) Operate a vessel with one or more charter vessel anglers on board that are catching and retaining halibut without the full compliance of the crew member(s) on the vessel with requirements of §§ 300.65 and 300.67.

4. Add § 300.67 to subpart E to read as follows:

§ 300.67 Charter Halibut Limited Access Program.

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

(a) *General permit requirements.* (1) In addition to other applicable permit and licensing requirements, any charter vessel operator with one or more charter vessel anglers catching and retaining Pacific halibut on board a vessel must have on board the vessel a valid charter halibut permit or permits endorsed for the regulatory area in which the vessel is operating and endorsed for the number of charter vessel anglers who are catching and retaining Pacific halibut.

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

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

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

(1) *Non–transferable permit.* NMFS will issue a non–transferable charter halibut permit to a person that:

(i) Is the person to which the State of Alaska Department of Fish and Game (ADF&G) issued the ADF&G Business Owner Licenses that authorized logbook fishing trips during the time periods in paragraphs (b)(1)(ii) and (iii) of this section;

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

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

(2) *Transferable permit.* NMFS will issue a transferable charter halibut permit to a person that:

(i) Is the person to which the ADF&G issued one or more ADF&G Business Owner Licenses that authorized logbook fishing trips during the time periods in paragraphs (b)(2)(ii) and (iii) of this section;

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

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

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

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

(ii) The person is the individual or non–individual entity to which ADF&G issued Business Owner Licenses that authorized logbook fishing trips that meet the participation requirements described in paragraphs (b)(1) and (b)(2) of this section for one or more charter halibut permits, unless the person is applying as a successor–in–interest.

(iii) If the person is applying as a successor–in–interest to the person to which ADF&G issued the Business Owner Licenses that authorized logbook fishing trips that meet the participation requirements described in paragraphs (b)(1) and (b)(2) of this section for one or more charter halibut permits, NMFS will require the following written documentation:

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

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

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

(5) Notwithstanding any other provision in this subpart, and except as provided in paragraph (b)(4) of this section,

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

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

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

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

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

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

(d) *Designation of transferability.* Each permit issued under paragraph (c) of this section will be designated as transferable or non–transferable. The number of transferable charter halibut permits issued to an applicant will be equal to the number of vessels that made 15 bottomfish logbook fishing trips or more in the applicant–selected year. If the applicant qualifies for additional charter halibut permits, they will be issued as non–transferable permits.

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

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

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

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

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

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

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

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

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

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

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

(g) *Unavoidable circumstance*—(1) *Recent participation period.* An applicant for a charter halibut permit that meets the participation requirement for the qualifying period, but does not meet the participation requirement for the recent participation period, may receive one or more charter halibut

permits if the applicant proves paragraphs (g)(1)(i) through (iv) of this section as follows:

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

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

(A) Unavoidable;

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

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

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

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

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

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

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

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

(A) Unavoidable;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) If the applicant applies for a permit within the specified application period and OAA accepts the applicant's appeal, the applicant will receive the number and kind of interim permits

which are not in dispute, according to the information in the official charter halibut record.

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

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

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

(2) *Standards for approval of transfers.* NMFS will transfer a transferable charter halibut permit to a person designated by the charter halibut permit holder if, at the time of the transfer the following standards are met:

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) An individual and the individual dies; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) *Eligible communities.* Each community charter halibut permit

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[FR Doc. E9–9110 Filed 4–20–09; 8:45 am]

BILLING CODE 3510–22–S