

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

[Docket No. 101027534-0559-01]

RIN 0648-BA37

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

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

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

**SUMMARY:** NMFS proposes regulations that would implement a catch sharing plan for the guided sport and commercial fisheries for Pacific halibut in waters of International Pacific Halibut Commission (IPHC) Regulatory Areas 2C (Southeast Alaska) and 3A (Central Gulf of Alaska). If approved, this catch sharing plan will change the annual process of allocating halibut between the guided sport and commercial fisheries in Area 2C and Area 3A, establish allocations for each sector, and specify harvest restrictions for guided sport anglers that are intended to limit harvest to the annual guided sport fishery catch limit. In order to provide flexibility for individual commercial and guided sport fishery participants, the proposed catch sharing plan also will authorize annual transfers of commercial halibut quota to charter halibut permit holders for harvest in the guided sport fishery. This action is necessary to achieve the halibut fishery management goals of the North Pacific Fishery Management Council.

**DATES:** Written comments must be received by September 6, 2011.

**ADDRESSES:** Send comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments identified by 0648-BA37 by any one of the following methods:

- *Electronic submissions:* Submit all electronic public comments via the Federal eRulemaking Portal Web site 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 a part of the public record and will generally be posted to <http://www.regulations.gov>

without change. All personal identifying information (e.g., name, address) 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). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe portable document file (pdf) formats 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 [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov) or fax to 202-395-7285.

Electronic copies of the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis prepared for this action are available from <http://www.regulations.gov> or from the NMFS Alaska Region Web site at <http://alaskafisheries.noaa.gov>. The Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis for the charter halibut limited access program is available from the NMFS Alaska Region Web site at <http://alaskafisheries.noaa.gov>.

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

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**I. Management of the Halibut Fisheries**

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 adopts regulations governing the Pacific halibut fishery under the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the North Pacific Ocean and Bering Sea (Convention), signed at Ottawa, Ontario, on March 2, 1953, as amended by a Protocol Amending the Convention (signed at Washington, DC, on March 29, 1979). Regulations developed by the IPHC are subject to acceptance by the Secretary of State with concurrence from the Secretary of Commerce. After acceptance by the Secretary of State and the Secretary of Commerce, NMFS publishes the IPHC regulations in the **Federal Register** as annual management measures pursuant to 50 CFR 300.62. The most recent IPHC regulations were published March 16, 2011, at 76 FR 14300. IPHC regulations affecting sport fishing for halibut and vessels in the guided sport (charter) fishery in Areas 2C and 3A may be found in sections 3, 25, and 28 (76 FR 14300, March 16, 2011).

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

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

Magnuson-Stevens Fishery Conservation and Management Act (MSA) (16 U.S.C. 1801 *et seq.*).

The harvest of halibut in Alaska occurs in three basic fisheries—the commercial, sport, and subsistence fisheries. The IPHC annually determines the amount of halibut that may be removed from the resource on an area-by-area basis in all areas of Convention waters without causing biological conservation problems. The IPHC develops catch limits for the commercial sector in waters in and off Alaska. The IPHC estimates the exploitable biomass of halibut using a combination of harvest data from the commercial, sport, and subsistence fisheries, and information collected during scientific surveys and sampling of bycatch in other fisheries. The IPHC calculates the amount of total allowable harvest in a given area by multiplying a harvest rate by the estimate of exploitable biomass. Referred to as the Total Constant Exploitation Yield (CEY), this target level represents the total removals for that area in the coming year. The Total CEY is expressed in net pounds, which is defined as the weight of halibut from which the gills, entrails, head, and ice and slime have been removed. The IPHC subtracts estimates of halibut removals and mortality from sources other than the directed commercial halibut fishery, including sport, subsistence, bycatch in non-halibut commercial fisheries, and halibut wastage, or discarded halibut that are smaller than the minimum legal commercial size limit of 32 inches, or 81.3 centimeters (cm), and halibut killed or lost on abandoned commercial halibut fishing gear, from the Total CEY. The remaining CEY is called the Fishery CEY. The Fishery CEY provides the basis for the IPHC's determination of catch limits for the directed commercial fixed gear halibut fishery. The IPHC considers staff recommendations, harvest policy, and stakeholder input when it determines commercial catch limits.

Pursuant to Article III of the Convention, the IPHC must develop and maintain halibut stocks to levels that will permit the optimum yield for the halibut fisheries. The IPHC meets this objective by including all sources of fishing mortality within the Total CEY and by establishing the commercial fixed gear catch limits only after subtracting halibut removals from other non-halibut commercial fisheries and non-commercial uses. Although most of the non-commercial uses of halibut have been relatively stable, growth in the guided sport fishery in recent years has resulted in this fishery harvesting a

larger amount of halibut than it did in earlier years. Because the IPHC subtracts this increased non-commercial halibut fishery removal from the Total CEY, the amount of halibut available for the commercial halibut fishery decreased.

## II. History of Management in the Guided Sport Halibut Fisheries

Until 2007, only regulations developed by the IPHC governed guided sport fisheries for halibut. The IPHC first adopted halibut sport fishing rules in 1973 to provide consistency and uniformity in halibut sport fishing regulations in all regulatory areas. At that time, the IPHC established that the sport fishing season for halibut would occur from March 1 through October 31. From 1984 through 1997, the IPHC required guided sport vessels to have IPHC licenses. Finally, the IPHC limited the number of halibut that charter vessel anglers could retain by imposing a daily bag limit. Since the initial limit of a three fish bag limit in 1973, the IPHC has adjusted the bag limit two times. The bag limit has varied between a limit of one, two, and three fish per angler per day. The bag limit under IPHC regulations for the 2011 guided sport fishery in Area 3A is two fish of any size per day unless more restrictive bag limits apply in Federal regulations. Currently, Federal regulations at 50 CFR 300.65 impose a more restrictive bag limit on the guided sport fishery of one halibut with a maximum length of 37 inches in Area 2C.

In 1997, the Council adopted separate guideline harvest levels (GHL) for Area 2C and Area 3A. Although the Council had a policy that guided sport halibut fisheries should not exceed the GHL, the Council did not recommend measures to constrain this fishery should it exceed the GHL. The proposed and final rules implementing the current GHLs were published in the **Federal Register** in 2002 and 2003 respectively (67 FR 3867, January 2, 2002; 68 FR 47256, August 8, 2003). These regulations are codified at 50 CFR 300.65.

The GHLs represent a pre-season specification of acceptable annual halibut harvests in the guided sport fisheries in Areas 2C and 3A. To accommodate some growth in the guided sport sector, while approximating historical levels, the Council recommended the GHLs based on 125 percent of the average 1995 through 1999 guided sport halibut harvest in each area. For Area 2C the maximum was set at 1,432,000 pounds (lbs), or 649.5 metric tons (mt) net weight, and in Area 3A the maximum GHL was set at 3,650,000 lbs (1,655.6 mt) net weight. The Council

recommended a system of step-wise adjustments to accommodate decreases and subsequent increases in abundance. The Council recommended this system of GHL adjustments to provide a relatively predictable and stable harvest target for guided halibut sport sector notwithstanding a lack of measures to constrain the guided sport halibut fishery. A more detailed description of GHL management and the Council's rationale behind such management can be found in the proposed and final rules implementing that action (67 FR 3867, January 2, 2002; 68 FR 47256, August 8, 2003).

To ensure that the halibut stocks would continue to develop to a level that would permit optimum yield in the halibut fisheries, the IPHC and Council have recommended, and the Secretary of Commerce has adopted, a number of regulatory measures in Area 2C to limit guided sport halibut harvest to within the GHL. The primary regulatory measures included: (1) Effective in 2007 and 2008, maintaining 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) (72 FR 30714, June 4, 2007); and (2) effective in 2009, a one-fish daily bag limit that superseded the June 4, 2007, two-fish with maximum size rule, a prohibition on harvest by the charter vessel guide and crew, and a line limit equal to the number of charter vessel anglers onboard, not to exceed six lines (74 FR 21194, May 6, 2009).

Members of the charter halibut sector challenged the May 6, 2009, final rule in the U.S. District Court for the District of Columbia (*Van Valin v. Locke*, 671 F. Supp 2d 1 D.D.C 2009). Plaintiffs argued that the rule violated the Halibut Act and the Administrative Procedure Act (APA). The court granted summary judgment in favor of the Secretary of Commerce and upheld the May 6, 2009, final rule. The one halibut per day bag limit for charter vessel anglers remains in effect for Area 2C.

In addition, as a response to concerns that that growth in the charter vessel sector was overcrowding productive halibut grounds, the Council recommended, and the Secretary of Commerce adopted, a limited access program to provide stability for the guided sport halibut fishery and decrease the need for regulatory adjustments affecting charter vessel anglers. NMFS published a final rule implementing the charter halibut limited access program on January 5, 2010 (75 FR 554). Under the program, NMFS initially issued permits to those businesses that historically and recently participated in the guided sport fishery.

The Area 2C guided sport harvest has exceeded its GHL every year since 2004 notwithstanding the foregoing management measures designed to control sport halibut harvest in this area. During 2004 through 2007, the GHL was 1,432,000 lbs (649.5 mt). During that time period, guided sport harvests were approximately 1,750,000 lbs (793.8 mt) in 2004, 1,952,000 lbs (885.4 mt) in 2005, 1,804,000 lbs (818.3 mt) in 2006, and 1,918,000 lbs (870.0 mt) in 2007. In 2008, the GHL was 931,000 lbs (422.3 mt) and guided sport harvests were approximately 1,999,000 lbs (906.7 mt). In 2009 the GHL was 788,000 lbs (357.4 mt) and the guided sport harvest was approximately 1,245,000 lbs (564.7 mt). In 2010, the GHL was 788,000 lbs (357.4 mt). The Alaska Department of Fish and Game (ADF&G) provided the IPHC with a preliminary estimate of the guided sport harvest in 2010 of 46,816 fish yielding 1,279,000 lbs (580.1 mt) (November 1, 2010, letter from ADF&G to the IPHC).

The Total CEY for 2011 is 5,390,000 lbs (2,445.0 mt) in Area 2C. The corresponding GHL is 788,000 lbs (357.4 mt) in Area 2C. Because NMFS imposed no additional charter restrictions in 2011, the IPHC believed that charter harvest was likely to exceed the GHL and result in total harvest exceeding the total CEY. As such, the IPHC recommended and the Secretary of State, with the concurrence of the Secretary of Commerce, accepted a daily bag limit for charter vessel anglers in Area 2C of one halibut with a maximum length of 37 inches (94.0 cm) per day (76 FR 14300, March 16, 2011). The IPHC recommended this additional management measure in the Area 2C charter fishery to limit guided sport halibut harvest to the GHL and achieve the IPHC's overall conservation objective for Area 2C.

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

In October 2008, the Council adopted a motion to recommend the CSP to the Secretary of Commerce. The motion is available at [http://alaskafisheries.noaa.gov/npfmc/current\\_issues/halibut\\_issues/HalibutCSPmotion1008.pdf](http://alaskafisheries.noaa.gov/npfmc/current_issues/halibut_issues/HalibutCSPmotion1008.pdf). The Council intended the CSP to be a comprehensive management program for the guided sport halibut fisheries in Area 2C and Area 3A. If approved, the proposed regulations would (1) establish sector allocations of a combined catch limit to the commercial and guided sport halibut fisheries in Area 2C and in Area 3A, (2) implement harvest restrictions (CSP restrictions) for charter vessel anglers in each area that

would be intended to limit guided sport harvest to within the target harvest range around that sector's catch limit for that area, and (3) authorize transfers of commercial halibut IFQ as guided angler fish (GAF) to charter halibut permit holders for harvest by charter vessel anglers in the guided sport halibut fishery. GAF would offer charter vessel anglers in Area 2C or Area 3A an opportunity to harvest halibut in addition to, or instead of, the halibut harvested under the CSP restriction, up to the harvest limits in place for unguided sport anglers in that area. Because GAF would be a use of halibut IFQ, GAF harvested by charter vessel anglers would not be included in estimates of guided sport harvest under the CSP.

The CSP allocations would replace the GHL with a percentage allocation of the combined catch limit to the guided sport fishery. The combined catch limit would be determined by the IPHC each year prior to the fishing season. The CSP also would establish non-discretionary CSP restrictions for charter vessel anglers prior to the fishing season based on projected harvests and guided sport catch limits for that year. Under the GHL, restrictions for charter vessel anglers in Area 2C were implemented by separate NMFS rulemaking after the GHL was exceeded. The pre-season specification of the CSP restrictions is intended to limit guided sport harvest to the target before an overage occurs, as opposed to the retroactive GHL approach that implements corrective action after the overages have occurred.

The pre-season specification of CSP restrictions is consistent with the Council's objective to maintain the guided sport season length in effect in recent years (February 1 through December 31) with no inseason changes to harvest restrictions. The Council developed this objective based on public testimony from charter vessel operators indicating that inseason changes to harvest restrictions would be disruptive to guided sport operators and anglers. Many charter vessel anglers typically book fishing trips with operators well in advance of the trip date with an expectation that the harvest restrictions that are effective at the beginning of the fishing season will be in place throughout that season. Management changes to bag or size limits for charter vessel anglers within a fishing season may cause considerable inconvenience for guided sport anglers and operators if anglers decide to postpone or cancel their guided sport fishing trip due to the bag or size limit change. The potential for inseason management changes also could result

in fewer anglers planning guided sport fishing trips in Alaska, which could have a significant adverse economic impact on charter vessel operators by reducing revenue.

The Council recommended, and NMFS agrees, that the annual CSP catch limits for the commercial and charter sectors and the CSP restrictions for charter vessel anglers should be determined and implemented by a predictable and standardized methodology as part of the IPHC's annual recommendations for halibut fishery conservation and management. This proposed rule would establish procedures for determining the sector catch limits and CSP restrictions for each area in order to provide a systematic method for limiting projected charter harvest to the target harvest range determined by the CSP. NMFS proposes that the annual CSP catch limits for the commercial and charter sectors and the CSP restrictions for charter vessel anglers be implemented as IPHC annual management measures. If the proposed CSP is approved, NMFS would include the CSP sector catch limits and CSP restrictions in the IPHC annual management measures published in the **Federal Register** each year, as specified by regulations at 50 CFR 300.62.

These annual management measures are effective until superseded by regulations, which typically result when the Secretary of State and the Secretary of Commerce accept the regulatory recommendations made by the IPHC at its next January annual meeting. In recent years, this schedule for implementing IPHC regulations has affected the February 1 season opening date for halibut sport fisheries in Alaska. The effective date of the annual management measures has typically been around March 1. Thus, the February 1 opening of the sport season was regulated by the previous year's annual management measures, which had not yet been superseded by the most recent IPHC-recommended regulations. This situation likely would continue under the CSP unless the IPHC recommends a change to the February 1 opening for the sport fishing season. However, implementation of the annual management measures in March likely does not impact the guided sport fishery because there has historically been little or no halibut harvest in this fishery in February.

Except for authorizing commercial halibut quota share (QS) holders to transfer IFQ as GAF to charter halibut permit holders, the Council did not intend for the CSP to change the management of the commercial longline

halibut fisheries in Area 2C and Area 3A. The directed commercial halibut fisheries in Area 2C and Area 3A are managed under the IFQ program pursuant to regulations at 50 CFR 679 subparts A through E. The proposed rule would amend these regulations to authorize transfers between IFQ and GAF and establish the requirements for using GAF.

#### **IV. CSP Allocation Between the Commercial and Guided Sport Halibut Fisheries**

##### *A. Annual Combined Catch Limit*

The CSP would (1) change the current process for specifying annual commercial catch limits for the commercial halibut fisheries in Area 2C and Area 3A, and (2) establish a process for specifying annual guided sport catch limits in Area 2C and Area 3A. The process for specifying annual guided sport catch limits under the CSP would replace the GHL for the guided sport fisheries in Area 2C and Area 3A. The IPHC currently specifies annual catch limits only for the directed commercial halibut fisheries, and Federal

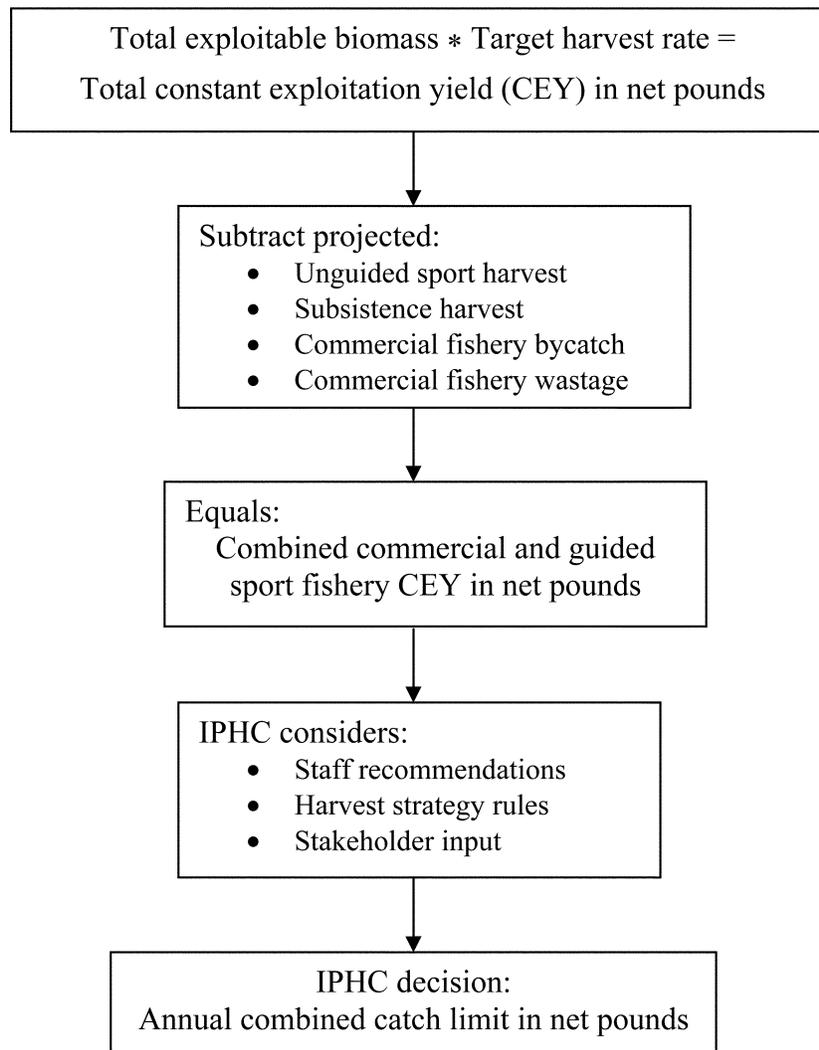
regulations determine the GHL for the guided sport halibut fisheries based on the Total CEY in Area 2C and Area 3A determined by the IPHC. Under the proposed CSP, the IPHC would specify an annual combined catch limit for Area 2C and for Area 3A at its annual meeting, which has typically taken place in January. Each area's annual combined catch limit in net pounds would be the total allowable halibut harvest for the directed commercial halibut fishery plus the total allowable halibut harvest for the guided sport halibut fishery under the CSP.

NMFS anticipates that the IPHC process for determining the annual combined catch limit would be similar to its current process for determining annual commercial catch limits. The IPHC would continue to estimate the exploitable biomass of halibut using a combination of harvest data from the commercial, sport, and subsistence fisheries, and information collected during scientific surveys and sampling of bycatch in other fisheries. The IPHC would calculate the Total CEY, or the target level for total removals (in net

pounds) for that area in the coming year, by multiplying the target harvest rate by the estimate of exploitable biomass. With the exception of guided sport removals, the IPHC would subtract estimates of all non-commercial removals from the Total CEY. The remaining CEY, after the removals are subtracted, would be the combined commercial and guided sport fishery CEY and would provide the basis for the IPHC's determination of the annual combined catch limit for Areas 2C and 3A. The IPHC would continue to consider the combined commercial and guided sport fishery CEY, staff recommendations, harvest policy, and stakeholder input, when it specifies the Area 2C and Area 3A annual combined catch limits in net pounds. The IPHC process for determining annual combined catch limits under the proposed CSP is presented in Figure 5.

Figure 5. IPHC Process for Setting Annual Combined Catch Limits for Area 2C and Area 3A Under the Proposed CSP

**BILLING CODE 3510-22-P**

**BILLING CODE 3510-22-C**

Under the CSP, the IPHC would divide the annual combined catch limits into separate annual catch limits for the commercial and guided sport fisheries. The CSP allocates a fixed percentage of the annual combined catch limit to the guided sport and commercial fisheries. The fixed percentage allocation to each sector varies with halibut abundance. The IPHC would multiply the CSP allocation percentages for each area by the annual combined catch limit to calculate the commercial and guided sport catch limits in net pounds. At moderate to low levels of halibut abundance, the CSP could provide the guided sport sector with a smaller poundage catch limit than it would have received under the GHL program. Conversely, at higher levels of abundance, the CSP could provide the guided sport sector with a larger poundage catch limit than it would have received under the GHL program. The Council intended the CSP sector allocations to balance the needs of the

guided sport and commercial sectors at all levels of halibut abundance.

Although the CSP allocation method is a significant change from the current allocation method under the GHL, NMFS believes that the allocation under the CSP provides a more equitable management response to changes in Total CEY. For example, the Area 2C GHL was 788,000 lbs in 2009. The Area 2C Total CEY declined by approximately 16 percent from 2009 to 2010, but this decline did not trigger a change in the GHL, which remained at 788,000 lbs in 2010. The burden of a lower exploitable biomass in Area 2C was borne entirely by the commercial sector in 2010. Conversely, when halibut exploitable biomass increases, the GHL does not allow the guided sport sector to fully benefit from this increase. For example, the Area 3A Total CEY increased by approximately 11 percent from 2006 to 2007, but this increase did not trigger a change in the GHL, which was at the maximum level of 3,650,000 lbs in 2006 and 2007.

The Council considered establishing fixed poundage allocations to the guided sport sector as implemented under the GHL program. However, the Council determined that use of a combined catch limit under the CSP would allow the IPHC to establish a clear allocation between the guided sport and commercial halibut sectors. Allocating each sector a percentage of the combined catch limit would be a simple calculation and would be transparent and comprehensible to each user group. This approach is equitable for halibut fishery management because both the commercial and guided sport sector allocations adjust directly with changes in halibut exploitable biomass. Thus, both the guided sport and commercial sectors would share in the benefits and costs of managing the resource for long-term sustainability under a combined catch limit.

*B. Annual Commercial Fishery and Guided Sport Fishery Catch Limits*

The Council considered historical catch information when determining the recommended CSP allocation percentages for the commercial and guided sport sectors. The Council reviewed average guided sport harvest estimates for individual years and for different combinations of years ranging from 1999 through 2005. The Council recommended two sets of CSP allocation percentages for the commercial and guided sport sectors in Area 2C and in Area 3A. At catch limit levels of 5,000,000 lbs (2,267.9 mt) and less in Area 2C and 10,000,000 lbs (4,535.9 mt) and less in Area 3A, the CSP would allocate a higher percentage of the combined catch limit to the guided sport sector than it would receive under combined catch limits above these levels. The Council recommended, and NMFS proposes, higher guided sport allocation percentages at relatively low abundance levels of halibut to ameliorate the effects

of replacing the GHL stair-step benchmark in pounds with a CSP allocation percentage that varies directly with the annual combined catch limit.

When the IPHC sets an annual combined catch limit of less than 5,000,000 lbs (2,267.9 mt) in Area 2C, the commercial fishery allocation would be 82.7 percent and the guided sport fishery allocation would be 17.3 percent of the annual combined catch limit. This proposed guided sport fishery allocation percentage was calculated as 125 percent of average guided sport harvest in Area 2C from 2001 through 2005 divided by combined guided sport and commercial halibut harvests from 2001 through 2005. The proposed allocation of 17.3 percent was the largest percentage allocation considered by the Council for Area 2C.

When the IPHC sets the annual combined catch limit at 5,000,000 lbs (2,267.9 mt) or more in Area 2C, the commercial fishery allocation would be 84.9 percent and the guided sport fishery allocation would be 15.1 percent of the Area 2C annual combined catch

limit. This proposed guided sport CSP allocation percentage was calculated as the 2005 guided sport harvest estimates divided by the combined 2005 guided sport and commercial harvests in Area 2C. The Council considered smaller percentage allocations to the guided sport sector, including the current GHL formula, which is 125 percent of the average 1995 through 1999 guided sport harvest divided by the 1995 through 1999 combined guided sport and commercial harvests in Area 2C. However, because guided sport harvests in Area 2C have exceeded the GHL since it was implemented in 2004, the Council determined, and NMFS agrees, that 2005 guided sport harvest would be a more appropriate basis for determining the guided sport allocation percentages under the CSP. The guided sport harvest in 2005 was the second highest halibut harvest estimated since 1999. Table 1 presents the Area 2C commercial and guided sport fishery percentage allocations under the proposed CSP.

TABLE 1—AREA 2C CSP ALLOCATIONS TO THE COMMERCIAL AND GUIDED SPORT FISHERIES AS A PERCENTAGE OF THE ANNUAL COMBINED CATCH LIMIT

If the Area 2C annual combined catch limit for halibut in net pounds (lbs) is:	and . . .	then the CSP allocation to the commercial fishery as a percentage of the annual combined catch limit is:	then the CSP allocation to the guided sport fishery as a percentage of the annual combined catch limit is:
between 0 lbs .....	4,999,999 lbs	82.7%	17.3%
5,000,000 lbs or greater .....		84.9%	15.1%

For Area 3A annual combined catch limits of less than 10,000,000 lbs (4,535.9 mt), the commercial fishery allocation would be 84.6 percent and the guided sport fishery allocation would be 15.4 percent of the Area 3A annual combined catch limit. The Council’s recommended CSP guided sport percentage allocations for annual combined catch limits of less than 10,000,000 lbs (4,535.9 mt) in Area 3A is based on a calculation of 125 percent of the average guided sport harvest from 2001 through 2005, which is the same formula the Council recommended for

the Area 2C percentage allocation at low abundance levels.

When the IPHC sets Area 3A annual combined catch limit at 10,000,000 lbs (4,535.9 mt) or more, the commercial fishery allocation would be 86 percent and the guided sport fishery allocation would be 14 percent of the Area 3A annual combined catch limit. The proposed guided sport CSP percentage allocation for Area 3A at annual combined catch limits of 10,000,000 lbs (4,535.9 mt) and greater was calculated using the GHL formula of 125 percent of the 1995 through 1999 average guided

sport harvest estimates in Area 3A. The Council determined that the GHL formula was appropriate for the Area 3A CSP percentage allocation because the annual average guided sport harvest from 2004 through 2007 exceeded the GHL by less than three percent. NMFS agrees that the GHL formula likely continues to be an appropriate allocation target because the Area 3A guided sport fishery harvest did not exceed the GHL in 2008 and 2009. Table 2 presents the Area 3A commercial and guided sport fishery percentage allocations under the proposed CSP.

TABLE 2—AREA 3A CSP ALLOCATIONS TO THE COMMERCIAL AND GUIDED SPORT FISHERIES AS A PERCENTAGE OF THE ANNUAL COMBINED CATCH LIMIT

If the Area 3A annual combined catch limit for halibut in net pounds (lbs) is:	and . . .	then the CSP allocation to the commercial fishery as a percentage of the annual combined catch limit is:	then the CSP allocation to the guided sport fishery as a percentage of the annual combined catch limit is:
between 0 lbs .....	9,999,999 lbs	84.6%	15.4%
10,000,000 lbs or greater .....		86.0%	14.0%

The CSP would apportion the annual combined catch limits for Area 2C and Area 3A between the commercial fishery and the guided sport fishery. For example, if the IPHC were to recommend an annual combined catch limit of 6,500,000 lbs (2,948.4 mt) for Area 2C, the annual commercial catch limit for Area 2C would be calculated by multiplying 6,500,000 lbs (2,948.4 mt) by 84.9 percent, which equals 5,518,000 lbs (2,502.9 mt). The guided sport catch limit for Area 2C would be calculated by

multiplying 6,500,000 lbs (2,948.4 mt) by 15.1 percent, which equals 981,500 lbs (445.2 mt).

NMFS would publish the catch limits for the guided sport and commercial fisheries in the **Federal Register** as part of the IPHC annual management measures pursuant to 50 CFR 300.62.

*C. Guided Sport Target Harvest Range*

The Council recognized, and NMFS agrees, that managing guided sport harvest is imprecise and, therefore, guided sport harvest in Area 2C and 3A

under the CSP can be expected to vary above and below the guided sport catch limit. To account for this imprecision, NMFS proposes that the CSP should restrict guided sport harvest to within a guided sport target harvest range corresponding with plus or minus 3.5 percentage points of the guided sport allocation percentage for that year. Tables 3 and 4 present the method for calculating the guided sport target harvest ranges for Area 2C and Area 3A under the proposed CSP.

TABLE 3—GUIDED SPORT TARGET HARVEST RANGE FOR AREA 2C

If the Area 2C annual combined catch limit for halibut in net pounds (lbs) is:	and . . .	then the CSP percentage allocation to the guided sport fishery is:	and the lowest value of the target harvest range is calculated by multiplying the annual combined catch limit by	and the highest value of the target harvest range is calculated by multiplying the annual combined catch limit by
between 0 lbs .....	4,999,999 lbs	17.3%	13.8%	20.8%
5,000,000 lbs or greater .....		15.1%	11.6%	18.6%

TABLE 4—GUIDED SPORT TARGET HARVEST RANGE FOR AREA 3A

If the Area 3A annual combined catch limit for halibut in net pounds (lbs) is:	and . . .	then the CSP percentage allocation to the guided sport fishery is:	and the lowest value of the target harvest range is calculated by multiplying the annual combined catch limit by	and the highest value of the target harvest range is calculated by multiplying the annual combined catch limit by
between 0 lbs .....	9,999,999 lbs	15.4%	11.9%	18.9%
10,000,000 lbs or greater .....		14.0%	10.5%	17.5%

Using the previous example of an annual combined catch limit of 6,500,000 lbs (2,948.4 mt) for Area 2C, the guided sport allocation of 15.1 percent, and the guided sport catch limit of 981,500 lbs (445.2 mt), NMFS intends the proposed CSP restrictions to limit guided sport harvest to between 15.1 percent minus 3.5 percentage points, or 11.6 percent, and 15.1 percent plus 3.5 percentage points, or 18.6 percent, of the annual combined catch limit. Thus, the CSP restrictions for Area 2C under this example would be

intended to limit guided sport fishery harvest to between 754,000 lbs (342.0 mt) and 1,209,000 lbs (548.4 mt). The lowest value of the target harvest range would be calculated by multiplying the annual combined catch limit by 11.6 percent (6,500,000 lbs (2,948.4 mt) × 11.6 percent = 754,000 lbs (342.0 mt)). The highest value of the target harvest range would be calculated by multiplying the annual combined catch limit by 18.6 percent (6,500,000 lbs (2,948.4 mt) × 18.6 percent = 1,209,000 lbs (548.4 mt)). The annual guided sport

catch limit, 981,500 lbs (445.2 mt) in this example, is the midpoint of the guided sport target harvest range specified by the CSP. The CSP restriction applied each year could vary, based on the annual combined catch limit as established by the IPHC and projected guided sport harvest estimates.

NMFS recognizes that guided sport halibut removals may exceed the guided sport catch limit in some years, and removals may be under the catch limit in other years, similar to variations in

guided sport harvest under the GHF program. However, the Council anticipated, and NMFS agrees, that over time, halibut harvests in the guided sport sector under the CSP would balance out around the guided sport catch limits to ensure that conservation and management objectives are achieved. Conservation of the halibut resource would be ensured because the IPHC would continue to account for all removals when determining the annual combined catch limit under the CSP. IPHC stock assessments would continue to account for guided sport harvests that exceed the sector's catch limit. Operationally, overages would result in a corresponding decrease in the combined guided sport and commercial catch limit in the following year. Underages would accrue to the benefit of the halibut biomass and all user groups and could result in a corresponding increase in the combined catch limit in the following year. The Council determined, and NMFS agrees, that halibut fishery management under the CSP would more likely limit the guided sport halibut fishery to its catch limit over time than the GHF program because the annual, non-discretionary CSP restrictions on guided sport harvest would restrict projected harvest at varying levels of annual combined catch limits. This annual implementation of the CSP also would be more timely and responsive to changes in halibut abundance because the restrictions on guided sport harvest are determined prior to the season. The GHF program relies on the implementation of harvest restrictions after a GHF overage takes place. Additionally, the Council, IPHC, and NMFS would continue to assess effectiveness of the CSP in halibut fisheries management. The Council and NMFS anticipate that as the CSP is implemented over time, the Council and its SSC would review the CSP. The SSC is the Council's primary scientific advisory body. As such, it provides the Council, NMFS, and the public with scientific and technical reviews of regulatory amendment analyses, stock assessments, and research and data needs for fisheries management in Alaska.

## V. CSP Restrictions

Under the CSP, the annual combined catch limit and projected guided sport harvest for Area 2C and Area 3A would

trigger the CSP restrictions, or the harvest limit regulations governing anglers in the guided sport fishery in each area. The CSP restrictions are designed to limit guided sport fishery harvests in Area 2C and Area 3A within the guided sport target harvest range. The CSP restrictions for charter vessel anglers are daily bag limits of one or two halibut, which may be implemented with or without restrictions on the maximum size of halibut retained under the daily bag limit. The CSP would require default CSP restrictions when the guided sport sector is projected to harvest within its allocated range, more stringent restrictions when the guided sport sector is projected to exceed its target harvest range, and in some circumstances, less stringent restrictions when the guided sport sector is projected to be below its target harvest range.

At its annual meeting in January, the IPHC would specify the Area 2C and Area 3A annual combined catch limits and divide the combined catch limits into separate annual commercial and guided sport catch limits. The IPHC would use guided sport harvest projections and the appropriate CSP management tier to determine the CSP restrictions that would be in place for the guided sport fishery in Area 2C and Area 3A for the upcoming year. If the Secretary of State and the Secretary of Commerce accept the IPHC recommendations, NMFS will publish the Area 2C and Area 3A annual commercial and guided sport catch limits and the CSP restrictions in the **Federal Register** as annual management measures pursuant to 50 CFR 300.62.

### A. Default CSP Restrictions

The Council recommended, and NMFS agrees, that CSP restrictions for each area be based on an area's annual combined catch limit for that year. CSP restrictions contain four levels, or tiers, based on annual combined catch limits for each Area 2C and Area 3A. Each tier contains associated CSP restrictions. For Area 2C, the tiers of annual combined catch limits are: (1) Between 0 lbs (0 mt) and 4,999,999 lbs (2,267.9 mt); (2) between 5,000,000 lbs (2,267.9 mt) and 8,999,999 lbs (4,082.3 mt); (3) between 9,000,000 lbs (4,082.3 mt) and 13,999,999 lbs (6,350.3 mt); and (4) 14,000,000 lbs (6,350.3 mt) and greater. For Area 3A, the tiers of annual

combined catch limits are: (1) between 0 lbs (0 mt) and 9,999,999 lbs (4,535.9 mt); (2) between 10,000,000 lbs (4,535.9 mt) and 19,999,999 lbs (4,535.9 mt); (3) between 20,000,000 lbs (4,535.9 mt) and 26,999,999 lbs (12,246.9 mt); and (4) 27,000,000 lbs (12,246.9 mt) and greater. Following the IPHC's specification of the annual combined catch limit for each area, NMFS would implement the default CSP restrictions for charter vessel anglers in Area 2C and Area 3A unless the projected guided sport harvest was estimated to be outside of the guided sport target harvest range.

The Council recommended, and NMFS agrees, that daily bag limits alone, or in combination with a maximum size limit, are appropriate CSP restrictions to limit guided sport harvest. The Council recommended a default CSP restriction limiting charter vessel anglers to two fish of any size each day at relatively high levels of halibut abundance, which the Council specified as 14,000,000 lbs (6,350.3 mt) or greater in Area 2C, and 27,000,000 lbs (12,246.9 mt) or greater in Area 3A (tier 4). At these levels of abundance, annual combined catch limits would be relatively higher and guided sport anglers would not require more stringent CSP restrictions to maintain harvest within the guided sport target harvest range. As halibut abundance levels and annual combined catch limits decrease, CSP restrictions would be more stringent, further limiting guided sport harvest at those lower tiers. The Council recommended that at the next lower tier, tier 3, the default CSP restriction should be a daily limit of two halibut, but at least one halibut must have a head-on length of no more than 32 inches (81.3 cm). If, however, a charter vessel angler retains only one halibut in a calendar day, that halibut could be of any length. The Council recommended the most restrictive default CSP restriction, a daily limit of one halibut, apply to tiers 1 and 2 for each area. The Council determined, and NMFS agrees, that this conservative default CSP restriction should be in place at the relatively low levels of abundance reflected in tiers 1 and 2 to promote the development of halibut stocks levels supporting optimum yield. Table 5 presents the default CSP restrictions for Area 2C tiers and Table 6 presents the default CSP restrictions for Area 3A tiers.

TABLE 5—DEFAULT CSP RESTRICTIONS FOR AREA 2C

Tier	If the Area 2C annual combined catch limit for halibut in net pounds (lbs) is:	and . . .	then the default CSP restriction is that the number of halibut caught and retained per calendar day by each charter vessel angler is limited to no more than:
Tier 1	between 0 lbs	4,999,999 lbs	one halibut of any size.
Tier 2	between 5,000,000 lbs	8,999,999 lbs	one halibut of any size.
Tier 3	between 9,000,000 lbs	13,999,999 lbs	two halibut, but at least one halibut must have 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 halibut may be of any length.
Tier 4	14,000,000 lbs and greater		two halibut of any size.

TABLE 6—DEFAULT CSP RESTRICTIONS FOR AREA 3A

Tier	If the Area 3A annual combined catch limit for halibut in net pounds (lbs) is:	and . . .	then the default CSP restriction is that the number of halibut caught and retained per calendar day by each charter vessel angler is limited to no more than:
Tier 1	between 0 lbs	9,999,999 lbs	one halibut of any size.
Tier 2	between 10,000,000 lbs	19,999,999 lbs	one halibut of any size.
Tier 3	between 20,000,000 lbs	26,999,999 lbs	two halibut, but at least one halibut must have 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 halibut may be of any length.
Tier 4	27,000,000 lbs and greater		two halibut of any size.

NMFS provides the following example to illustrate the CSP tiered system of harvest restrictions. An IPHC annual combined catch limit of 6,500,000 lbs (2,948.4 mt) in Area 2C would correspond with tier 2. The tier 2 default CSP restriction would limit each charter vessel angler to retaining no more than one halibut of any size per calendar day. An IPHC annual combined catch limit of 25,000,000 lbs (11,339.8 mt) in Area 3A would correspond with tier 3. The tier 3 default CSP restriction would limit each charter vessel angler to retaining no more than two halibut per calendar day, but at least one halibut must have a head-on length of no more than 32 inches (81.3 cm). Note that although the default CSP restrictions are the same for Area 2C and Area 3A tiers, the IPHC annual combined catch limits may differ between Area 2C and Area 3A. Therefore, it is possible that charter vessel anglers in Area 2C would be subject to a different CSP restriction than charter vessel anglers in Area 3A in any particular year.

*B. Projections of Guided Sport Harvest*

Projections of guided sport harvest in Area 2C and Area 3A are an integral component of the CSP. Each year, the IPHC would use annual projections of total guided sport halibut harvest in net

pounds for Area 2C and Area 3A for the upcoming year to determine whether anglers in the guided sport fishery are likely to harvest an amount of halibut outside of the management tier default target harvest range.

In January 2009, ADF&G staff prepared an analysis to assess the feasibility of projecting guided sport halibut harvest under the CSP. The Council’s SSC reviewed the reports and provided its recommendations to the Council in February 2009. The ADF&G analysis can be found at: [http://www.alaskafisheries.noaa.gov/npfmc/current\\_issues/halibut\\_issues/HarvestProjectionsDisc709.pdf](http://www.alaskafisheries.noaa.gov/npfmc/current_issues/halibut_issues/HarvestProjectionsDisc709.pdf). As detailed in that analysis, at least one, and possibly two, projections of guided sport halibut harvest for the upcoming year would be required for the CSP for both Area 2C and Area 3A.

Each year, the IPHC would specify the annual combined catch limit and, based on ADF&G harvest estimates, project guided sport harvest in net pounds for the upcoming year. The harvest projection would assume that charter vessel anglers would be subject to the default CSP restriction for the appropriate management tier. For example, to determine the total guided sport halibut harvest projection in net pounds under the management tier default CSP restriction, the IPHC would

forecast the number of fish that would be harvested by charter vessel anglers and an average net weight of halibut harvested by charter vessel anglers. The product of the number of fish and the average net weight is the projection of guided sport halibut harvest in net pounds. If the projection under the default CSP restriction is below the guided sport target harvest range, the IPHC would prepare a second projection assuming a less stringent CSP restriction. If the projection under the default CSP restriction is above the guided sport target harvest range, the IPHC would implement a more stringent CSP restriction.

The IPHC will base its projections in large part on ADF&G analyses of guided sport harvest. ADF&G has used a variety of methods to project guided sport harvest in the past. For the CSP projections of guided sport halibut harvest, the IPHC will build on ADF&G’s previous experience estimating guided sport halibut harvest prior to and under the CSP. The IPHC will use the best information available to develop harvest projections, including data from the ADF&G statewide harvest survey of sport anglers, ADF&G statewide saltwater charter logbooks, ADF&G dockside surveys, IPHC longline survey data, and any other information that improves the

accuracy of the projections. The IPHC will develop the projections to account for year-to-year changes to the CSP restrictions in effect for charter vessel anglers as well as normal year-to-year variability in harvest due to changes in fishing effort or catchability of halibut.

*C. Determination of Annual CSP Restrictions*

The annual CSP restrictions in effect in each area will be determined by using (1) the appropriate management tier associated with the IPHC's recommended annual combined catch limit, and (2) the projected guided sport harvest of halibut for each area under the default CSP restriction, expressed as a percentage of the annual combined catch limit for each area. The Council and NMFS anticipate that the default CSP restrictions would limit projected guided sport harvest to within the guided sport target harvest range for each area. However, in the event that projected guided sport harvest is above the management tier target harvest

range, the CSP triggers more stringent CSP restrictions. In the event that the projected guided sport harvest is below the management tier target harvest range, the CSP may trigger relaxed CSP restrictions. Thus, there are up to three possible CSP restrictions for each tier, depending on whether projected guided sport harvest under the default CSP restriction is less than, within, or above the guided sport target harvest range.

*Determination of Annual CSP Restrictions if Projected Guided Sport Harvest Is Within the Target Harvest Range*

If the projected guided sport fishery harvest under the default CSP restriction is within the guided sport target harvest range, charter vessel anglers would be subject to the default CSP restriction for the year. For example, if the IPHC recommended an Area 2C annual combined catch limit of 9,500,000 lbs (4,309.1 mt), the IPHC would implement the default CSP restriction, which limits charter vessel

anglers to retaining two halibut per day and one halibut must be less than 32 inches (81.3 cm). The target range around the 15.1 percent guided sport allocation would have a low value of 11.6 percent and a high value of 18.6 percent (see Table 3). This allocation range would correspond to a target harvest range from 1,102,000 lbs (499.9 mt) to 1,767,000 lbs (801.5 mt). If projected guided sport harvest under the default CSP restriction were greater than or equal to 1,102,000 lbs (499.9 mt) and less than or equal to 1,767,000 lbs (801.5 mt), the CSP would limit charter vessel anglers to the default CSP restriction, which is retaining no more than two halibut per day and one halibut must be less than 32 inches (81.3 cm). Table 7 provides NMFS' proposed process for determining Area 2C annual CSP restrictions if projected guided sport harvest under the default CSP restriction is within the guided sport target harvest range.

**TABLE 7—DETERMINATION OF AREA 2C ANNUAL CSP RESTRICTIONS IF PROJECTED GUIDED SPORT HARVEST IS WITHIN THE TARGET HARVEST RANGE UNDER THE DEFAULT CSP RESTRICTION**

Tier	If the Area 2C annual combined catch limit for halibut in net pounds (lbs) is:	and . . .	If the projected guided sport harvest using the default CSP restriction is:	then the annual CSP restriction in effect is that the number of halibut caught and retained per calendar day by each charter vessel angler is limited to no more than:
Tier 1 .....	between 0 lbs	4,999,999 lbs	greater than or equal to 13.8% and less than or equal to 20.8% of the annual combined catch limit.	one halibut of any size.
Tier 2 .....	between 5,000,000 lbs	8,999,999 lbs	greater than or equal to 11.6% and less than or equal to 18.6% of the annual combined catch limit.	one halibut of any size.
Tier 3 .....	between 9,000,000 lbs	13,999,999 lbs	greater than or equal to 11.6% and less than or equal to 18.6% of the annual combined catch limit.	two halibut, but at least one halibut must have 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 halibut may be of any length.
Tier 4 .....	14,000,000 lbs and greater		greater than or equal to 11.6% and less than or equal to 18.6% of the annual combined catch limit.	two halibut of any size.

If the IPHC recommended an Area 3A annual combined catch limit of 28,000,000 lbs (12,700.6 mt), the default CSP restriction would be a daily limit of two halibut of any size. The target range around the 14.0 percent guided sport allocation would have a low value of 10.5 percent and a high value of 17.5

percent (see Table 4). If projected guided sport harvest in Area 3A under the default CSP restriction represented an allocation greater than or equal to 10.5 percent and less than or equal to 17.5 percent, the CSP would limit charter vessel anglers to the default CSP

restriction, which is retaining two halibut of any size per day.

Table 8 provides NMFS' proposed process for determining Area 3A annual CSP restrictions if projected guided sport harvest under the default CSP restriction is within the guided sport target harvest range.

TABLE 8.—DETERMINATION OF AREA 3A ANNUAL CSP RESTRICTIONS IF PROJECTED GUIDED SPORT HARVEST IS WITHIN THE TARGET HARVEST RANGE UNDER THE DEFAULT CSP RESTRICTION

Tier	If the Area 3A annual combined catch limit for halibut in net pounds (lbs) is:	and . . .	If the projected guided sport harvest using the default CSP restriction is:	then the annual CSP restriction in effect is that the number of halibut caught and retained per calendar day by each charter vessel angler is limited to no more than:
Tier 1 .....	between 0 lbs	9,999,999 lbs	greater than or equal to 11.9% and less than or equal to 18.9% of the annual combined catch limit.	one halibut of any size.
Tier 2 .....	between 10,000,000 lbs	19,999,999 lbs	greater than or equal to 10.5% and less than or equal to 17.5% of the annual combined catch limit.	one halibut of any size.
Tier 3 .....	between 20,000,000 lbs	26,999,999 lbs	greater than or equal to 10.5% and less than or equal to 17.5% of the annual combined catch limit.	two halibut, but at least one halibut must have 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 halibut may be of any length.
Tier 4 .....	27,000,000 lbs and greater		greater than or equal to 10.5% and less than or equal to 17.5% of the annual combined catch limit.	two halibut of any size.

Determination of Annual CSP Restrictions if Projected Guided Sport Harvest is Below the Target Harvest Range

If the projected guided sport fishery harvest under the default CSP restriction is less than the lowest value of the target harvest range, the CSP specifies that charter vessel anglers could be subject to the next less stringent CSP restriction, that is, the default CSP restriction under the next higher management tier. For example, if the annual combined catch limit is 26,000,000 lbs for Area 3A, tier 3 is the effective tier (see Table 6) and the default CSP restriction would limit charter vessel anglers to retaining two

halibut per day, and one halibut must be 32 inches (81.3 cm) or less. If projected guided sport harvest under this default CSP restriction as a percentage of the annual combined catch limit was less than 10.5 percent (see Table 4), then the IPHC would complete a second projection using the default CSP for tier 4, which limits charter vessel anglers to retaining two halibut per day of any size.

If projected guided sport harvest under the tier 4 projection is less than 17.5 percent of the annual combined catch limit for Area 3A, which is the highest value of the guided sport target harvest range for annual combined catch limits of 10,000,000 lbs (4,535.9 mt) and

greater (see Table 4), then the tier 4 default CSP restriction would apply, limiting charter vessel anglers in Area 3A to retaining two halibut per day of any size. If, however, projected harvest under the tier 4 default CSP restriction was greater than 17.5 percent (see Table 4), the tier 3 default CSP restriction would apply, limiting charter vessel anglers in Area 3A to retaining two halibut per day, one of which must be 32 inches (81.3 cm) or less.

Table 9 describes NMFS' proposed process for determining Area 2C annual CSP restrictions if projected guided sport harvest under the default CSP restriction is below the guided sport target harvest range under each tier.

TABLE 9.—DETERMINATION OF AREA 2C ANNUAL CSP RESTRICTIONS IF PROJECTED GUIDED SPORT HARVEST UNDER THE DEFAULT CSP RESTRICTION IS BELOW THE TARGET HARVEST RANGE

Tier	If the Area 2C annual combined catch limit for halibut in net pounds (lbs) is:	and . . .	and the projected guided sport harvest using the default CSP restriction is:	then the next higher tier default CSP restriction is that the number of halibut caught and retained per calendar day by each charter vessel angler is limited to no more than:	If projected guided sport harvest vessel using the next higher tier default CSP restriction is:	then the annual CSP restriction in effect is that the number of halibut caught and retained per calendar day by each charter vessel angler is limited to no more than:
Tier 1 .....	between 0 lbs	4,999,999 lbs	less than 13.8% of the annual combined catch limit.	one halibut of any size..	N/A .....	one halibut of any size.

TABLE 9—DETERMINATION OF AREA 2C ANNUAL CSP RESTRICTIONS IF PROJECTED GUIDED SPORT HARVEST UNDER THE DEFAULT CSP RESTRICTION IS BELOW THE TARGET HARVEST RANGE—Continued

Tier	If the Area 2C annual combined catch limit for halibut in net pounds (lbs) is:	and . . .	and the projected guided sport harvest using the default CSP restriction is:	then the next higher tier default CSP restriction is that the number of halibut caught and retained per calendar day by each charter vessel angler is limited to no more than:	If projected guided sport harvest vessel using the next higher tier default CSP restriction is:	then the annual CSP restriction in effect is that the number of halibut caught and retained per calendar day by each charter vessel angler is limited to no more than:
Tier 2 .....	between 5,000,000 lbs	8,999,999 lbs	less than 11.6% of the annual combined catch limit.	two halibut, but at least one halibut must have 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 halibut may be of any length.	less than or equal to 18.6% of the annual combined catch limit.	two halibut, but at least one halibut must have 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 halibut may be of any length.
greater than or equal to 18.6% of the annual combined catch limit.					one halibut of any size.	
Tier 3 .....	between 9,000,000 lbs	13,999,999 lbs	less than 11.6% of the annual combined catch limit.	two halibut of any size..	less than or equal to 18.6% of the annual combined catch limit. greater than or equal to 18.6% of the annual combined catch limit..	two halibut of any size.  two halibut, but at least one halibut must have 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 halibut may be of any length.
Tier 4 .....	14,000,000 lbs and greater		less than 11.6% of the annual combined catch limit.	N/A .....	N/A .....	two halibut of any size.

N/A = not applicable.

Table 10 describes NMFS' proposed process for determining the Area 3A annual CSP restrictions if projected

guided sport harvest under the default CSP restriction is below the guided

sport target harvest range under each tier.

TABLE 10—DETERMINATION OF AREA 3A ANNUAL CSP RESTRICTIONS IF PROJECTED GUIDED SPORT HARVEST UNDER THE DEFAULT CSP RESTRICTION IS BELOW THE TARGET HARVEST RANGE

Tier	If the Area 3A annual combined catch limit for halibut in net pounds (lbs) is:	and . . .	and the projected guided sport harvest using the default CSP restriction is:	then the next higher tier default CSP restriction is that the number of halibut caught and retained per calendar day by each charter vessel angler is limited to no more than:	If projected guided sport harvest using the next higher tier default CSP restriction is:	then the annual CSP restriction in effect is that the number of halibut caught and retained per calendar day by each charter vessel angler is limited to no more than:
Tier 1 .....	between 0 lbs	9,999,999 lbs	less than 11.9% of the annual combined catch limit.	one halibut of any size.	N/A .....	one halibut of any size
Tier 2 .....	between 10,000,000 lbs	19,999,999 lbs	less than 10.5% of the annual combined catch limit.	two halibut, but at least one halibut must have 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 halibut may be of any length.	less than or equal to 17.5% of the annual combined catch limit.	two halibut, but at least one halibut must have 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 halibut may be of any length
					greater than or equal to 17.5% of the annual combined catch limit.	one halibut of any size
Tier 3 .....	between 20,000,000 lbs	26,999,999 lbs	less than 10.5% of the annual combined catch limit.	two halibut of any size.	less than or equal to 17.5% of the annual combined catch limit.	two halibut of any size.
					greater than or equal to 17.5% of the annual combined catch limit.	two halibut, but at least one halibut must have 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 halibut may be of any length
Tier 4 .....	27,000,000 lbs and greater		less than 10.5% of the annual combined catch limit.	N/A .....	N/A .....	two halibut of any size.

N/A = not applicable.

Exceptions to the method for determining the CSP restrictions exist for tiers 1 and 4. Where the projected guided sport harvest is less than the lowest value of the target harvest range in tier 1, a second projection would be unnecessary because the default CSP of the next higher tier, tier 2, is also one halibut of any size per day. Because the least restrictive CSP restriction under tier 1 is one halibut of any size per day,

this CSP restriction would apply if projected guided sport harvest is less than or equal to the highest value of the target harvest range under the default CSP tier.

Where the projected guided sport harvest under tier 4 is less than the lowest value of the target harvest range, a second projection would be unnecessary because tier 4 is the highest tier and the default CSP restriction of

two fish of any size per day is the least restrictive CSP restriction authorized under the CSP. Thus, the tier 4 CSP restriction of two fish of any size per day would apply if projected guided sport harvest is less than the highest value of the target harvest range under the default CSP tier. If projected guided sport harvest is greater than the highest value of the target harvest range under the default CSP tier, the CSP restriction

would be determined as discussed in the next section.

**Determination of Annual CSP Restrictions if Projected Guided Sport Harvest Is Above the Target Harvest Range**

If the projected guided sport fishery harvest under the default CSP restriction is greater than the highest value of the target harvest range, the CSP specifies that charter vessel anglers would be subject to the next more stringent CSP restriction, that is, the default CSP restriction under the next lower management tier. For example, in tier 4, the default CSP restriction limits charter vessel anglers to two fish of any size per day. If projected guided sport harvest under the tier 4 default CSP

restriction is greater than the largest value of the target harvest range, then the tier 3 default CSP restriction would apply. In both Area 2C and Area 3A, the tier 3 default CSP restriction limits charter vessel anglers to retaining two halibut per day, one of which must be 32 inches (81.3 cm) or less. Similarly, in tier 3, if projected guided sport harvest under the tier 3 default CSP restriction is greater than the largest value of the target harvest range, then the tier 2 default CSP restriction would apply.

In both Area 2C and Area 3A, the tier 2 default CSP restriction limits charter vessel anglers to retaining one halibut of any size per day. However, the tier 1 and 2 default CSP restriction is the most restrictive guided sport harvest restriction under the CSP. If the

projected guided sport harvest under the default CSP restriction is greater than the largest value of the target harvest range in tier 1 or tier 2, the Council specified that a maximum length limit would be placed on the one halibut that could be retained per day by charter vessel anglers in that area. The addition of the length limit to the one halibut daily bag limit is intended to further restrict guided sport harvest to be equal to or below the annual guided sport catch limit for the appropriate management tier.

Tables 11 and 12 describe NMFS' proposed process for determining Area 2C and Area 3A annual CSP restrictions if projected guided sport harvest under the default CSP restriction is above the target harvest range under each tier.

**TABLE 11—DETERMINATION OF AREA 2C ANNUAL CSP RESTRICTIONS IF PROJECTED GUIDED SPORT HARVEST UNDER THE DEFAULT CSP RESTRICTION IS ABOVE THE TARGET HARVEST RANGE**

Tier	If the Area 2C annual combined catch limit for halibut in net pounds (lbs) is:	and . . .	If the projected guided sport harvest using the default CSP restriction is:	then the annual CSP restriction in effect is that the number of halibut caught and retained per calendar day by each charter vessel angler is limited to no more than:
Tier 1	between 0 lbs	4,999,999 lbs	greater than 20.8% of the annual combined catch limit.	one halibut of a maximum length to restrict guided sport harvest to be equal to or below 17.3% of the annual combined catch limit.
Tier 2	between 5,000,000 lbs	8,999,999 lbs	greater than 18.6% of the annual combined catch limit.	one halibut of a maximum length to restrict guided sport harvest to be equal to or below 15.1% of the annual combined catch limit.
Tier 3	between 9,000,000 lbs	13,999,999 lbs	greater than 18.6% of the annual combined catch limit.	one halibut of any size.
Tier 4	14,000,000 lbs and greater		greater than 18.6% of the annual combined catch limit.	two halibut, but at least one halibut must have 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 halibut may be of any length.

**TABLE 12—DETERMINATION OF AREA 3A ANNUAL CSP RESTRICTIONS IF PROJECTED GUIDED SPORT HARVEST UNDER THE DEFAULT CSP RESTRICTION IS ABOVE THE TARGET HARVEST RANGE**

Tier	If the Area 3A annual combined catch limit for halibut in net pounds (lbs) is:	and . . .	If the projected guided sport using the default CSP restriction is:	then the annual CSP restriction in effect is that the number of halibut caught and retained per calendar day by each charter vessel angler is limited to no more than:
Tier 1	between 0 lbs	10,999,999 lbs	greater than 18.9% of the annual combined catch limit.	one halibut of a maximum length to restrict guided sport harvest to be equal to or below 15.4% of the annual combined catch limit
Tier 2	between 10,000,000 lbs	19,999,999 lbs	greater than 17.5% of the annual combined catch limit.	one halibut of a maximum length to restrict guided sport harvest to be equal to or below 14.0% of the annual combined catch limit
Tier 3	between 20,000,000 lbs	26,999,999 lbs	greater than 17.5% of the annual combined catch limit.	one halibut of any size.

TABLE 12—DETERMINATION OF AREA 3A ANNUAL CSP RESTRICTIONS IF PROJECTED GUIDED SPORT HARVEST UNDER THE DEFAULT CSP RESTRICTION IS ABOVE THE TARGET HARVEST RANGE—Continued

Tier	If the Area 3A annual combined catch limit for halibut in net pounds (lbs) is:	and . . .	If the projected guided sport using the default CSP restriction is:	then the annual CSP restriction in effect is that the number of halibut caught and retained per calendar day by each charter vessel angler is limited to no more than:
Tier 4 .....	27,000,000 lbs and greater		greater than 17.5% of the annual combined catch limit.	two halibut, but at least one halibut must have 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 halibut may be of any length

For example, if the Area 2C annual combined catch limit is 4,500,000 lbs (2,041.2 mt) and projected guided sport harvest as a percentage of the annual combined catch limit exceeds 20.8 percent, which is the greatest value of the guided sport target harvest range (see Table 3), then charter vessel anglers would be limited to retaining one halibut of a maximum length per day to limit guided sport harvest equal to or below 17.3 percent of the annual combined catch limit. This would keep the annual guided sport harvest within its allocation in Area 2C (see Table 1).

If the Area 3A annual combined catch limit is 14,000,000 lbs (6,350.3 mt) and projected guided sport harvest as a percentage of the annual combined catch limit exceeds 17.5 percent, which

is the greatest value of the guided sport target harvest range (see Table 4), the CSP would limit charter vessel anglers to retaining one halibut of a maximum length per day to limit projected guided sport harvest equal to or below 14.0 percent of the annual combined catch limit. This would keep the annual guided sport harvest within its allocation in Area 3A (see Table 4).

The Council did not specify what the maximum length limit would be under tier 1 or tier 2 in its motion recommending the CSP. The Council contracted an analyst to prepare a supplemental analysis on the process for selecting a maximum length limit to manage guided sport halibut harvest in times of low abundance. In January 2009, the analyst presented a paper to

the Council’s SSC outlining two methods for projecting the average net weight of all halibut harvested by charter vessel anglers. The analyst’s paper can be found at: [http://www.alaskafisheries.noaa.gov/npfmc/current\\_issues/halibut\\_issues/HalibutCSPdisc709.pdf](http://www.alaskafisheries.noaa.gov/npfmc/current_issues/halibut_issues/HalibutCSPdisc709.pdf). The Council’s SSC reviewed the paper and provided its recommendations to the analyst in February 2009.

The annual guided sport catch limit (C) is the product of the guided sport sector allocation percentage specified in the CSP and the annual combined catch limit in pounds net weight established by the IPHC and expressed as equation 1:

$$C = CCL \cdot P_{\max} \quad \text{(equation 1)}$$

where:

CCL = Annual combined catch limit in pounds net weight established by the IPHC for Area 2C and Area 3A, and

P<sub>max</sub> = Maximum percentage of the annual guided sport catch limit that is allocated to the guided sport sector, expressed as a proportion.

For example, for an annual combined catch limit of 6,000,000 lbs (2,721.6 mt) in Area 2C, the guided sport sector allocation is 15.1 percent. The catch limit for the guided sport sector would therefore be calculated as 6,000,000 lbs

(2,721.6 mt) × 0.151 = 906,000 lbs (410.9 mt).

For purposes of harvest estimation, ADF&G currently breaks each IPHC area into several subareas. ADF&G produces estimates of the number of fish harvested for each subarea, and then combines these estimates with size data from ADF&G creel surveys conducted at sites within the subareas. During creel surveys, ADF&G measures the length of harvested halibut and calculates a predicted weight for each fish in the sample using the IPHC length-weight relationship equation. ADF&G

calculates average weight as the average of the predicted weights for each individual fish. The numbers of halibut of various sizes (size distribution) harvested by charter anglers vary by subarea. Because the magnitude of harvest also varies by area, ADF&G cannot simply combine creel survey data on the size of harvested halibut from all subareas to estimate total removals. Instead, ADF&G calculates guided sport halibut removals (R<sub>p</sub>) by subarea and sums them to obtain total removals as expressed in equation 2:

$$R_p = \sum_s H_{Sp} W_{Sp} \quad \text{(equation 2)}$$

where:

H<sub>Sp</sub> = The estimated or projected number of halibut harvested by charter vessel anglers in each subarea S, and

W<sub>Sp</sub> = The estimated or projected average net weight in pounds of halibut harvested by charter vessel anglers in each subarea S.

This is the general form of the equation currently used for estimating guided sport removals. Variants of this general equation could be used to estimate the maximum length limit under the CSP, depending on the

method selected to calculate the maximum length limit.

The supplemental analysis prepared for the Council’s SSC in January 2009 noted that there are a number of methods that could be used to calculate a maximum length limit to restrict the

total pounds of halibut harvested in the guided sport sector equal to or below the guided sport catch limit. The analyst assumed, and NMFS concurs, that the maximum length limit would be calculated as the length limit that would allow anglers to retain the largest halibut possible while limiting total guided sport harvest to a level equal to or below the annual guided sport catch limit.

The IPHC would base its maximum length limit calculation in large part on ADF&G analyses and projections of guided sport harvest. The IPHC would use a projection of  $H_{sp}$ , the number of halibut that will be harvested by charter vessel anglers in each subarea and an annual projection of total guided sport halibut harvest for Area 2C and Area 3A. The CSP would use the projection of guided sport harvest in net pounds for the upcoming year, assuming that charter vessel anglers would be subject to the default CSP restriction for the appropriate management tier. The CSP would specify the method for calculating the greatest maximum length limit in whole inches ( $L_{in}$ ) that produces a projection of guided sport removals ( $R_p$ ) that does not exceed the annual guided sport catch limit ( $C$ ).

The analyst developed two methods for calculating the length limit  $L_{in}$  for presentation to the Council's SSC in January 2009. The methods differ in their assumptions about how the size distribution of harvested halibut might

change upon imposition of a maximum length limit.

Method A assumes that upon imposition of a maximum length limit the average weight of halibut harvested by charter anglers will equal the average weight of those fish that were equal to or less than the maximum length limit in a recent year in which anglers were allowed to harvest fish of at least that length. Use of size data from a recent year assumes that the size distribution of charter harvest from the recent year's sample is the best available data to describe the size distribution in the coming year in the absence of a size limit.

To project harvest using Method A, the IPHC would use ADF&G's calculation of the projected average weight ( $w_{sp}$ ) for each subarea using length data from only those halibut sampled in the recent year that were equal to or less than the prospective maximum length limit. Using equation 2, these projections of average weight would then be combined with harvest estimates for each subarea ( $H_{sp}$ ) to obtain a projected guided sport removal under each prospective length limit. For example, to evaluate guided sport removals resulting from a size limit of 40 inches (101.6 cm), the average weight of only those harvested halibut that were equal to or less than 40 inches (101.6 cm) in length in the sample from the most recent year would be calculated. After repeating the

calculations for a range of maximum length limits, the IPHC would adopt the largest size limit  $L_{in}$  in whole inches that results in a projected guided sport removal ( $R_p$ ) that is less than or equal to the annual guided sport catch limit ( $C$ ).

Method B assumes that every halibut harvested and retained by charter vessel anglers would be precisely equal in length to the maximum length limit. Because all fish are assumed to be the same length, there would be no differences in the projected size distributions between subareas of each regulatory area. The IPHC would use the average weight that, when multiplied by the projected number of fish harvested in the entire IPHC regulatory area, would result in the annual guided sport catch limit ( $C$ ) for that area as expressed in equation 3:

$$C = H_p w_p \quad (\text{equation 3})$$

where:

$H_p$  = The estimated or projected number of halibut harvested in Area 2C or Area 3A, and

$w_p$  = The average net weight in pounds of all halibut harvested by charter vessel anglers in Area 2C or Area 3A.

The CSP would then use the IPHC length-weight relationship equation to solve for the maximum length limit  $L_{in}$  corresponding with the average weight  $w_p$ . The current IPHC length-weight equation relates net weight in pounds ( $W$ ) to length in centimeters ( $L_{cm}$ ) and expressed in equation 4:

$$W = 6.921(10^{-6})L_{cm}^{3.24} \quad (\text{equation 4})$$

To obtain the maximum length limit under Method B, the CSP would substitute equation 4 for  $w_p$  in equation 3, solve for  $L_{cm}$ , then convert and round down to the nearest whole inch, which would be the maximum length limit in effect ( $L_{in}$ ). If the IPHC were to modify this length-weight relationship equation or its parameters, the CSP would use the revised equation recommended by the IPHC.

For example, if the annual combined catch limit ( $CCL$ ) was set by the IPHC for Area 2C at 6,000,000 lbs (2,721.6 mt), the guided sport allocation would be 15.1 percent, and the guided sport catch limit would be 906,000 lbs (410.9 mt) (equation 1). If projected guided sport harvest for the coming year ( $H_p$ ) was 50,000 halibut, then the average net weight ( $w_p$ ) could not exceed 18.1 lbs, or 8.2 kilograms (kg) (equation 3). The length that results in a predicted average net weight of 18.1 lbs (8.2 kg) is 95.7 cm, or 37.7 inches (equation 4). The

maximum length limit would therefore be rounded down to the nearest whole inch and set at 37 inches (95.7 cm).

In January 2011, the IPHC used Method B when it recommended a maximum length limit for the 2011 fishery for charter vessel anglers harvesting halibut in Area 2C. The Secretary of State and the Secretary of Commerce approved the IPHC's recommendation (76 FR 14300, March 16, 2011) and charter vessel anglers in Area 2C are limited to catching and retaining one halibut per calendar day that is no longer than 37 inches. Following the IPHC's recommendation, guided sport sector stakeholders commented to NMFS that the IPHC's use of Method B was too conservative because it assumes that all charter vessel anglers would be able to harvest precisely a halibut of the maximum size limit. This likely would not occur and some anglers will harvest halibut smaller than the maximum size limit.

The guided sport sector stakeholders suggested that it might be possible to use a less conservative methodology than Method B that would result in a relatively larger maximum length limit while limiting guided sport harvest to target levels.

In response to requests from guided sport sector stakeholders, ADF&G used an alternative method to calculate the maximum size limit. This additional method, referred to as Method C in this proposed rule, combines the assumptions used in Methods A and B to produce an intermediate result. Like Method A, Method C would be used to calculate a maximum length limit using data from a previous year in which the guided sport fishery was not constrained by a length limit, or a year in which a less constraining (higher) maximum length limit was in place to manage the guided sport fishery under its allocation.

Method C assumes that under a size limit in the coming year, (a) the proportion of the harvested halibut that will be smaller than the prospective maximum length limit will equal the proportion that were under that length in the previous year, (b) the average weight of fish smaller than the prospective maximum length limit will remain unchanged from the previous year, and (c) the portion of the previous

year's harvest that was larger than the prospective maximum length limit will be exactly equal to the length limit in the coming year.

The Method C calculations would proceed as follows. For each prospective maximum length limit  $L_{in}$ , the CSP would use the proportion of the halibut in the previous year harvest sample that were less than or equal to the size limit, and the average weight of those fish.

$$w_{SP} = (p_{UL}w_{UL}) + (p_{OL}w_{OL}) \text{ (equation 5)}$$

where:

$p_{UL}$  = the proportion of halibut in the previous year's creel survey sample from subarea  $S$  that were less than or equal in length to the prospective length limit  $L_{in}$ ,  
 $w_{UL}$  = the average weight of halibut in the previous year's creel survey sample from subarea  $S$  that were less than or equal in length to the prospective length limit  $L_{in}$ ,  
 $p_{OL}$  = the proportion of halibut in the previous year's creel survey sample from subarea  $S$  that were greater in length than the prospective length limit  $L_{in}$ ,  
 $w_{OL}$  = the average weight of halibut of prospective length limit  $L_{in}$ , predicted from the IPHC length-weight relationship equation (equation 4), and  
 $p_{UL} + p_{OL} = 1$ .

The IPHC would then select the largest size limit  $L_{in}$  in whole inches that results in a projected charter removal ( $R_p$ ) that is less than or equal to the annual guided sport catch limit ( $C$ ).

For example, if calculating the average weight corresponding with a 40 inch (101.6 cm) maximum length limit, the CSP would use, for each subarea, the proportion of fish in the previous year's sample that were less than or equal to 40 inches (101.6 cm) in length, and the average weight of only those fish. Suppose that 70 percent of the fish in a subarea were less than or equal to 40 inches (101.6 cm) in length and those halibut had an average net weight of 13.0 lbs (5.9 kg). The remaining 30 percent of the harvested fish would be assumed to have an average net weight of 22.0 lbs (10 kg) (from equation 4). In this example, the average weight for this subarea would be calculated as  $(0.70 \times 13.0) + (0.30 \times 22.0) = 15.7$  lbs (7.1 kg).

Each of the methods for calculating the maximum length limit requires the use of specific assumptions for determining an average weight of halibut harvested in the guided sport fishery when anglers are limited to retaining one halibut that is no larger than the maximum length limit. The projected average weights determined by using these assumptions likely will not precisely equal the actual average weight of halibut harvested in the

guided sport fishery under the maximum length limit. Method A and Method C assume that at least a portion of the halibut caught in the guided sport fishery in a future year will have the same average weight as halibut harvested in a previous year. If the CSP uses Method A or Method C and charter vessel anglers are able to increase the average size of halibut caught and retained under the maximum length limit relative to the previous year's harvest, calculation of the maximum length limit using the previous year's average size will result in underestimated guided sport harvest. This underestimated harvest will result in a calculated maximum length limit that is larger than the length limit that would be implemented under the larger average size of halibut. This relatively larger maximum length limit could result in the guided sport sector exceeding its catch limit. Conversely, if the average size of halibut caught and retained under the maximum length limit is lower than the average from the previous year's harvest, the maximum length limit calculated under Method A or Method C will result in overestimated guided sport harvest and a calculated maximum length limit that is smaller than the length limit that would be implemented under the smaller average size of halibut. Guided sport harvest may not reach the sector allocation under this relatively smaller maximum length limit.

Anglers may have the ability to increase the average size of halibut caught and retained under the maximum length limit by high-grading, or releasing smaller fish in order to retain larger fish. However, the ability of anglers to high-grade also depends on the availability of larger fish, which could change with natural variations in halibut stock composition, movements of fish, and the ability of the fleet to find or access areas where those fish are. Variability was observed in estimated average weights in the Area 2C guided

The average weight of the remaining portion of the harvest would be assumed to be equal to the average weight of halibut of length  $L_{in}$ , predicted from the IPHC length-weight relationship (equation 4). Guided sport removals would be calculated for prospective length limits using equation 2, with the average weight for each subarea  $w_{SP}$  calculated as follows:

halibut fishery even before bag limit changes were first enacted in 2007. Variability can be caused by a number of factors, including bias and sampling error in the collection of size data through creel surveys. It is not yet possible to accurately predict the amount or effect of high-grading based on average weight data. It is reasonable to assume, however, that imposition of a maximum length limit or a decrease in the maximum length limit may provide more incentive for anglers to retain the largest fish possible, and the assumption used in Method A that all halibut retained by guided sport anglers will be of the average size fish previously caught in the fishery may not be realistic.

On the other hand, Method B assumes that all halibut harvested in the guided sport fishery would be equal to the maximum length limit when anglers are limited to retaining one halibut that is no larger than a maximum length limit. Method B would likely overestimate guided sport harvest, however, because it is highly unlikely that all anglers would be able to catch and retain halibut that are precisely equal to the maximum length limit. Some anglers will undoubtedly retain halibut that are smaller than the maximum length limit, and guided sport harvest in net pounds will not always reach the projected guided sport harvest used to determine the maximum length limit under Method B. The overestimation of average weight using Method B would increase as the maximum length limit increases. The maximum length limit calculated under Method B would result in the most biologically conservative outcome among the three methods because it would result in a smaller maximum length limit than the limits that would result from using Methods A and C.

Method C assumes that a portion of the halibut harvested by guided sport anglers under the maximum length limit will be the average size previously

caught in the fishery, similar to Method A. As described for Method A, this could result in underestimated harvest for that portion of the halibut harvest if anglers are able to high-grade and increase the average weight of halibut harvested relative to the previous year. However, Method C uses the most biologically conservative Method B assumption for the remaining portion of halibut harvested in the previous year's fishery. Method C assumes that the portion of harvested halibut that were larger than the maximum length limit in the previous year would be equal to the maximum length limit for purposes of projecting guided sport harvest under the maximum length limit. As described for Method B, this could result in overestimated harvest for that portion of the halibut harvest. The net effect is that using both assumptions in Method C may balance the effects of Methods A and B. Method C will result in maximum length limits and projected guided sport harvests that are between those calculated using Methods A and B. Method C is likely to be less biologically conservative than Method B. Method C is likely to be more biologically conservative than Method A, especially when the daily bag limit is changed from one halibut of any size to one halibut with a maximum length limit, because anglers are presumed to already be high-grading under a one halibut of any size daily bag limit.

The consequences of projection errors vary by methods also. In January 2009, the Council's SSC noted that Method A would be expected to produce the least impact on the guided sport industry but the most impact on the halibut resource. Underestimated guided sport harvest due to changes in angler behavior under Method A could result in actual guided sport harvest exceeding the guided sport catch limit. While Method B uses a conservative approach by assuming that all charter vessel anglers will high-grade to the maximum length limit, it increases the likelihood that guided sport harvest will not reach the sector's catch limit because not all anglers will be able to high-grade to the maximum length limit. The SSC noted that the biologically conservative assumption used under Method B could result in an undesirable economic loss to the guided sport industry and a loss of opportunity to charter vessel anglers because the maximum length limit would be smaller than limits calculated using less biologically conservative assumptions. Method C balances the impacts of Method A and B on the halibut stock and guided sport fishery participants

because it applies the assumptions used in both Method A and Method B.

The SSC suggested that the CSP could use an iterative approach to calculating maximum length limits for a few years in order to accommodate new information on angler behavior under maximum length limit restrictions. However, this suggestion is inconsistent with the Council's intent that the CSP would establish non-discretionary CSP restrictions for charter vessel anglers prior to the fishing season.

NMFS proposes that the CSP could use Methods A, B, or C to set maximum length limits when guided sport harvest is being constrained under the CSP management tier 1 or tier 2. This would include scenarios in which a bag limit of one halibut of any size per day is already in place and a maximum length limit is enacted for the first time, or a maximum length limit is in place but needs to be reduced because of a decline in the annual combined catch limit. However, neither Method A nor Method C would likely be appropriate for use in the situation where a maximum length limit has been in place for several years but needs to be increased due to an increase in the annual combined catch limit. These methods would require modification since there would not be recent information with which to predict the catch of fish in the gap between the original size limit and the new size limit. Method B could be applied to the proportion of the fish that were greater than the original size limit in these situations. If Method B were applied to all fish in year following a size limit produced using Methods A or C, use of the more conservative Method B could result in a decrease in the size limit even though the annual combined catch limit increased.

NMFS believes that conservation of the halibut resource should be a priority under the CSP. Although the assumption used in Method B that all halibut harvested would be of the maximum length may result in the guided sport sector harvesting less than its catch limit, NMFS believes this assumption maximizes the effectiveness of size limits in constraining guided sport halibut harvests at low levels of abundance. While NMFS intends for the CSP to accommodate the guided sport industry's need for predictability and stability, it believes that conservation of the halibut resource should be a priority under the CSP and is consistent with the purpose of the Convention. As such, NMFS proposes to use Method B, the most biologically conservative method, under the CSP. This proposal is consistent with a December 2007 Council statement in which it

acknowledged that guided sport harvest may not precisely meet the sector allocation under the CSP. The Council statement of its management objectives for the CSP can be found at: [http://www.alaskafisheries.noaa.gov/npfmc/current\\_issues/halibut\\_issues/Halibutmotion1207\\_rev.pdf](http://www.alaskafisheries.noaa.gov/npfmc/current_issues/halibut_issues/Halibutmotion1207_rev.pdf). NMFS is requesting comments on the use of the proposed Methods A, B, or C, or on other potential methods, to establish maximum length limits under the CSP. NMFS specifically requests input on the underlying assumptions for each method and the resulting impacts on the halibut resource, participants in the guided sport fisheries, and other halibut user groups.

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

The proposed rule would prohibit a person from possessing on board a vessel halibut that are disfigured in a manner that prevents the determination of the number of halibut harvested by each person on board the vessel. However, NMFS proposes that under the CSP, charter vessel anglers may cut each retained halibut into no more than two ventral pieces, two dorsal pieces, and two cheek pieces, with the skin on all pieces. This restriction is intended to enable charter vessel anglers to fillet halibut on board a vessel while maintaining enforcement agents' ability to verify angler compliance with CSP daily bag and possession limits by limiting the total number and type of halibut pieces each person may possess on board a vessel.

Beginning in 1997, the IPHC annual management measures implemented a prohibition in all waters of Alaska on filleting, mutilating, or otherwise disfiguring halibut in any manner that prevented the determination of the number of halibut caught, possessed, or landed. In 2007, the IPHC limited this prohibition to apply only on board the vessel on which the halibut were caught and retained. The 2007 annual management measures clarified that the prohibition would not apply once halibut was landed or offloaded from the vessel on which it was retained. The IPHC implemented this change to facilitate the processing of sport-caught halibut in Alaska for personal use.

The 2008 annual management measures modified the allowable condition of sport-caught halibut in a person's possession in waters in and off Alaska to add the exception that each halibut on board a vessel may be cut into no more than two ventral, two dorsal pieces, and two cheeks, with the skin on all pieces. The IPHC clarified, and NMFS agrees, that the restriction to cut halibut into identifiable dorsal,

ventral and cheek pieces improves identification of the number of retained halibut that are sport-caught in Alaska by facilitating enforcement of bag and possession limits. NMFS proposes to include these regulations in the Area 2C and Area 3A CSP proposed rule because they are necessary to implement and enforce the CSP restrictions in these areas. This inclusion will facilitate enforcement of CSP restrictions if the IPHC changes its recommended requirements for the allowable condition of sport-caught halibut in a person's possession in waters in and off Alaska in the future.

The restriction on cutting each retained halibut into no more than two ventral pieces, two dorsal pieces, and two cheek pieces, with the skin on all pieces would apply each year under the CSP. In years where the CSP restriction includes a maximum length limit, NMFS proposes that each charter vessel angler also must retain the intact carcass (a carcass with the head attached to the tail) of the filleted halibut subject to the maximum length limit until all halibut fillets are offloaded from the vessel. As discussed in the "CSP Restrictions" section of this preamble, two CSP restrictions limit charter vessel anglers to retaining halibut of a maximum length. The first CSP restriction limits charter vessel anglers to retaining two halibut, one of which must be less than 32 inches, per day. The second CSP restriction limits charter vessel anglers to retaining one halibut of a maximum length limit per day. When either of these CSP restrictions is in effect, each charter vessel angler must retain the intact carcass of a filleted halibut subject to the size limit until all fillets are offloaded from the vessel. An intact carcass is required because enforcement officers cannot otherwise determine the head-on length of a halibut filleted at sea.

NMFS implemented the carcass retention requirement for charter vessel anglers in Area 2C in 2007 and 2008 when it limited the charter vessel anglers to retaining two halibut of any size per day, one of which had to be less than 32 inches (81.3 cm). The 2011 IPHC annual management measures also implemented the carcass retention requirement for Area 2C charter vessel anglers to facilitate enforcement of the 37 inch maximum length limit in effect for the 2011 fishing season.

Prior to development of this proposed rule for the CSP, NMFS published a final rule on May 6, 2009 (74 FR 21194), to implement along with other restrictions a prohibition on operator, guide, and crew retention of halibut in Area 2C. The proposed CSP would not

modify this prohibition on retention of halibut in Area 2C and would implement the same prohibition in Area 3A. As noted in the EA/RIR/IRFA prepared for the CSP (see **ADDRESSES**), NMFS estimates that prohibiting retention of halibut by operators, guides, and crew reduces guided sport harvest by approximately 4.3 percent to 4.7 percent in Area 2C, and approximately 10.4 percent in Area 3A. The prohibition on retention of halibut by the operator, guide, and crew of a charter vessel is consistent with one of the CSP objectives, which is to limit guided sport halibut harvest to within the guided sport target harvest range.

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

The proposed rule also would prohibit individuals who hold both a charter halibut permit and a Subsistence Halibut Registration Certificate from using both permits to harvest halibut on the same vessel during the same day in Area 2C and Area 3A. NMFS agrees with the Council that this prohibition is necessary to allow enforcement officials and samplers to classify harvest among the guided sport, subsistence, and commercial fisheries. Allowing multiple types of trips on a vessel in the same day could create uncertainty regarding how to classify retained halibut.

Enforcement of provisions prohibiting individuals from fishing for commercial and guided sport halibut or for subsistence and guided sport halibut on the same vessel during the same day in Area 2C and Area 3A, would require charter vessel operators to indicate the date of a charter vessel fishing trip in the ADF&G charter logbook and all of the required fields in the charter logbook must be completed before the halibut are offloaded. These requirements will enable enforcement agents to determine whether that vessel was used on a charter vessel fishing trip that day. If the charter logbook is properly and accurately completed and indicates that charter activity occurred on the vessel during a particular day on which halibut were retained, an

enforcement agent would consider the retained halibut caught in the guided sport fishery.

#### VI. Guided Angler Fish (GAF)

The proposed CSP regulations would authorize supplemental, individual transfers of commercial halibut IFQ as guided angler fish (GAF) to charter halibut permit holders for harvest by charter vessel anglers in the guided sport halibut fishery. GAF would offer charter vessel anglers in Area 2C or Area 3A an opportunity to harvest halibut in addition to, or instead of, the halibut harvested under the CSP restriction, up to the harvest limits in place for unguided sport anglers in that area. Transfers between commercial halibut IFQ and GAF would be effective for the current fishing season only, so transfers of IFQ to GAF would not be a permanent transfer of halibut IFQ from the commercial sector to the guided sport sector. This market-based aspect of the CSP allows the guided sport halibut sector to increase its halibut harvest beyond the area guided sport catch limit specified in the annual management measures up to limits imposed by the unguided sport halibut fishery. In addition, this aspect of the CSP creates a system wherein the guided sport halibut sector compensates the commercial halibut sector for decreases in commercial halibut IFQ harvest.

Through the CSP GAF transfer program, qualified charter halibut permit holders in Area 2C and Area 3A may offer anglers on board their vessel the opportunity to retain up to two halibut of any size per day when the CSP restriction limits charter vessel anglers to a halibut harvest limit that is more restrictive than two halibut of any size per day. Charter vessel anglers may retain GAF to supplement halibut retained under the CSP restriction. However, charter vessel anglers retaining GAF may not exceed the harvest restriction in place for unguided sport anglers in that area. In other words, a charter vessel angler may retain as GAF a halibut that exceeds the daily bag limit and length restrictions triggered by the CSP only to the extent that the angler's halibut retained under the CSP restriction plus halibut retained as GAF do not exceed daily bag limit and length restrictions imposed on unguided anglers. For example, the daily halibut retention limit for unguided sport anglers in Area 2C and Area 3A is currently two halibut of any size per calendar day. Assuming this same unguided sport angler retention limit, charter vessel anglers would only retain GAF when the CSP restriction for that area limits guided sport anglers to

retaining less than two fish of any size per calendar day. The Council recommended this restriction on GAF use to maintain parity between guided

and unguided sport halibut retention limits. Table 13 presents the potential uses of GAF by charter vessel anglers in Area 2C and Area 3A under the proposed

CSP restrictions, assuming that unguided sport anglers are limited to retaining two halibut of any size per calendar day.

TABLE 13—OPTIONS FOR GAF HARVEST UNDER CSP RESTRICTIONS

If the CSP restriction is:	and the harvest limit for unguided sport anglers is:	then each charter vessel angler could use GAF to retain:
one halibut of a maximum length .....	two halibut of any size .....	EITHER: one halibut less than or equal to the maximum length under the CSP restriction plus one GAF halibut of any size; OR two GAF halibut of any size.
one halibut of any size .....	two halibut of any size .....	one halibut of any size under the CSP restriction plus one GAF halibut of any size.
two halibut, but at least one halibut must have 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 halibut may be of any length.	two halibut of any size .....	one halibut greater than 32 inches in length under the CSP restriction plus one GAF greater than 32 inches.
two halibut of any size .....	two halibut of any size .....	N/A

N/A = not applicable.

The Council recommended including GAF in the Area 2C and Area 3A CSP to provide operating flexibility for participants in the commercial and guided sport halibut fisheries. The Council and NMFS determined that the GAF program could provide increased fishing opportunities in the guided sport fishery for those anglers desiring such an opportunity. The GAF program also would provide commercial halibut QS holders with greater flexibility when developing their annual harvest strategy. Persons holding halibut QS for an area have harvesting privileges for an amount of halibut that is derived annually from their QS holdings in that area and authorized on their IFQ permit. NMFS determines each person's amount of halibut IFQ (in net pounds) from the number of halibut QS units held, the total number of halibut QS units issued for that specific regulatory area, and the area's total allowable catch allocation for halibut IFQ and Community Development Quota fisheries (if applicable) in a particular year to determine the specific amount of halibut IFQ (in net pounds). As discussed above in the "Annual Commercial Fishery and Guided Sport Fishery Catch Limits" section, under the CSP, the IPHC determines the annual combined catch limit which then triggers the commercial catch limit (see Table 1 and Table 2). The opportunity for annual transfers of IFQ to GAF could provide some halibut IFQ holders with greater economic benefits than harvesting the IFQ themselves if they receive more revenue from transferring

IFQ to GAF than they would receive from harvesting the IFQ themselves. An IFQ holder is eligible to transfer halibut quota shares if such person holds at least one unit of halibut QS and has received an annual IFQ permit authorizing harvest of IFQ in either the Area 2C and Area 3A commercial halibut fishery. A charter halibut permit holder is eligible to receive IFQ as GAF if such a person holds one or more charter halibut permits in the management area that corresponds to the IFQ permit area from which the IFQ would be transferred. Holders of military charter halibut permits would also be eligible to receive IFQ as GAF. Military charter halibut permits are issued to U.S. Military Morale, Welfare, and Recreation programs in Alaska that offer guided sport halibut fishing to service members in Area 2C or Area 3A. To operate a charter vessel, the U.S. Military Morale, Welfare, and Recreation program would need to obtain a military charter halibut permit by application to NMFS or could purchase a charter halibut permit on the commercial market. Community Quota Entities holding community charter halibut permits are also eligible to receive IFQ as GAF. Regulations at 50 CFR 300.67(k)(2) list the communities that are eligible to receive community charter halibut permits from NMFS. In addition to community charter halibut permits, a Community Quota Entity may acquire non-community charter halibut permits by transfer. The final rule implementing the charter halibut limited access program describes community charter

halibut permits and the application and eligibility requirements for Community Quota Entities to receive community charter halibut permits (75 FR 554, January 5, 2010). There are several ways in which a Community Quota Entity in Area 2C or Area 3A that is eligible to receive community charter halibut permits and hold charter halibut permits could be a party to a GAF transaction. Community Quota Entities could receive a transfer of GAF for use on a community charter halibut permit or charter halibut permit that it holds. Community Quota Entities that are eligible to hold community charter halibut permits and charter halibut permits also are authorized to hold IFQ under the IFQ program by Amendment 66 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (69 FR 23681, April 30, 2004). Amendment 66 authorized Community Quota Entities to receive transferred halibut or sablefish QS on behalf of the community it represents and to lease the resulting IFQ to fishermen who are residents of that community. Thus, a Community Quota Entity holding IFQ would be eligible to transfer the IFQ as GAF to a holder of a charter halibut permit, community charter halibut permit, or military charter halibut permit. Regulations implementing the CSP would detail the requirements for a valid transfer of halibut IFQ to GAF. Both parties would complete and submit an application to NMFS to transfer halibut in net pounds between IFQ and GAF. NMFS would approve the

transfer provided that application is complete, both parties are eligible to transfer, and there are no other administrative reasons to disapprove the transfer.

NMFS would convert the number of GAF to be transferred to the charter halibut permit holder's GAF account into net pounds to be debited from the IFQ holder's account. To determine the number of net pounds to be debited from the IFQ account, NMFS would multiply the number of GAF to be transferred by the conversion factor for that year. The conversion factor for the current fishing year would be the ADF&G estimate of the average net weight calculated from all halibut harvested in the guided sport fishery during the preceding fishing year in that IPHC regulatory area. NMFS would post the conversion factors for Area 2C and Area 3A for the current fishing year on the NMFS Alaska Region Home Page at <http://www.alaskafisheries.noaa.gov> as soon as the average net weight estimates for Area 2C and Area 3A are available. NMFS anticipates it would post the conversion factor for the current fishing year in January each year.

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

The charter halibut permit holder holding a GAF permit (GAF permit holder) and charter vessel angler would need to agree on any fees for harvesting the GAF. Depending on the structure of the payment, total costs to the GAF permit holder, charter vessel anglers or both could increase. While the market-based nature of IFQ to GAF transfers makes it likely that the cost of obtaining GAF would be borne by the charter vessel anglers using GAF, charter vessel anglers who want the opportunity to retain more halibut than permitted under the CSP restriction would have the opportunity to do so using GAF.

GAF permit holders would be required to hold a sufficient number of GAF for charter vessel anglers to retain halibut in excess of the CSP restriction and up to limits in place for the unguided sport halibut fishery for that area at the time any excess halibut are retained. The GAF permit holder also would be required to have the GAF

permit and the assigned charter halibut permit on board the vessel on which charter vessel anglers retain GAF, and to present the permits if requested by an authorized enforcement officer. GAF permit holders that do not hold sufficient GAF to cover retained halibut by charter vessel anglers in excess of the CSP restriction may not allow anglers to retain those halibut. By midnight on the day on which GAF were retained, the GAF permit holder would be required to electronically report the total number of GAF retained under his or her GAF permit. NMFS would deduct this number of GAF from the GAF permit holder's account of unused GAF. NMFS proposes to require the GAF permit holder to complete a GAF electronic report by midnight on the day GAF were retained to maintain as close to real-time accounting of GAF balances as possible. Unharvested GAF could be returned to the IFQ permit holder from which it derived at any time during the fishing year if the GAF permit holder wishes to do so and the IFQ holder agrees to the return. The IFQ permit holder could then harvest the converted net pounds of halibut in the commercial fishery. Once the GAF were returned to the IFQ holder, it would not be available for harvest in the guided sport fishery unless the IFQ permit holder engaged in another transfer of IFQ to GAF. To approve and execute these returns of unharvested GAF to the IFQ permit holder, NMFS would need timely information on the harvest of GAF via electronic reporting by GAF permit holders.

The CSP regulations would also specify a mandatory GAF return date of 15 days prior to the end of the commercial halibut fishing season. The end of the commercial halibut fishing season would be specified in the IPHC annual management measures published by NMFS in the **Federal Register** each year. On this date GAF would no longer be authorized for use in the guided sport fishery. NMFS would return any remaining unharvested GAF to the IFQ holder from which it was derived. NMFS would not approve voluntary returns of GAF to IFQ after the mandatory GAF return date. NMFS recognizes that some GAF permit holders likely would have a balance of unharvested GAF at the end of the guided sport fishing season. The Council recommended and NMFS agrees that NMFS should return unused GAF 15 days prior to the end of the commercial halibut fishing season. Although the guided sport halibut fishery has typically been open from February 1 through December 31 in

recent years, most fishing in the guided sport fishery occurs from May through August. ADF&G data for 2006 indicate that less than 1 percent of guided sport halibut harvest occurred after September 30, in either Area 2C or Area 3A. The commercial halibut fishing season typically opens in March and closes in mid-November. Based on this information, NMFS believes that NMFS should return remaining unused GAF to the IFQ permit holder 15 days prior to the end of the commercial halibut fishing season because it would not significantly affect charter vessel business operations in aggregate. Further, this timeline would provide the IFQ holder with an opportunity to harvest the IFQ before the end of the commercial fishing season for that year. The IFQ holder also may choose to count the IFQ returned from GAF toward an underage for his or her halibut IFQ account for the next fishing year, as specified in regulations at § 679.40(e). On or as soon as possible after the mandatory GAF return date, NMFS would convert GAF in number(s) of fish to IFQ in net pounds using the conversion factor for that year and return the converted IFQ to the IFQ holder's account.

The proposed rule would establish the following four elements for implementation of the GAF transfer program: (a) Eligibility criteria for halibut QS/IFQ holders and charter halibut permit holders to transfer between IFQ and GAF; (b) a process to complete a transfer between halibut IFQ and GAF; (c) GAF transfer limits; and (d) additional reporting requirements for guided sport operators whose clients retain GAF. Each of these elements is discussed in more detail below.

#### *A. Eligibility Requirements To Transfer Between IFQ and GAF*

NMFS will approve an application for transfer of IFQ and GAF between an eligible IFQ holder and an eligible holder of a charter halibut permit, community charter halibut permit, or military charter halibut permit if NMFS determines that (1) the transfer would not cause the IFQ holder or the GAF holder to exceed use limits specified for GAF at § 300.65 and halibut IFQ at § 679.42 (see "GAF Transfer Restrictions" section below); (2) there are no fines, civil penalties, sanctions, or other payments due and owing, or outstanding permit sanctions, resulting from Federal fishery violations involving either person or permit; and (3) other pertinent information requested on the application has been supplied.

NMFS would need to make additional determinations to approve a transfer between IFQ and GAF for a Community Quota Entity. In addition to the requirements listed above, NMFS would approve the transfer upon making a determination that: (1) the Community Quota Entity applying to transfer IFQ to GAF is eligible to hold and receive IFQ on behalf of a eligible community in Area 2C or Area 3A, as specified in 50 CFR 300.67(k)(2); (2) the Community Quota Entity applying to receive GAF from an Area 2C or Area 3A IFQ holder holds one or more community charter halibut permits or charter halibut permits for the corresponding area; and (3) the Community Quota Entity applying to transfer between IFQ and GAF has submitted a complete annual report(s) to NMFS as required by § 679.5(l)(8).

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

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

The IFQ holder and the charter halibut permit holder receiving GAF would be required to complete and sign an application for transfer between IFQ (either IFQ to GAF or GAF to IFQ) prior to the automatic GAF return date. Application forms would be available on the NMFS, Alaska Region, Web site at <http://alaskafisheries.noaa.gov/>. Applications could be submitted by mail, hand delivery, or facsimile. Electronic submissions other than facsimile would not be acceptable because NMFS would require the original signature of the IFQ holder and the charter halibut permit holder. The applicants also would need to attest under penalty of perjury that legal requirements were met and all statements on the application are true, correct, and complete. The automatic return of GAF by NMFS on or around the automatic GAF return date each year would not require either party to complete a transfer application, and NMFS would not approve an application for transfer between IFQ and GAF after the automatic GAF return date.

*Conversion Between IFQ and GAF.* NMFS would issue GAF in numbers of halibut. NMFS CSP regulations would require that for each GAF transferred from an IFQ holder to a charter halibut permit holder's GAF account, the equivalent number of net pounds of halibut rounded to the nearest net pound (in whole numbers, not decimals) would be removed from an

IFQ holder's IFQ account. Conversely, CSP regulations would require that for each GAF returned from a charter halibut permit holder's GAF account, the equivalent number of net pounds of halibut IFQ rounded to the nearest net pound would be returned to the IFQ holder's account. NMFS would use the average net weight of a halibut landed in the guided sport fishery in each area (2C or 3A) during the previous year, as determined by ADF&G, to convert GAF to equivalent net pounds of halibut IFQ rounded up to the nearest net pound. The same average net weight would be used for all conversions of IFQ to GAF and returns of GAF to IFQ in one year.

A request for transfer from IFQ to GAF would be made in numbers of fish, or the number of GAF to be transferred to the GAF permit holder. For example, if NMFS approved a transfer of 5 GAF and the conversion factor was 20.7 lbs (9.4 kg), then 104 lbs (47.2 kg) of IFQ would be debited from the IFQ holder's account (5 GAF  $\times$  20.7 lbs (9.4 kg) = 103.5 lbs (46.9 kg) and rounded to 104 lbs (46.9 kg)). NMFS would round up the conversion calculation (103.5 lbs (46.9 kg)) to the nearest pound (104 lbs (46.9 kg)) and debit that amount from the IFQ holder's account. NMFS accounts only for net pounds in whole numbers without decimals in the IFQ program and proposes to continue accounting in whole numbers of net pounds for transfers between IFQ and GAF.

A voluntary request for return of GAF to IFQ and the automatic return of GAF also would require NMFS to convert unharvested GAF to net pounds of IFQ. To calculate the number of net pounds of halibut IFQ returned to the IFQ holder, NMFS would multiply the unharvested number of GAF by the conversion factor and round up to the nearest pound. In the example used above, if the parties agreed to a voluntary return of 2 GAF to the IFQ holder, NMFS would return 42 lbs (19.1 kg) to the IFQ holder's account (2 GAF  $\times$  20.7 lbs (9.4 kg) = 41.4 lbs (18.8 kg) and rounded to 42 lbs (19.1 kg)). NMFS would make the same conversion calculation for automatic returns of unharvested GAF to IFQ.

*GAF Permit.* On approval of an application for transfer between IFQ and GAF, NMFS would issue a GAF permit to the charter halibut permit holder receiving GAF. A GAF permit would authorize the GAF permit holder to offer GAF to charter vessel anglers and allow charter vessel anglers to retain halibut in excess of the CSP restriction, up to limits on GAF use in regulations at § 300.65(c). GAF could be retained under a GAF permit only if, at the time

the GAF are retained, the GAF permit holder's account contains at least the number of retained GAF. All GAF permits would expire at 11:59 p.m. on the day prior to the automatic GAF return date. GAF could not be retained by charter vessel anglers after the expiration of GAF permits.

NMFS would issue a revised GAF permit to the GAF permit holder each time during the year that it approved a transfer between IFQ and GAF for that GAF permit. Each GAF permit would be assigned to only one charter halibut permit, community charter halibut permit, or military charter halibut permit in Area 2C or Area 3A. Charter halibut permit holders requesting GAF would be required to specify the charter halibut permit to which the GAF permit would be assigned on the application for transfer between IFQ and GAF. The assignment between a GAF permit and a charter halibut permit, community charter halibut permit, or military charter halibut permit could not be changed during that year. If charter vessel anglers retain GAF, the GAF permit and the assigned charter halibut permit, community charter halibut permit, or military charter halibut permit would need to be on board the vessel on which the GAF halibut are retained, and available for inspection by an authorized enforcement officer.

#### *C. GAF Transfer Restrictions*

The Council recommended and NMFS proposes restrictions on the amount of IFQ that an IFQ holder could transfer as GAF and on the number of GAF that could be assigned to one GAF permit. The restrictions on transfers between IFQ and GAF are intended to prevent a particular individual, corporation, or other entity from acquiring an excessive share of halibut fishing privileges as IFQ or GAF. The proposed rule would implement the Council's recommendations for three GAF transfer restrictions. First, IFQ holders would be limited to transferring up to 1,500 lbs (680.4 kg) or 10 percent, whichever is greater, of their annual halibut IFQ for use as GAF. Second, no more than a total of 400 GAF would be assigned during one year to a GAF permit assigned to a charter halibut permit that is endorsed for six or fewer anglers. Third, no more than a total of 600 GAF would be assigned during one year to a GAF permit assigned to a charter halibut permit endorsed for more than six anglers.

Commercial halibut IFQ regulations at § 679.42(f)(1)(i) and (ii) also include QS use limits that are intended to prevent a particular individual, corporation, or other entity from acquiring an excessive

share of commercial halibut fishing privileges. NMFS determines individual and collective interest in halibut fishing privileges by summing QS used by that person and a portion of any QS used by an entity in which that person has an interest. NMFS considers the person's portion of the QS used by the entity equal to the share of interest the person has in that entity. For example, if an individual uses 50,000 units of Area 2C halibut QS and has a 5 percent interest in a company that uses 750,000 units of Area 2C halibut QS, the amount of Area 2C halibut QS that person would be considered to use for purposes of the limits at § 679.42(f)(1)(i) and (ii) is 50,000 units (his personal holdings) plus 37,500 units (5 percent interest for the 750,000 units in the company using Area 2C halibut QS). This individual's use of 87,500 units would not exceed the Area 2C QS use limit of 599,799 units.

For purposes of administering the QS use limits at § 679.42(f)(1)(i) and (ii), NMFS proposes to include the QS equivalent of IFQ transferred to GAF in the calculation of a person's QS use. Using the example above, if the QS holder transferred the equivalent of 100 lbs (45.4 kg) of IFQ as GAF to a charter halibut permit holder, NMFS would continue to include the QS equivalent of the IFQ transferred to GAF in the calculation of that person's QS use for purposes of the QS use limits at § 679.42(f)(1)(i) and (ii). NMFS proposes this approach because it considers a transfer of IFQ to GAF a use of halibut QS. A transfer of IFQ to GAF would be voluntary, and the halibut QS holder likely would receive a benefit from the transfer according to the terms of the transfer agreement with the charter halibut permit holder receiving GAF. Furthermore, it is possible under the proposed CSP for a person to use halibut QS issued as IFQ and transferred to GAF in the commercial halibut fishery before the end of the fishing season if the IFQ was transferred to GAF, not harvested in the guided sport fishery, and returned to the QS holder. The proposed CSP specifies that any unused GAF derived from IFQ issued to the QS holder (1) may be voluntarily returned to the QS holder at any time during the fishing season prior to the mandatory GAF return date, and (2) would automatically be returned by NMFS to the QS holder on or as soon as possible after the mandatory GAF return date.

The proposed rule also would prohibit GAF, once transferred to a charter halibut permit holder, from being transferred to another charter halibut permit, community charter

halibut permit, or military charter halibut permit holder. This requirement would prevent a charter halibut permit holder from receiving GAF by transfer with the intention of transferring the GAF to another charter halibut permit holder for compensation. The Council and NMFS generally recommend management provisions that encourage holders of harvest privileges to actively participate in the fishery for which they hold the privilege rather than receiving financial benefits from another person who pays to use those harvest privileges. The Council's recommendation and NMFS' proposal to prohibit GAF permit holders from transferring GAF to another charter halibut permit holder is consistent with this policy objective to require a charter halibut permit holder who receives GAF by transfer to utilize GAF in conjunction with their charter halibut permit.

#### Community Quota Entities and GAF

Under the proposed rule, a Community Quota Entity holding halibut IFQ in Area 2C or Area 3A would be authorized to transfer that IFQ as GAF. However, the Council recommended that transfers between IFQ and GAF for Community Quota Entities be exempt from GAF transfer restrictions in certain circumstances. The Regulatory Impact Review prepared for the CSP (see **ADDRESSES**) provided a general statement about the Council's intent for transfers between IFQ and GAF for Community Quota Entities (CQE):

A CQE is allowed to lease 100 percent of the halibut they hold to eligible residents in their communities. This means a CQE may convert 100 percent of its annual IFQ to GAF for use on its halibut community harvest permit, may lease 100 percent of its IFQ out as GAF to another CQE, may lease 100 percent of its IFQ to community residents (subject to current holding limitations), or may lease GAF to its own community residents that hold community charter halibut permits.

NMFS agrees that Community Quota Entity transfers between IFQ and GAF should be exempt from GAF transfer restrictions in the instances described in the Regulatory Impact Review. Although the Council used the term "eligible community resident" in recommending exemptions to the GAF transfer restrictions for Community Quota Entities under the CSP, this term is not directly applicable to the charter halibut limited access program because businesses are expected to hold charter halibut permits. Although a business could be composed of an individual, it is possible for a business to be a partnership, corporation, or other legal

entity. Therefore, NMFS is proposing that "eligible community resident," for purposes of exempting from GAF transfer restrictions transfers of IFQ to GAF from a Community Quota Entity to an eligible community resident, means that the charter halibut permit holder receiving GAF from the Community Quota Entity must operate their business out of the community. Current regulations at 50 CFR 300.67(k)(5) require that every charter vessel fishing trip authorized by a community charter halibut permit must begin or end within the boundaries of the community represented by the Community Quota Entity holding the permit. The regulations do not require that an eligible community resident of the Community Quota Entity community use the community charter halibut permit.

NMFS proposes to apply the same requirement for using community charter halibut permits to the definition of eligible community resident for purposes of IFQ to GAF transfers involving Community Quota Entities. The proposed rule would revise the definition of eligible community resident for purposes of IFQ to GAF transfers under the Area 2C and Area 3A CSP. A person (either an individual or a non-individual entity) holding a charter halibut permit would need to either begin or end a charter vessel fishing trip authorized by their charter halibut permit within the boundaries of the community represented by the Community Quota Entity to qualify as an eligible community resident of that Community Quota Entity for purposes of IFQ to GAF transfers. If a Community Quota Entity transfers IFQ as GAF to an eligible community resident, the transfer would not be subject to the IFQ to GAF transfer restrictions.

Under the proposed rule, transfers between IFQ and GAF would be exempt from GAF transfer restrictions if a Community Quota Entity transfers IFQ as GAF to (1) itself for use with a charter halibut permit or a community charter halibut permit it holds; (2) a business operating out of the Community Quota Entity community that holds a charter halibut permit; or (3) another Community Quota Entity for use with a charter halibut permit or a community charter halibut permit held by the Community Quota Entity receiving GAF. All other transfers between IFQ and GAF by Community Quota Entities would be subject to the GAF transfer restrictions. NMFS believes that exempting Community Quota Entities from GAF transfer restrictions in these circumstances would provide a Community Quota Entity with more

flexibility in determining how to utilize its holdings of IFQ, community charter halibut permits, or charter halibut permits. These exemption provisions allow the Community Quota Entity to determine how to use halibut fishery privileges to maximize benefits for the Community Quota Entity community and its residents.

Although transfers between IFQ and GAF for Community Quota Entities would be exempt from GAF transfer restrictions in the circumstances described above, all transfers of IFQ to GAF in which the IFQ is held by a Community Quota Entity would be limited by an existing halibut IFQ regulation at § 679.42(f)(6). This regulation specifies that “[n]o individual that receives IFQ derived from halibut QS held by a Community Quota Entity may hold, individually or collectively, more than 50,000 lbs (22.7 mt) of IFQ halibut derived from any halibut QS source.” As described above, NMFS determines individual and collective ownership interest by summing IFQ held or used by that person and a portion of any IFQ held or used by an entity in which that person has an interest. NMFS considers the person’s portion of the IFQ held or used by the entity equal to the share of interest the person has in that entity. For example, if an individual holds or uses 100 lbs (45.4 kg) of IFQ and has a 5 percent interest in a company that holds or uses 100 lbs (45.4 kg) of IFQ that was derived from halibut QS held by a Community Quota Entity, the amount of IFQ that person would be considered to hold for the IFQ limit calculation at § 679.42(f)(6) is 100 lbs (45.4 kg) (his personal holdings) plus 5 lbs (2.3 kg) (5 percent interest for the 100 lbs (45.4 kg) in the company holding IFQ). This individual’s holdings of 105 lbs (47.6 kg) would not exceed the IFQ limit of 50,000 lbs (45.4 kg) for purposes of § 679.42(f)(6).

The Council recommended, and this rule proposes, to include GAF derived from halibut IFQ held by a Community Quota Entity in this individual and collective IFQ holding limit. Hence, the proposed rule would limit an individual receiving either IFQ or GAF derived from IFQ held by a Community Quota Entity to holding individually or collectively, no more than 50,000 lbs (45.4 kg) of halibut IFQ and GAF derived from the IFQ, combined. Thus, for an individual that holds GAF derived from IFQ held by a Community Quota Entity, IFQ derived from QS held by a Community Quota Entity, or both, NMFS would calculate that individual’s total halibut IFQ and GAF holdings by (1) multiplying the total number of GAF

held individually and collectively by the conversion factor for that year (see “Conversion Between IFQ and GAF” section above) to determine the equivalent number of halibut net pounds held, and (2) adding the equivalent number of halibut net pounds held to the total number of IFQ equivalent pounds held individually and collectively by that person.

#### *D. GAF Reporting Requirements*

The proposed rule would implement new recordkeeping and reporting requirements for GAF in ADF&G charter logbooks, in addition to charter logbook reporting requirements currently specified at § 300.65(d). The draft regulations also would require GAF permit holders to separately report retained GAF by midnight on the day the GAF were retained using a NMFS-approved electronic GAF reporting system.

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

The proposed rule for the CSP would continue to require the ADF&G charter logbook as the primary reporting method for operators in the guided sport halibut fishery.

The proposed rule would require the person to whom ADF&G issued a charter logbook to retain and make available for inspection by authorized enforcement personnel completed original charter logbooks for a period of two years following the charter vessel fishing trip. This requirement would be necessary for enforcement of CSP

restrictions and GAF reporting requirements.

For each charter vessel fishing trip on which charter vessel anglers retain GAF, charter vessel guides would be required to report in the charter logbook sheet completed for a charter vessel fishing trip (1) the GAF permit number under which the GAF were retained, and (2) the number of GAF retained by each charter vessel angler during the trip. For charter vessel fishing trips completed on a single day, charter vessel guides would be required by Federal regulations to complete these fields in the charter logbook before any halibut are offloaded and/or charter vessel anglers disembark from the vessel. For multi-day charter vessel fishing trips, charter vessel guides would be required to complete the GAF reporting requirements in a charter logbook on board the vessel by the end of each day of the trip. These charter logbook reporting requirements would facilitate GAF recordkeeping and enforcement of charter vessel angler daily bag and possession limits during a charter vessel fishing trip. NMFS also would use the GAF charter logbook reporting fields to verify information reported in the electronic GAF reporting system.

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

In the commercial IFQ program, regulations at 50 CFR 679.5(e) require that Registered Buyers report fisheries landings electronically using a secure, password-protected Internet-based system approved by NMFS. The final steps of the electronic IFQ reporting process generate a time-stamped receipt displaying landings data. Commercial Registered Buyers must print, and along with the individual IFQ fisherman, must sign copies of the receipt, which must be maintained and made available for a specified time period for inspection by authorized Agency personnel. Printing of this receipt indicates the report sequence is complete and the IFQ account(s) has been properly debited.

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

Although real-time data are necessary for accurate account management, the amount and type of data required for inseason GAF account management are relatively small and simple relative to that required for charter logbooks. GAF permit holders would be required to complete the GAF electronic report before midnight of each day on which a charter vessel angler retained GAF using their GAF permit even if the GAF permit holder is operating a multi-day charter vessel fishing trip.

The GAF permit holder would be required to record the following information in the GAF electronic reporting system: (1) ADF&G charter logbook number in which GAF were recorded; (2) Vessel identification number (State of Alaska issued boat registration number or U.S. Coast Guard documentation number) for the vessel on which GAF were retained; (3) GAF permit number used to retain GAF; (4) ADF&G Sport Fishing Guide license number held by the charter vessel guide who certified the ADF&G charter logbook sheet on which GAF were recorded; and (5) Total number of GAF caught and retained under the GAF permit number.

Charter vessel operators using a GAF permit assigned to a community charter halibut permit for a charter vessel fishing trip on which GAF were retained also would be required to report the community or port where the charter vessel fishing trip begins and ends.

Upon receipt of the daily electronic GAF report from a GAF permit holder, NMFS would respond with a confirmation number as evidence that the harvest report was received by NMFS and the GAF account was properly debited. The GAF permit holder would be required to enter the confirmation number in the charter logbook used on the vessel on the day the GAF were retained and recorded in the charter logbook. This record of confirmation number would allow cross-reference of the charter logbook data elements and the electronic GAF report by management and enforcement staff.

The Council also recommended, and NMFS proposes, that GAF permit holders would be required to allow ADF&G and IPHC scientific sampling personnel access to landed halibut on private property owned by the GAF permit holder. This provision is intended to facilitate monitoring of guided sport halibut harvest and the collection of scientific information from halibut harvested in the guided sport fishery. Current ADF&G guided sport halibut sampling programs collect size data from the sport halibut fishery, mainly at public access sites, with some exceptions in Area 2C. At this time, it is unknown whether the current public access ADF&G sampling sites would provide adequate or representative samples of halibut harvested in the guided sport fishery and landed at other locations, such as lodges in remote areas. The proposed access requirements to halibut landing locations on private property could provide additional scientific data by providing additional samples of halibut retained in the guided sport fisheries in Area 2C and Area 3A. Persons who do not wish to have ADF&G and IPHC samplers on their property have the option to not allow GAF to be landed on their property. The Council's motion is specific to GAF, and persons that do not allow GAF to be landed on their property are not required to allow scientific sampling personnel access to their property. However, if at any time private property owners allow GAF to be landed on their property, they would be subject to the access requirements.

The Council also recommended that GAF permit holders landing GAF on their private property be required to allow enforcement personnel access to the point of landing. The Council recognized, and NMFS agrees, that enforcing the CSP restrictions and GAF use restrictions would require enforcement staff to track the retention of halibut by all charter vessel anglers in the guided sport fishery, including anglers landing halibut on private property. However, section 773i of the Halibut Act provides enforcement staff with this authorization and additional regulations are not necessary for the CSP. Section 773i(b) of the Halibut Act states that any authorized officer may, at reasonable times enter, and search or inspect, shoreside facilities in which fish taken subject to the Convention or the Halibut Act are processed, packed or held. NMFS notes that this authorization applies to shoreside facilities in any IPHC regulatory area in which halibut are taken. Additionally, the authorization applies to shoreside

facilities to which all halibut are landed or taken and is not specific to GAF halibut. An authorized officer means any officer authorized by (1) the Secretary of Commerce, including any special agent or fisheries enforcement officer of NMFS, (2) the Secretary of the department in which the United States Coast Guard is operating, or (3) the head of any Federal or State agency which has entered into an agreement with the Secretary of Commerce or the Commandant of the United States Coast Guard to enforce the provisions of any statute administered by the Secretary of Commerce, including the Halibut Act.

## VII. Cost Recovery for GAF

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

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

The IFQ permit holders who transfer IFQ to GAF would owe cost recovery fees for those GAF retained in the guided sport fishery. Fees for unharvested GAF converted back to IFQ equivalent pounds and harvested as commercial IFQ pounds would be assessed fees as commercial landings with value estimated as specified in current regulations at § 679.45. IFQ holders might share these costs with GAF users through contractual agreements. IFQ and GAF that are not harvested during the year would not be subject to the cost recovery fee. Fish harvested in excess of the amount

authorized by a GAF permit, or in excess of allowed IFQ permit overages, would not result in cost recovery fees owed because such overages would be handled as enforcement actions.

NMFS establishes commercial cost recovery fee assessments in November each year. To determine cost recovery fee liabilities for IFQ holders, NMFS uses data reported by Registered Buyers to compute annual standard ex-vessel IFQ prices by month and port (or, if confidential, by port group). NMFS publishes these standard prices in the **Federal Register** each year. NMFS published the 2010 standard ex-vessel IFQ prices in the **Federal Register** on December 10, 2010 (75 FR 76957). NMFS uses the standard prices to compute the total annual value of the IFQ fisheries. NMFS determines the fee percentage by dividing actual total management and enforcement costs by total IFQ fishery value. Only those halibut and sablefish holders who had landings on their permits owe cost recovery fees. Fees owed by an IFQ holder are the computed annual fee percentage multiplied by the value of their IFQ landings.

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

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

#### VIII. Technical Regulatory Changes

This action proposes three technical changes to the regulations. The first proposed change would clarify the regulations to describe the current process by which the IPHC Area 4 catch sharing plan is promulgated. The Area

4 catch sharing plan was codified in Federal regulations at § 300.65(b) in 1998. The Area 4 catch sharing plan allocates the Area 4 commercial catch limit among Areas 4C, 4D, and 4E. Each year, the Area 4 catch sharing plan subarea allocations are applied to the Area 4 commercial catch limit recommended by the IPHC and published in the final rule implementing the annual management measures. The proposed regulatory change would clarify the description of this process in § 300.65(b).

The second proposed technical change would update instructions in regulations at § 679.5(l)(7) for Registered Buyers to complete and submit the Registered Buyer Ex-vessel Value and Volume Report form. Registered Buyers submit this form to NMFS to report ex-vessel IFQ prices by month and port. NMFS uses data reported by Registered Buyers to compute annual standard ex-vessel IFQ prices to determine cost recovery fee liabilities for IFQ holders.

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

#### IX. 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 of Commerce'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 action would establish a CSP for the commercial and guided sport halibut fisheries in Area 2C and Area

3A. In addition to establishing allocations to each sector, the Council's preferred alternative (Alternative 3) would establish a new management system for the guided sport halibut fishery in these areas. Beginning February 1, 2011, operators of vessels with charter vessel anglers on board were required to have on board the vessel a valid charter halibut permit issued by NMFS. Therefore, the universe of regulated entities for the proposed CSP would be the holders of one or more charter halibut permits in Area 2C and Area 3A. NMFS estimates that 229 businesses were issued charter halibut permits in Area 2C and 291 businesses were issued charter halibut permits in Area 3A. However, most charter halibut permits are transferable. A charter halibut permit holder may transfer a transferable permit, subject to NMFS approval, to a qualified person at any time. Thus, the exact number of businesses that would be regulated by the proposed CSP cannot be determined at this time.

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

Regulations that directly regulate entities representing small, remote communities in Areas 2C and 3A are included in this action. These regulations would authorize community quota entities holding community charter halibut permits or charter halibut permits to transfer or receive commercial halibut IFQ as GAF as proposed under the CSP. GAF would offer charter vessel anglers in Area 2C or Area 3A an opportunity to harvest halibut in addition to the halibut harvested under the CSP restriction, up to the harvest limits in place for unguided sport anglers in that area. Under the preferred alternative, 18 Area 2C communities are eligible to each receive up to 4 halibut community charter halibut permits; 14 Area 3A communities are eligible to each receive up to 7 halibut community charter halibut permits. Note that eligibility for community charter halibut permits is conditioned on the fact that the community must be represented by a

non-profit community quota entity approved by NMFS. Thus, the number of eligible community entities that would be authorized by the proposed action to engage in GAF transfers is a maximum estimate. All of these eligible communities would be considered small entities under the SBA definitions.

This action would impose new recordkeeping requirements. Applications to transfer between IFQ and GAF would be required to be submitted to and approved by NMFS for each transfer from IFQ to GAF and for each transfer from GAF to IFQ prior to the automatic GAF return date for that year. The application would require information about the IFQ permit holder and the charter halibut permit holder, including each permit holder's contact information and the IFQ permit account from which halibut pounds are to be transferred and the GAF account to which GAF are to be transferred. NMFS would require additional information only when the structure of the business holding the IFQ or charter halibut permit changes. NMFS also may require some additional information, depending on how well the current ADF&G charter logbooks meet management and enforcement needs and the level of access NMFS has to those data. In addition, community quota entities eligible to receive community charter halibut permits would be required to submit information to NMFS (1) on the application for a transfer between IFQ and GAF, and (2) regarding the Community Quota Entity's activity in an annual report by January 31 of the following year. 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 Halibut Act and other applicable statutes and that would minimize any significant economic impact of the proposed rule on small entities.

The status quo alternative specifies the GHF as a target amount of halibut that anglers in the guided sport fishery can harvest in Area 2C and Area 3A. However, guided sport harvests that exceed the GHF can have a *de facto* allocation effect of reducing the amount of halibut that may be harvested by the commercial fishery. Additionally, guided sport halibut fishery harvests beyond the GHF also can undermine

overall harvest strategy goals established by the IPHC for the halibut resource. The primary objective of the proposed action is to implement a management program for the Area 2C and Area 3A guided sport and commercial halibut fisheries that establishes a clear allocation to each sector and implements management measures that are intended to limit halibut harvest in the guided sport fisheries to within the guided sport target harvest range.

The Council considered one alternative to the status quo (Alternative 2) in addition to the preferred alternative (Alternative 3) for the proposed CSP. The Council selected Alternative 3 from the elements and options considered under Alternative 2, along with program elements that resulted from Council discussion, additional staff research, and public testimony. The Council determined that Alternative 3 would meet its objective to establish a catch sharing plan for the commercial and guided sport sectors by managing the guided sport halibut fishery to ensure that harvests stay within the sector's allocated range. The Council also considered the guided sport sector's need to have a stable in-season regulatory environment. Management of the guided sport sector under Alternative 3 is intended to ensure that it is given advance notice and predictability with respect to application of management tools (e.g., bag limits, size restrictions) and season length. Alternative 3 would implement annual management measures for the guided sport sector that are specified prior to the beginning of the fishing season. NMFS agrees that the annual implementation of the CSP under Alternative 3 likely would be timely and responsive to changes in halibut abundance while providing the guided sport sector with advance notice of the effective guided sport fishery management measures.

Alternative 2 included three options for establishing an allocation between the guided sport and commercial halibut sectors in Area 2C and Area 3A. These options included allocating (1) fixed percentage of the annual combined catch limit to each sector; (2) a fixed number of pounds to the guided sport sector; and (3) a fixed number of pounds in addition to a specified percentage of the annual combined catch limit to the guided sport sector. After considering average guided sport harvest estimates for individual years and for different combinations of years from 1995 through 2005 in the Alternative 2 options, the Council recommended implementing a fixed percentage of the annual combined

catch limit to each sector in Alternative 3 for the proposed CSP. The Council determined that a fixed percentage allocation best met its objectives with the least impact to affected entities. Additionally, a fixed percentage allocation would be equitable because both the commercial and guided sport sectors would be on an equal footing concerning the impacts and effects of accounting for other removals and applying IPHC harvest policy. Thus, both the guided sport and commercial sectors would share in the benefits and costs of managing the resource for long-term sustainability under a combined catch limit.

Alternative 2 included eight options for limiting guided sport harvest to the sector's catch limit under the CSP. The Council recommended limiting CSP restrictions to daily bag limits and daily bag limits in combination with a maximum size limit. The Council elected not to recommend trip limits or season closures as CSP restrictions because it aimed to provide predictability and stability for the guided sport sector to the extent practicable under the CSP. Additionally, daily bag limits and maximum size limits impact all charter vessel anglers equally, so the impact of the CSP restriction would not fall disproportionately on specific types of charter vessel operations.

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

*OMB Control No. 0648-0398*

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

*OMB Control No. 0648-0575*

Public reporting burden per response is estimated to average 4 minutes for ADF&G Logbook Entry for vessel guide and submittal; 1 minute for ADF&G Logbook Entry for anglers and signature; and 4 minutes for Data Entry in GAF electronic reporting system.

*OMB Control No. 0648-0592*

Public reporting burden per response is estimated to average 15 minutes for an Application for Transfer Between IFQ and GAF; and 15 minutes for an Application for Transfer Between IFQ

and GAF by a Community Quota Entity (CQE).

OMB Control No. 0648-0272

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

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

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

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

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

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

#### List of Subjects

##### 50 CFR Part 300

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

##### 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: July 14, 2011.

**John Oliver,**

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

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

#### 50 CFR Chapter III

#### PART 300—INTERNATIONAL FISHERIES REGULATIONS

##### Subpart E—Pacific Halibut Fisheries

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

**Authority:** 16 U.S.C. 773–773k.

2. In § 300.61:

- a. Remove the definition for “Guideline Harvest Level (GHL)”;
- b. Revise the definition for “Individual Fishing Quota (IFQ)”;
- c. Add definitions for “Annual combined catch limit”, “Annual commercial catch limit”, “Annual guided sport catch limit”, “Guided Angler Fish (GAF)”, “GAF permit”, and “GAF permit holder” to read as follows:

##### § 300.61 Definitions.

\* \* \* \* \*

*Annual combined catch limit*, for purposes of commercial and sport fishing in Area 2C and in Area 3A, means the annual total allowable halibut harvest by persons fishing IFQ and by charter vessel anglers.

*Annual commercial catch limit*, for purposes of commercial fishing in waters in and off Alaska, means the annual total allowable halibut harvest by persons fishing IFQ halibut, CDQ halibut, and GAF.

*Annual guided sport catch limit*, for purposes of sport fishing in Area 2C and in Area 3A, means the annual total allowable halibut harvest by charter vessel anglers, except GAF harvested by charter vessel anglers, as determined in § 300.65(c)(4).

\* \* \* \* \*

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

*GAF permit* means an annual permit issued by the National Marine Fisheries Service pursuant to § 300.65(c)(6)(iii).

*GAF permit holder* means the person identified as the GAF permit holder on a GAF permit.

\* \* \* \* \*

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

\* \* \* \* \*

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

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

\* \* \* \* \*

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

(c) *Catch sharing plan (CSP) for Area 2C and Area 3A*—(1) *General*. The Area 2C and Area 3A catch sharing plan:

(i) Allocates the annual combined catch limit for Area 2C and Area 3A between the annual commercial catch limit and the annual guided sport catch limit for the halibut commercial fishing and sport fishing seasons, pursuant to paragraphs (c)(3) and (4) of this section;

(ii) Establishes CSP restrictions for charter vessel anglers in Area 2C and in Area 3A at specified annual combined catch limit levels, pursuant to paragraph (c)(5) of this section; and

(iii) Authorizes the use of Area 2C and Area 3A halibut IFQ as guided angler fish (GAF) for harvest by charter vessel anglers in the corresponding area, pursuant to paragraph (c)(6) of this section.

(2) *Implementation*. The Area 2C and Area 3A CSP annual catch limits and CSP restrictions for charter vessel anglers are promulgated by the Commission as annual management measures and published by NMFS in the **Federal Register** as required in § 300.62.

(3) *Annual commercial catch limits*—(i) The Area 2C and Area 3A annual commercial catch limits are determined pursuant to Tables 1 and 2 of this subpart E, promulgated by the Commission as annual management measures, and published in the **Federal Register** as required in § 300.62.

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

(4) *Annual guided sport catch limits*—(i) The Area 2C and Area 3A annual guided sport catch limits are determined pursuant to Tables 3 and 4 of this

subpart E, promulgated by the Commission as annual management measures, and published in the **Federal Register** as required in § 300.62.

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

(5) *CSP restrictions for charter vessel anglers in Area 2C and Area 3A—(i) General.* CSP restrictions for charter vessel anglers in Area 2C and Area 3A are determined annually in accordance with this section (§ 300.65(c)(5)). NMFS recommends CSP restrictions to the Commission as annual management measures, and publishes the annual management measures in the **Federal Register** as required in § 300.62.

(ii) The CSP restrictions in Area 2C and Area 3A are determined annually using:

(A) The annual combined catch limit for each area determined by the Commission, and

(B) The projected charter vessel anglers' harvest of halibut for each area. The projected charter vessel anglers' harvest of halibut for each area is:

(1) Prepared based on the appropriate CSP restriction for Area 2C and Area 3A, as determined by Tables 5 and 6 of this subpart E; and

(2) Expressed as a percentage of the annual combined catch limit for each area.

(iii) *CSP restrictions.* The CSP restrictions for charter vessel anglers in Area 2C and Area 3A are determined annually by Tables 5 through 8 of this subpart E.

(A) *Maximum length limit under one-halibut daily bag limit.* If the default CSP restriction for charter vessel anglers in Area 2C or Area 3A, as determined by Column 3 in Tables 5 and 6 of this subpart E, limits the number of halibut that may be caught and retained per calendar day by each charter vessel angler to no more than one, the CSP restriction for that area also may include a maximum length limit, to be determined as follows:

(1) If the projected charter vessel anglers' harvest of halibut under the default CSP restriction as a percentage of the annual combined catch limit for an area is greater than the largest value of the target harvest range around the guided sport catch limit for that area, as determined by Column 6 in Tables 5 and 6 of this subpart E, then the CSP restriction in effect is that the number of halibut caught and retained per calendar day by each charter vessel angler in that area is limited to no more than one halibut of a maximum length,

as determined in paragraph (c)(5)(iii)(C) of this section.

(2) If the projected charter vessel anglers' harvest of halibut under the default CSP restriction as a percentage of the annual combined catch limit for an area is less than or equal to the largest value of the target harvest range around the guided sport catch limit for that area, as determined by Column 6 in Tables 5 and 6 of this subpart E, then the CSP restriction is that the number of halibut caught and retained per calendar day by each charter vessel angler in that area is limited to no more than one halibut of any size.

(B) For purposes of this section (§ 300.65(c)(5)(iii)), the following terms are defined as:

(1)  $C$  = Annual guided sport catch limit in pounds for Area 2C or Area 3A as determined in paragraph (c)(4) of this section.

(2)  $H_p$  = Projected charter vessel anglers' harvest of halibut in numbers of fish for Area 2C or Area 3A.

(3)  $w_p$  = Average net weight in pounds of all halibut harvested in Area 2C or Area 3A.

(4)  $W$  = Currently effective Commission equation to convert halibut length to weight under a length limit assuming that all charter vessel anglers in the respective area retain halibut of the maximum head-on length  $L_{cm}$  and expressed as:

$$W = xL_{cm}^y$$

(5)  $L_{cm}$  = Maximum allowable length in centimeters of one halibut caught and retained per calendar day by each charter vessel angler in Area 2C or Area 3A calculated from the currently effective Commission equation to convert halibut length to weight ( $W$ ).

(6)  $L_{in}$  = Maximum allowable length in whole inches (no fractions of an inch) of one halibut caught and retained per calendar day by each charter vessel angler in Area 2C or Area 3A, as determined in paragraphs (c)(5)(iii)(C)(1) through (4) of this section.

(C) As determined by Tables 5 and 6 of this subpart E, each charter vessel angler in Area 2C or Area 3A is limited to catching and retaining one halibut per calendar day with a maximum head-on length of  $L_{in}$ .  $L_{in}$  is the length limit calculated and rounded down to the nearest whole inch as follows:

(1) Calculate the average weight ( $w_p$ ) of projected charter vessel anglers' harvest of halibut in numbers of fish ( $H_p$ ) that results in the annual guided sport catch limit ( $C$ ):

$$C = H_p w_p$$

(2)

$$\frac{C}{H_p} = w_p$$

(3) Substitute  $W$  for  $w_p$  and solve for  $L_{cm}$ :

$$xL_{cm}^y = w_p$$

(4) Multiply  $L_{cm}$  by 0.39 and round down to the nearest whole inch and solve for  $L_{in}$ :

$$0.39L_{cm} = L_{in}$$

(6) *Guided Angler Fish (GAF).* This paragraph (§ 300.65(c)(6)) governs the transfer of Area 2C and Area 3A halibut individual fishing quota (IFQ) to guided angler fish (GAF), the issuance of GAF permits, and GAF use.

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

(B) A GAF permit authorizes a charter vessel angler to retain GAF on board a vessel in the area specified on a GAF permit:

(1) During the sport halibut fishing season promulgated by the Commission's annual management measures and published in the **Federal Register** as required in § 300.62, and

(2) Subject to the GAF use restrictions at paragraphs (c)(6)(iv)(A) through (I) of this section.

(C) On or after 15 days prior to the closing of the commercial halibut fishing season each year, NMFS will return unharvested GAF to the IFQ permit account from which the GAF were derived, subject to paragraph (c)(6)(ii) of this section and underage provisions at § 679.40(e) of this title.

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

(1) A transfer of IFQ to GAF, in which halibut IFQ equivalent pounds, as defined in § 679.2 of this title, are transferred from an Area 2C or Area 3A IFQ permit account, converted to number(s) of GAF as specified in paragraph (c)(6)(ii)(F) of this section, and assigned to a GAF permit account in the same management area;

(2) A transfer of GAF to IFQ, in which GAF in number(s) of fish are transferred from a GAF permit account in Area 2C or Area 3A, converted to IFQ equivalent pounds as specified in paragraph (c)(6)(ii)(F) of this section, and assigned

to the same IFQ permit account from which the GAF were derived; or

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

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

(2) *Application timing.* The Regional Administrator will not approve an Application for Transfer Between IFQ and GAF before annual IFQ is issued for each year or after the automatic GAF return date, which is 15 days prior to the end of the commercial halibut fishing season for that year.

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

(ii) NMFS will provide the reason(s) for disapproval of an Application for Transfer Between IFQ and GAF by mail posted on the date of that decision.

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

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

(4) *IFQ and GAF accounts*—(i) IFQ and GAF accounts affected by either a Regional Administrator approved Application for Transfer Between IFQ and GAF or a return of unharvested GAF to IFQ by NMFS on or after 15 days prior to the closing of the commercial halibut fishing season will change on the date of approval or return. Any necessary permits will be sent with the

notification of the Regional Administrator's decision on the Application for Transfer Between IFQ and GAF.

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

(iii) On or after 15 days prior to the closing of the commercial halibut fishing season, NMFS will convert unharvested GAF from a GAF permit account back into IFQ equivalent pounds as specified in paragraph (c)(6)(ii)(F)(2) of this section, return the resulting IFQ equivalent pounds to the IFQ permit account from which the GAF were derived, and close the GAF permit account to voluntary transfers for that year, unless prevented by regulations at 15 CFR part 904.

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

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

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

(i) Possesses halibut quota share (QS), as defined in § 679.2 of this title, in Area 2C or Area 3A; and

(ii) Has been issued an annual IFQ Permit for Area 2C or Area 3A, as defined in § 679.4(d)(1) of this title, resulting from that halibut QS.

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

(3) The person applying to receive GAF or IFQ currently exists at the time of approval of the transfer.

(4) Other pertinent information requested on the Application for Transfer Between IFQ and GAF has been supplied to the satisfaction of the Regional Administrator.

(5) For a transfer of IFQ to GAF:

(i) The person applying to transfer IFQ must hold at least one unit of halibut QS in either Area 2C and Area 3A, must have received an annual IFQ permit authorizing harvest of IFQ in the commercial fishery in IFQ permit the Commission regulatory area corresponding to the person's QS holding, and must have an IFQ permit account with an IFQ amount equal to or greater than amount of IFQ to be transferred;

(ii) The transfer between IFQ and GAF must not cause the GAF permit issued to the GAF permit holder to exceed the GAF use limits in paragraphs (c)(6)(iv)(F)(1) and (2) of this section;

(iii) The transfer must not cause the person applying to transfer IFQ to exceed the GAF use limit in paragraph (c)(6)(iv)(F)(3) of this section; and

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

(6) For a transfer of GAF to IFQ, unharvested GAF will be transferred to the IFQ permit account from which it derived.

(7) If a Community Quota Entity (CQE), as defined in § 679.2 of this title, is applying for a transfer between IFQ and GAF, the Application for Transfer Between IFQ and GAF by a CQE will not be approved until the Regional Administrator has determined that:

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

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

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

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

(E) *Transfer due to court order, operation of law, or as part of a security agreement.* NMFS may return GAF to the IFQ permit account from which it derived pursuant to a court order,

operation of law, or a security agreement.

(F) *Conversion between IFQ and GAF*—(1) *General*. Conversion between net pounds (whole number, no decimal points) of halibut IFQ and number(s) of GAF (whole number, no decimal points) for Area 2C and Area 3A will use Alaska Department of Fish and Game's estimated average net weight of all halibut harvested by charter vessel anglers in Area 2C or Area 3A during the previous year.

(2) *Conversion calculation*. The net pounds of IFQ transferred to or from an IFQ permit holder (holder i) in Area 2C or Area 3A (area a) will be equal to the number(s) of GAF transferred to or from the GAF account of a GAF permit holder (holder g) in the corresponding area (area a), multiplied by the ADF&G estimated average net weight of all halibut harvested by charter vessel anglers for that area (area a) during the previous year. NMFS will round up to the nearest whole number (no decimals) when transferring IFQ to GAF and when transferring GAF to IFQ. Expressed algebraically, the conversion formula is:  $IFQ_{net\ pounds,ia} = (GAF_{ga} \times average\ net\ weight_a)$ .

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

(iii) *Guided Angler Fish (GAF) permit*—(A) *General*. (1) A GAF permit authorizes a charter vessel angler to catch and retain GAF in that area, subject to the limits in paragraphs (c)(6)(iv)(A) through (I) of this section, during a charter vessel fishing trip authorized by the charter halibut permit, community charter halibut permit, or military charter halibut permit that is assigned to the GAF permit.

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

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

(ii) The permit expires at 11:59 pm on the day prior to the automatic GAF return date. The automatic GAF return date is 15 days prior to the end of the commercial halibut fishing season for that year, Alaska local time;

(iii) NMFS replaces the GAF permit with a modified GAF permit following a NMFS-approved transfer; or

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

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

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

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

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

(7) GAF permit holders must allow an employee of the Alaska Department of Fish and Game or the Commission to enter any area of custody (*i.e.*, any vessel, building, vehicle, live car, pound, pier, or dock facility where fish might be found) subject to such person's control, for the purpose of scientific data collection.

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

(C) *Transfer*. GAF authorized by a GAF permit under this section (§ 300.65(c)(6)(iii)) are not transferable to another GAF permit, except as provided under paragraph (c)(6)(ii) of this section.

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

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

(C) The total number of halibut retained by a charter vessel angler

harvesting GAF cannot exceed the sport fishing daily bag limit in effect for unguided sport anglers at the time of harvest as promulgated by the Commission's annual management measures and published in the **Federal Register** as required in § 300.62.

(D) Retained GAF are not subject to the maximum length limit implemented by the CSP restriction implemented pursuant to paragraph (c)(5)(iii) of this section, if applicable.

(E) Each charter vessel angler retaining GAF must comply with the halibut possession requirements as promulgated by the Commission's annual management measures and published in the **Federal Register** as required in § 300.62.

(F) Except as provided in paragraph (c)(6)(iv)(I) of this section, during the halibut sport fishing season promulgated by the Commission's annual management measures and published in the **Federal Register** as required in § 300.62, no more than:

(1) 400 GAF may be assigned to a GAF permit that is assigned to a charter halibut permit or community charter halibut permit endorsed for six (6) or fewer charter vessel anglers,

(2) 600 GAF may be assigned to a GAF permit issued that is assigned to a charter halibut permit endorsed for more than six (6) charter vessel anglers; and

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

(G) For a person who transfers IFQ to GAF, the halibut QS equivalent, issued as net pounds of halibut IFQ and transferred to GAF, is included in the computation of halibut QS and use caps in § 679.42(f)(1)(i) and (ii) of this title.

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

(I) Restrictions on GAF use for CQEs. The GAF use restrictions in paragraph (c)(6)(iv)(F) of this section do not apply if:

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

(2) A CQE transfers IFQ as GAF to an eligible community resident of that CQE community, as defined for purposes of the Area 2C and Area 3A Catch Sharing Plan in § 679.2 of this title, holding one or more charter halibut permits.

(d) *Charter vessels in Area 2C and Area 3A—(1) General requirements—*

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

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

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

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

(ii) Make the logbook available for inspection upon the request of an authorized officer.

(3) *Charter vessel guide and crew restriction in Area 2C and Area 3A.* A charter vessel guide, charter vessel operator, or crew member in Area 2C or in Area 3A on a vessel with charter vessel anglers on board that are catching and retaining halibut must not catch and retain halibut during a charter vessel fishing trip.

(4) *Recordkeeping and reporting requirements in Area 2C and Area 3A—*

(i) *General requirements.* Each charter vessel angler and charter vessel guide on board a vessel in Area 2C or in Area 3A must comply with the following recordkeeping and reporting requirements (see paragraphs (d)(4)(i) and (ii) of this section), except as specified in paragraph (d)(4)(ii)(C), by the end of the day or by the end of the

charter vessel fishing trip, whichever comes first:

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

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

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

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

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

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

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

(6) *Angler sport fishing license number and printed name.* Before a charter vessel fishing trip begins, record for each charter vessel angler the Alaska Sport Fishing License number for the current year, resident permanent license number, or disabled veteran license number, and print the name of each paying and nonpaying charter vessel angler on board that will fish for halibut. Record the name of each angler not required to have an Alaska Sport Fishing License or its equivalent.

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

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

(9) *Signature.* Acknowledge that the recorded information is correct by signing the logbook data sheet.

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

(C) *GAF electronic reporting confirmation number.* The GAF permit holder is responsible for ensuring that by 2359 hours on the day GAF were retained, the confirmation number issued for a properly reported GAF landings report, as described in paragraph (d)(4)(iii) of this section, is entered on the logbook sheet on which those GAF were recorded.

(iii) *GAF reporting requirements—(A) General—(1)* In addition to the recordkeeping and reporting requirements in paragraphs (d)(4)(i) and (ii) of this section, a GAF permit holder must use the NMFS-approved electronic reporting system on the Alaska Region Web site at <http://alaskafisheries.noaa.gov/> to submit a GAF landings report.

(2) A GAF permit holder must submit a GAF landings report by 2359 hours for each day on which a charter vessel angler retained GAF authorized by the GAF permit held by that permit holder.

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

(B) *Electronic Reporting of GAF.* A GAF permit holder must obtain, at his or her own expense, the technology that they will use for submitting GAF landing reports to the NMFS-approved reporting system for GAF landings.

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

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

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

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

(D) *Information entered for each GAF caught and retained.* The GAF permit

holder must enter the following information for each GAF retained under the authorization of the permit holder's GAF permit into the NMFS-approved electronic reporting system (see paragraphs (d)(4)(iii)(D)(1) through (7) of this section) for each day on which a charter vessel angler retained GAF:

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

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

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

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

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

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

(5) Number of GAF caught and retained under the GAF permit holder's permit number.

(6) Community charter halibut permit only: Community or Port where charter vessel fishing trip began (charter vessel anglers boarded the vessel).

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

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

(2) A GAF landing confirmation number issued by the NMFS-approved electronic reporting system and recorded on the logbook sheet used to record the retained GAF, as required in paragraph (d)(4)(ii)(C) of this section, constitutes confirmation that the GAF permit holder's GAF landing is properly

reported and the GAF permit holder's account is properly debited.

\* \* \* \* \*

4. In § 300.66:

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

b. Revise paragraph (h) introductory text and newly redesignated paragraphs (s), (t), (u), and (v); and

c. Add paragraphs (i), (x), (y), and (z) to read as follows:

**§ 300.66 Prohibitions.**

\* \* \* \* \*

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

\* \* \* \* \*

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

\* \* \* \* \*

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

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

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

(v) Be an operator of a vessel on which one or more charter vessel

anglers on board are catching and retaining halibut in Area 2C and Area 3A during one charter vessel fishing trip.

\* \* \* \* \*

(x) Be an operator of a vessel in Area 2C or Area 3A with one or more charter vessel anglers on board that are exceeding the daily bag limits specified in § 300.65(c)(5).

(y) Be an operator of a vessel in Area 2C or Area 3A with one or more charter vessel anglers on board that possess halibut that has been mutilated or otherwise disfigured in a manner that prevents the determination of size or number of fish, except that each halibut may be cut into no more than two ventral pieces, two dorsal pieces, and two cheek pieces, with skin on all pieces.

(z) Be an operator of a vessel in Area 2C or Area 3A with one or more charter vessel anglers on board that possess halibut that are required to have a head-on length of no more than the maximum length specified under § 300.65(c)(5) and are cut into more than one piece without possessing the entire carcass, with the head and tail connected as a single piece.

5. In § 300.67:

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

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

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

\* \* \* \* \*

(i) \* \* \*

(2) \* \* \*

(v) The charter halibut permit is not assigned to a GAF permit for which the GAF account contains unharvested GAF, pursuant to § 300.65 (c)(6)(iii)(A)(3) and (4);

\* \* \* \* \*

6. Add Tables 1 through 8 to subpart E of Part 300 to read as follows:

TABLE 1 TO SUBPART E OF PART 300—DETERMINATION OF AREA 2C ANNUAL COMMERCIAL CATCH LIMIT

If the Area 2C annual combined catch limit for halibut in net pounds (lbs) is:	and . . .	then the Area 2C annual commercial catch limit in net pounds is equal to the annual combined catch limit multiplied by:
between 0 lbs .....	4,999,999 lbs	82.7%
5,000,000 lbs and greater		84.9%

TABLE 2 TO SUBPART E OF PART 300—DETERMINATION OF AREA 3A ANNUAL COMMERCIAL CATCH LIMIT

If the Area 3A annual combined catch limit for halibut in net pounds (lbs) is:	and . . .	then the Area 3A annual commercial catch limit in net pounds is equal to the annual combined catch limit multiplied by:
between 0 lbs .....	9,999,999 lbs	84.6%
10,000,000 lbs and greater		86.0%

TABLE 3 TO SUBPART E OF PART 300—DETERMINATION OF AREA 2C ANNUAL GUIDED SPORT CATCH LIMIT

If the Area 2C annual combined catch limit for halibut in net pounds (lbs) is:	and . . .	then the Area 2C annual guided sport catch limit in net pounds is equal to the annual combined catch limit multiplied by:
between 0 lbs .....	4,999,999 lbs	17.3%
5,000,000 lbs and greater		15.1%

TABLE 4 TO SUBPART E OF PART 300—DETERMINATION OF AREA 3A ANNUAL GUIDED SPORT CATCH LIMIT

If the Area 3A annual combined catch limit for halibut in net pounds (lbs) is:	and . . .	then the Area 3A annual guided sport catch limit in net pounds is equal to the annual combined catch limit multiplied by:
between 0 lbs .....	9,999,999 lbs	15.4%
10,000,000 lbs and greater		14.0%

TABLE 5 TO SUBPART E OF PART 300—DETERMINATION OF AREA 2C CHARTER VESSEL ANGLER CSP RESTRICTIONS

(Column 1) If the Area 2C annual combined catch limit for halibut in net pounds (lbs) is between:	(Column 2) and:	(Column 3) then the default CSP restriction is that the number of halibut caught and retained per calendar day by each charter vessel angler is limited to no more than:	(Column 4) Under the default CSP restriction (table 5, column 3), the projected harvest by charter vessel anglers as a percentage of the annual combined catch limit is intended to be between:	(Column 5) and:	(Column 6) If the projected harvest by charter vessel anglers using the default CSP restriction (table 5, column 3) is:	(Column 7) then the annual CSP restriction in effect is that the number of halibut caught and retained per calendar day by each charter vessel angler is:
0 lbs .....	4,999,999 lbs	one halibut of any size.	13.8%	20.8%	less than 13.8% of the annual combined catch limit. greater than or equal to 13.8% and less than or equal to 20.8% of the annual combined catch limit.	limited to no more than one halibut of any size.  limited to no more than one halibut of any size.

TABLE 5 TO SUBPART E OF PART 300—DETERMINATION OF AREA 2C CHARTER VESSEL ANGLER CSP RESTRICTIONS—Continued

					greater than 20.8% of the annual combined catch limit.	limited to no more than one halibut with a head-on length of no more than $L_{in}$ as determined in § 300.65(c)(5)(iii)(C).
5,000,000 lbs ...	8,999,999 lbs	one halibut of any size.	11.6%	18.6%	less than 11.6% of the annual combined catch limit. greater than or equal to 11.6% and less than or equal to 18.6% of the annual combined catch limit. greater than 18.6% of the annual combined catch limit.	determined in Table 7 of this subpart E.  limited to no more than one halibut of any size.  limited to no more than one halibut with a head-on length of no more than $L_{in}$ as determined in § 300.65(c)(5)(iii)(C).
9,000,000 lbs ...	13,999,999 lbs	two halibut, but at least one halibut must have 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 halibut may be of any length.	11.6%	18.6%	less than 11.6% of the annual combined catch limit.  greater than or equal to 11.6% and less than or equal to 18.6% of the annual combined catch limit.  greater than 18.6% of the annual combined catch limit.	determined in Table 7 of this subpart E.  limited to no more than two halibut, but at least one halibut must have 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 halibut may be of any length.  limited to no more than one halibut of any size.
14,000,000 lbs and greater		two halibut of any size.	11.6%	18.6%	less than 11.6% of the annual combined catch limit.	limited to no more than two halibut of any size.

TABLE 5 TO SUBPART E OF PART 300—DETERMINATION OF AREA 2C CHARTER VESSEL ANGLER CSP RESTRICTIONS—Continued

					greater than or equal to 11.6% and less than or equal to 18.6% of the annual combined catch limit. greater than 18.6% of the annual combined catch limit.	limited to no more than two halibut of any size.  limited to no more than two halibut, but at least one halibut must have 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 halibut may be of any length.
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TABLE 6 TO SUBPART E OF PART 300—DETERMINATION OF AREA 3A CHARTER VESSEL ANGLER CSP RESTRICTIONS

(Column 1) If the Area 3A annual combined catch limit for halibut in net pounds (lbs) is between:	(Column 2) and:	(Column 3) then the default CSP restriction is that the number of halibut caught and retained per calendar day by each charter vessel angler is limited to no more than:	(Column 4) Under the default CSP restriction (table 6, column 3), the projected harvest by charter vessel anglers as a percentage of the annual combined catch limit is intended to be between:	(Column 5) and:	(Column 6) If the projected harvest by charter vessel anglers using the default CSP restriction (table 6, column 3) is:	(Column 7) then the annual CSP restriction in effect is that the number of halibut caught and retained per calendar day by each charter vessel angler is:
0 lbs .....	9,999,999 lbs	one halibut of any size.	11.9%	18.9%	less than 11.9% of the annual combined catch limit. greater than or equal to 11.9% and less than or equal to 18.9% of the annual combined catch limit. greater than 18.9% of the annual combined catch limit.	limited to no more than one halibut of any size.  limited to no more than one halibut of any size.  limited to no more than one halibut with a head-on length of no more than L <sub>in</sub> as determined in § 300.65(c)(5)(iii)(C).
10,000,000 lbs .....	19,999,999 lbs	one halibut of any size.	10.5%	17.5%	less than 10.5% of the annual combined catch limit. greater than or equal to 10.5% and less than or equal to 17.5% of the annual combined catch limit. greater than 17.5%	determined in Table 8 of this subpart E.  limited to no more than one halibut of any size.  limited to no more than one halibut with a head-on length of no more than L <sub>in</sub> as determined in § 300.65(c)(5)(iii)(C).

TABLE 6 TO SUBPART E OF PART 300—DETERMINATION OF AREA 3A CHARTER VESSEL ANGLER CSP RESTRICTIONS—Continued

20,000,000 lbs .....	26,999,999 lbs	two halibut, but at least one halibut must have 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 halibut may be of any length.	10.5%	17.5%	less than 10.5% of the annual combined catch limit.  greater than or equal to 10.5% and less than or equal to 17.5% of the annual combined catch limit.  greater than 17.5% of the annual combined catch limit.	determined in Table 8 of this subpart E.  limited to no more than two halibut, but at least one halibut must have 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 halibut may be of any length.  limited to no more than one halibut of any size.
27,000,000 lbs and greater .....		two halibut of any size.	10.5%	17.5%.	less than 10.5% of the annual combined catch limit. greater than or equal to 10.5% and less than or equal to 17.5% of the annual combined catch limit. greater than 17.5% of the annual combined catch limit.	limited to no more than two halibut of any size.  limited to no more than two halibut of any size.  limited to no more than two halibut, but at least one halibut must have 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 halibut may be of any length.

TABLE 7 TO SUBPART E OF PART 300—DETERMINATION OF AREA 2C CHARTER VESSEL ANGLER CSP RESTRICTIONS IF A SECOND PROJECTION IS NEEDED

(Column 1) If the Area 2C annual combined catch limit for halibut in net pounds (lbs) is between:	(Column 2) and:	(Column 3) and the projected harvest by charter vessel anglers using the default CSP restriction (table 5, column 3) is:	(Column 4) then the second default CSP restriction is that the number of halibut caught and retained per calendar day by each charter vessel angler is limited to no more than:	(Column 5) Under the second default CSP restriction (table 7, column 4), the projected harvest by charter vessel anglers as a percentage of the annual combined catch limit is intended to be between:	(Column 6) and:	(Column 7) If the projected harvest by charter vessel anglers using the second default CSP restriction (table 7, column 4) is:	(Column 8) then the annual CSP restriction in effect is that the number of halibut caught and retained per calendar day by each charter vessel angler is:
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TABLE 7 TO SUBPART E OF PART 300—DETERMINATION OF AREA 2C CHARTER VESSEL ANGLER CSP RESTRICTIONS IF A SECOND PROJECTION IS NEEDED—Continued

5,000,000 lbs ....	8,999,999 lbs	less than 11.6% of the annual combined catch limit.	two halibut, but at least one halibut must have 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 halibut may be of any length.	11.6%	18.6%	less than or equal to 18.6% of the annual combined catch limit.  greater than 18.6% of the annual combined catch limit.	two halibut, but at least one halibut must have 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 halibut may be of any length.  one halibut of any size.
9,000,000 lbs ....	13,999,999 lbs	less than 11.6% of the annual combined catch limit.	two halibut of any size.	11.6%	18.6%	less than or equal to 18.6% of the annual combined catch limit.  greater than 18.6% of the annual combined catch limit.	two halibut of any size.  two halibut, but at least one halibut must have 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 halibut may be of any length.

TABLE 8 TO SUBPART E OF PART 300—DETERMINATION OF AREA 3A CHARTER VESSEL ANGLER CSP RESTRICTIONS IF A SECOND PROJECTION IS NEEDED

(Column 1) If the Area 3A annual combined catch limit for halibut in net pounds (lbs) is between:	(Column 2) and:	(Column 3) and the projected harvest by charter vessel anglers using the default CSP restriction (table 6, column 4) is:	(Column 4) then the second default CSP restriction is that the number of halibut caught and retained per calendar day by each charter vessel angler is limited to no more than:	(Column 5) Under the second default CSP restriction (table 8, column 4), the projected harvest by charter vessel anglers as a percentage of the annual combined catch limit is intended to be between:	(Column 6) and:	(Column 7) If the projected harvest by charter vessel anglers using the second default CSP restriction (table 8, column 4) is:	(Column 8) then the annual CSP restriction in effect is that the number of halibut caught and retained per calendar day by each charter vessel angler is:
10,000,000 lbs ..	19,999,999 lbs	less than 10.5% of the annual combined catch limit.	two halibut, but at least one halibut must have 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 halibut may be of any length.	10.5%	17.5%	less than or equal to 17.5% of the annual combined catch limit.	two halibut, but at least one halibut must have 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 halibut may be of any length.

TABLE 8 TO SUBPART E OF PART 300—DETERMINATION OF AREA 3A CHARTER VESSEL ANGLER CSP RESTRICTIONS IF A SECOND PROJECTION IS NEEDED—Continued

						greater than 17.5% of the annual combined catch limit.	one halibut of any size.
20,000,000 lbs ..	26,999,999 lbs	less than 10.5% of the annual combined catch limit.	two halibut of any size.	10.5%	17.5%	less than or equal to 17.5% of the annual combined catch limit. greater than 17.5% of the annual combined catch limit.	two halibut of any size.  two halibut, but at least one halibut must have 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 halibut may be of any length.

50 CFR Chapter VI

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

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

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

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

**§ 679.2 Definitions.**

\* \* \* \* \*

*Eligible community resident means:*

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

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

(2) For purposes of the Area 2C and Area 3A catch sharing plan (CSP) in § 300.65(c) of this title, means any individual or non-individual entity who:

- (i) Holds a charter halibut permit as defined in § 300.61 of this title;
- (ii) Has been approved by the Regional Administrator to receive GAF, as defined in § 300.61 of this title, from a CQE in a transfer between IFQ and GAF pursuant to § 300.65(c)(6)(ii) of this title; and
- (iii) Begins or ends every charter vessel fishing trip, as defined in § 300.61 of this title, authorized by the charter halibut permit issued to that person, and on which halibut are retained, at a location(s) within the boundaries of the community represented by the CQE from which the GAF were received. The geographic boundaries of the eligible community will be those defined by the United States Census Bureau.

\* \* \* \* \*

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

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

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

\* \* \* \* \*

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

\* \* \* \* \*

- 9. In § 679.4:
  - a. Add paragraph (a)(1)(xv); and
  - b. Revise paragraph (a)(2) to read as follows:

**§ 679.4 Permits.**

- (a) \* \* \*
- (1) \* \* \*

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

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

10. In § 679.5, revise paragraph (l)(7) to read as follows:

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

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

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

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

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

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

(D) *Submission address.* The Registered Buyer must complete a Registered Buyer Ex-vessel Value and Volume Report and submit by mail to: Administrator, Alaska Region, NMFS,

Attn: RAM Program, P.O. Box 21668, Juneau, AK 99802–1668; by FAX to: (907) 586–7354; or electronically at <http://alaskafisheries.noaa.gov>. Report forms are available on the NMFS Alaska Region Web site at <http://alaskafisheries.noaa.gov>, or by contacting NMFS at 800–304–4846, Option 2.

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

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

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

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

(D) *IFQ landing summary and estimated fee liability.* NMFS will provide to an IFQ permit holder an IFQ Landing Summary and Estimated Fee Liability page as required by § 679.45(a)(2). The IFQ permit holder must either accept the accuracy of the NMFS estimated fee liability associated with his or her IFQ landings for each IFQ permit, or calculate a revised IFQ fee liability in accordance with paragraph (1)(7)(ii)(C)(2)(i) of this section. The IFQ permit holder may calculate a revised fee liability for all or part of his or her IFQ landings.

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

the appropriate values to the different parts of the landings.

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

(G) *Reporting Period.* The reporting period of the IFQ Fee Submission Form shall extend from January 1 to December 31 of the year prior to the January 31 due date.

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

**§ 679.40 Sablefish and halibut QS.**

The Regional Administrator shall annually divide the annual commercial fishing catch limit of halibut as defined in § 300.61 of this title and published in the **Federal Register** pursuant to § 300.62 of this title, among qualified halibut quota share holders. The Regional Administrator shall annually divide the TAC of sablefish that is apportioned to the fixed gear fishery pursuant to § 679.20, minus the CDQ reserve, among qualified sablefish quota share holders.

(c) *Calculation of annual IFQ allocation—(1) General—(i)* The annual allocation of halibut IFQ to any person (person p) in any IFQ regulatory area (area a) will be equal to the product of the annual commercial catch limit as defined in § 300.61 of this title, after adjustment for purposes of the Western Alaska CDQ Program, and that person's QS divided by the QS pool for that area. Overage adjustments will be subtracted from a person's IFQ pursuant to paragraph (d) of this section; underage adjustments will be added to a person's IFQ pursuant to paragraph (e) of this section. Expressed algebraically, the

annual halibut IFQ allocation formula is as follows:

$$IFQ_{pa} = [(annual\ commercial\ catch\ limit_a) \times (QS_{pa}/QS\ pool_a)] - \text{overage adjustment of } IFQ_{pa} + \text{underage adjustment of } IFQ_{pa}.$$

(ii) The annual allocation of sablefish IFQ to any person (person p) in any IFQ regulatory area (area a) will be equal to the product of the TAC of sablefish by fixed gear for that area (after adjustment for purposes of the Western Alaska CDQ Program) and that person's QS divided by the QS pool for that area. Overage adjustments will be subtracted from a person's IFQ pursuant to paragraph (d) of this section; underage adjustments will be added to a person's IFQ pursuant to paragraph (e) of this section. Expressed algebraically, the annual IFQ allocation formula is as follows:

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

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

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

(a) \* \* \*  
 (3) A transfer between IFQ and guided angler fish (GAF), as defined in § 300.61 of this title, is governed by regulations in § 300.65(c) of this title.

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

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

(f) \* \* \*  
 (1) \* \* \*

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

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

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

14. In § 679.45:  
 a. Remove and reserve paragraph (c); and  
 b. Revise paragraphs (a)(1), (a)(2), (a)(3), (a)(4)(i), (a)(4)(ii), (a)(4)(iii), (b),

(d)(2) heading, (d)(2)(i)(A), (d)(2)(i)(B), (d)(2)(i)(C), (d)(2)(ii), (d)(3)(i), (d)(4), (e), and (f) to read as follows:

**§ 679.45 IFQ cost recovery program.**

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

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

(A) Each year, the Regional Administrator will issue each IFQ permit holder a summary of his or her IFQ equivalent pounds landed as IFQ and GAF as part of the IFQ Landing and Estimated Fee Liability page described at § 679.5(l)(7)(ii)(C)(2).

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

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

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

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

(ii) *Value assigned to GAF.* The IFQ fee liability is computed from all net pounds allocated to the IFQ permit

holder that are landed, including IFQ landed as GAF.

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

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

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

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

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

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

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

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

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

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

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

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

(iv) *Effective duration.* The IFQ standard prices will remain in effect until revised by the Regional Administrator by notification in the **Federal Register** based upon new information of the type set forth in this section. IFQ standard prices published in the **Federal Register** by NMFS shall apply to all landings made in the same calendar year as the IFQ standard price publication and shall replace any IFQ standard prices previously provided by NMFS that may have been in effect for that same calendar year.

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

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

(c) [Reserved]

(d) \* \* \*

(2) *Calculating the fee percentage.*

\* \* \*

(i) \* \* \*

(A) The IFQ and GAF landings to which the IFQ fee will apply;

(B) The ex-vessel value of that landed IFQ and GAF; and

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

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

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

where:

“DPC” is the direct program costs for the IFQ fishery for the previous fiscal year, and “V” is the ex-vessel value determined for IFQ landed as commercial catch or as GAF subject to the IFQ fee liability for the current year.

(3) \* \* \*

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

\* \* \* \* \*

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

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

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

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

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

(3) If payment is not received on or before the 30th day after the final agency action, the matter will be

referred to the appropriate authorities for purposes of collection.

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

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

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

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

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

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

(5) Upon final agency action determining that an IFQ permit holder has not paid his or her IFQ fee liability, any IFQ fishing permit held by the IFQ

permit holder is not valid until all IFQ fee liabilities are paid.

(6) If payment is not received on or before the 30th day after the final agency action, the matter will be

referred to the appropriate authorities for purposes of collection.

\* \* \* \* \*

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