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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Parts 300 and 679

[Docket No. 161222999-8773-02]

RIN 0648-BG57

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

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

ACTION: Final rule.

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

halibut fishery, and is intended to promote the goals and objectives of the Northern Pacific Halibut Act of 1982, and other applicable laws.

DATES: This rule is effective on [*INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER*].

ADDRESSES: Electronic copies of the Regulatory Impact/Initial Regulatory Flexibility Analysis/Environmental Assessment (collectively, Analysis) prepared for this action are available from <http://www.regulations.gov> or from the NMFS Alaska Region website at <http://alaskafisheries.noaa.gov>.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted to NMFS, Alaska Region, P.O. Box 21668, Juneau, AK 99082-1668, Attn: Ellen Sebastian, Records Officer, in person at NMFS, Alaska Region, 709 West 9th Street, Room 420A, Juneau, AK; by email to OIRA_Submission@omb.eop.gov; or by fax to 202-395-5806.

FOR FURTHER INFORMATION CONTACT: Kurt Iverson, 907-586-7228.

SUPPLEMENTARY INFORMATION: This final rule implements regulatory amendments to authorize an RQE to participate in the Pacific Halibut and Sablefish Individual Fishing Quota Program (IFQ Program) in International Pacific Halibut Commission (IPHC) Regulatory Areas 2C and 3A in the Gulf of Alaska. NMFS published the proposed rule to authorize an RQE on October 3, 2017 (82 FR 46016). The comment period on the proposed rule ended on November 17, 2017. NMFS received 18 comment letters on the proposed rule. One of the comment letters was outside the scope of this action. Of the remaining 17 comment letters, NMFS identified and considered 19

unique, relevant comments. A summary of the comments and NMFS' responses is provided in the Comments and Responses section of this preamble.

A detailed review of this rule and the rationale for these regulations is provided in the preamble to the proposed rule (82 FR 46016, October 3, 2017). Electronic copies of the proposed rule and the Analysis may be obtained from www.regulations.gov or from the NMFS Alaska Region website at <http://alaskafisheries.noaa.gov>. All public comment letters submitted during the comment period may be obtained from www.regulations.gov.

Background

Authority for Action

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 (halibut) fishery under the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the North Pacific Ocean and Bering Sea (Convention), signed at Ottawa, Ontario, on March 2, 1953, as amended by a Protocol Amending the Convention (signed at Washington, D.C., on March 29, 1979). For the United States, regulations developed by the IPHC are subject to acceptance by the Secretary of State with concurrence from the Secretary of Commerce. After acceptance by the Secretary of State and the Secretary of Commerce, NMFS publishes the IPHC regulations in the **Federal Register** as annual management measures pursuant to 50 CFR 300.62. The interim final rule implementing IPHC regulations for the 2018 fishing season, including regulations affecting sport fishing for halibut and vessels in the charter

fishery in IPHC Regulatory Areas 2C (Southeast Alaska) and 3A (Southcentral Alaska), was published March 20, 2018 (83 FR 12133).

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

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

Summary Background on Management of the Charter Halibut Fishery

A comprehensive history of management of the guided sport fishery for halibut (also referred to herein as the “charter fishery”) was presented in the proposed rule for this action published October 3, 2017 (82 FR 46016). The proposed rule also provides essential background of the commercial halibut and sablefish IFQ Program and how the IFQ Program intersects with management of the charter fishery, primarily through the

Catch Sharing Plan (CSP) that establishes allocations of halibut harvests between the commercial halibut IFQ and charter sectors.

The proposed rule describes the history and development of annual management measures for the charter fishery. The proposed rule also provides a summary of the development of the Charter Halibut Limited Access Program (CHLAP) that established Charter Halibut Permits (CHPs), and provides details on the Guided Angler Fish (GAF) Program, which authorizes limited annual transfers of commercial halibut IFQ as GAF to qualified CHP holders. The proposed rule describes the Community Quota Entity Program (CQE) as well, where eligible communities can form non-profit corporations to purchase catcher vessel quota shares (QS). The IFQ resulting from the QS may then be leased to community residents annually.

As described in the proposed rule and in Section 2.3 of the Analysis, regulatory areas established by the IPHC are referred to as “IPHC Regulatory Areas.” This preamble uses the terms “Area 2C” and “Area 3A” to refer to IPHC Regulatory Areas 2C and 3A, respectively.

Summary of this Action

This final rule will change halibut fishery management in Areas 2C (Southeast Alaska) and 3A (Central Gulf of Alaska). It will implement a regulatory amendment to allow a non-profit RQE to represent the charter sector in Areas 2C and 3A. Sport fishing for Pacific halibut in Areas 2C and 3A is subject to distinct regulations, depending upon whether anglers are guided (charter) or unguided. To provide stability in the charter fishery and to help meet allocation objectives, the Council adopted and NMFS implemented the CHLAP in January 2010. The CHLAP limits the total number of charter

vessel operators that may participate in the guided sport fishery in Areas 2C and 3A. To fish for halibut with charter anglers on board, an operator must have an original, valid CHP on board.

Since 2014, harvests of charter halibut in Alaska have been subject to a CSP that allocates harvests between the commercial halibut IFQ fishery and the charter fishery. To keep the harvests of the charter fishery within its allocation, regulations are developed annually in a cooperative effort between the Council, NMFS, and IPHC.

Regulations for charter anglers are generally more restrictive than regulations for unguided anglers, and have become more stringent as halibut abundance has dropped and charter catch limits have been reduced. Charter angling restrictions vary between Areas 2C and 3A. Typical restrictions include daily and annual limits on the number of fish retained, fish size limits, and closures on specific days of the week for charter halibut fishing.

This final rule will allow the RQE to purchase commercial halibut QS from the commercial halibut sector. The harvest pounds associated with the QS will yield annual Recreational Fishing Quota that will supplement the amount of halibut allocated to the charter sector under the existing CSP. If the RQE obtains enough QS, some or all of the halibut size and bag limits could be relaxed for charter anglers, up to a point where charter anglers could potentially retain up to two fish of any size as a daily bag limit, which is the current daily limit for unguided halibut anglers.

Quota share obtained by the RQE will be purchased on the open market, with prices and terms negotiated between the buyer (RQE) and sellers (commercial halibut QS holders). The regulations allow the RQE to hold QS indefinitely, and to transfer QS back

to the commercial halibut sector. This preamble uses the term “RQE Program” to refer to the regulations that authorize the RQE and determine its activities and responsibilities. Additional detail on the specific provisions that apply to the RQE is provided in the section of this preamble titled “Provisions of Final Rule.”

Purpose and Need

The preamble to the proposed rule (82 FR 46016, October 3, 2017) provided a detailed description of the purpose and need for this final rule. A brief summary is provided here. As stated above, the charter fishery is limited to harvesting its percentage of the Area 2C or 3A combined catch limit allocated under the CSP. Charter catch limits increase or decrease as total halibut abundance increases or decreases. When halibut abundance is relatively low, as it has been in recent years compared to abundance in the 1990s and 2000s, the charter allocations under the CSP are lower, resulting in more restrictive annual management measures.

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

Based on these concerns, in 2015, the Council initiated the analytic process to develop a “market-based mechanism” to allow a non-profit entity to purchase and hold a limited amount of commercial halibut QS on behalf of charter anglers. The intent of the

Council was to provide additional harvest opportunity and less restrictive annual harvest measures for charter anglers in times of low halibut abundance, while complying with total halibut removals under the catch limits established by the IPHC under the CSP. In initiating this effort, the Council sought to balance the objectives of participants in the charter fishery without undermining the goals of the IFQ Program or creating significant adverse impacts to other halibut sectors. A complete history of the development of this action is described in the proposed rule (82 FR 46016, October 3, 2017) and Section 2.2 of the Analysis.

Recreational Quota Entity for Area 2C and Area 3A

This final rule allows an RQE to be established as an eligible entity to purchase halibut QS in Area 2C and Area 3A, with limitations, for use by the charter fishery as a whole. This final rule designates the RQE as an eligible participant in the IFQ Program that can purchase Area 2C and 3A halibut QS for use by all charter halibut anglers in the respective area. Any halibut QS purchased by the RQE will be held by this entity for the common use of charter halibut anglers.

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

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

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

Provisions of Final Rule

RQE Organizational Structure

The Council recommended and NMFS implements the requirement that an RQE must be established as a qualified non-profit entity registered under the laws of the State of Alaska and recognized as exempt from Federal income tax by the Internal Revenue Service (IRS) to purchase and hold halibut QS for use by the charter fishery. The QS held by an RQE could yield RFQ annually. This final rule allows a single non-profit entity to

form to represent and manage separate QS holdings for Areas 2C and 3A. More detailed information on the structure of the RQE is provided in the preamble to the proposed rule (82 FR 46016, October 3, 2017) and in Section 4.8.1.1 of the Analysis.

This final rule adds new definitions in § 679.2 for “recreational fishing quota (RFQ)” and “recreational quota entity (RQE).”

Eligibility

This final rule establishes requirements for the formation of a single RQE that would be eligible to purchase and hold commercial halibut QS for use by the guided halibut sector. The RQE must be a qualified non-profit entity registered under the laws of the State of Alaska and recognized as exempt from Federal income tax by the IRS. To qualify as exempt from Federal income tax, an organization must seek recognition of exemption from Federal income tax under section 501(a) of the Internal Revenue Code.

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

Articles of incorporation are public documents that must be filed with the state agency where the corporation becomes incorporated (e.g., with Alaska’s Division of Corporations, Business, and Professional Licensing). The RQE must be incorporated within the State of Alaska consistent with incorporation requirements applicable to CQEs.

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

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

the NMFS National Appeals Office under the provisions established at 15 CFR part 906. Detailed information on RQE eligibility is provided in the preamble to the proposed rule (82 FR 46016, October 3, 2017) and in Section 4.8 of the Analysis.

This rule adds a new paragraph to § 679.41(n) to describe the application process and eligibility requirements for a prospective RQE.

Restrictions on Transfers

This final rule authorizes two-way transfers of QS. QS acquired by the RQE may be transferred to an otherwise eligible participant in the commercial IFQ fishery. Because QS and the resulting IFQ used in the commercial IFQ fishery is subject to vessel categories and block designations on initially-issued QS—unlike the QS and resulting RFQ used by the RQE, which is exempt from such categories and designations—NMFS will track QS units, IFQ pounds, and vessel category and block designations that apply to ensure that original categories and designations for the commercial IFQ fishery are maintained during the transfer process. Detailed information on transfers of QS between the commercial and charter fishery is provided in the preamble to the proposed rule (82 FR 46016, October 3, 2017) and in Section 4.8 of the Analysis.

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

Annual Limit on Transfers to an RQE

This final rule establishes area-specific annual limits on the amount of halibut QS that can transfer to an RQE. Under this final rule, the RQE may transfer up to the equivalent of 1 percent of the commercial QS units in Area 2C based on the 2015 pool of all QS categories (59,477,396 units). An annual transfer limit was set equivalent to 1.2 percent of the commercial QS pool in Area 3A based on the 2015 pool of all QS

categories (184,893,008 units). For a more detailed description of the rationale for this provision, please see the preamble of the proposed rule (82 FR 46016, October 3, 2017). Annual transfer limits are discussed in further detail in Section 4.8.1.2.2 of the Analysis.

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

Limit on Total QS Holdings by the RQE

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

This final rule limits QS holdings for Area 3A to 12 percent of the 2015 entire commercial QS pool, including categories and blocks of QS units that the RQE is prohibited from purchasing. Twelve percent of the 2015 commercial QS pool in Area 3A equates to 22,187,161 units.

As described in the proposed rule (82 FR 46016, October 3, 2017), this final rule specifies the limits on total QS holdings by the RQE in regulations so that they are clearly defined for fishery participants and will not fluctuate if there are future changes in the Area 2C or 3A QS pools. The limits on RQE holdings of QS are discussed in further detail in Section 4.8.1.2.3 of the Analysis.

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

Limit on GAF Transfers as RQE Holdings Increase

Part of this RQE Program limits the total amount of GAF that may be used annually by CHP holders. The GAF transfer restrictions are adopted so that in any year, the combined amount of RFQ and GAF transferred to CHP holders cannot exceed a poundage equal to the maximum amount of pounds that could be issued as RFQ in Area 2C or 3A. The limit on GAF transfers as RQE QS holdings increase is discussed in further detail in Section 4.8.1.2.4 of the Analysis.

To implement these restrictions on IFQ transfers to GAF, NMFS adds a new paragraph at § 300.65(c)(5)(ii)(D)(1)(iv).

Vessel Category Restrictions

This rule also places limits on the amounts of QS the RQE could hold by vessel category. In Area 2C, the RQE is limited to holding an amount equal to 10 percent of D-category QS and an amount equal to 10 percent of B-category QS, based on the Area 2C 2015 QS pools. Translated to QS units, this rule prohibits the RQE from holding more than 889,548 units of D-category QS, and more than 265,524 units of B-category QS, in Area 2C (see Table 4-40 of the Analysis). In Area 3A, the RQE is prohibited from purchasing or holding D-category QS. The RQE may purchase any amount, up to the annual transfer and cumulative use limits of A-, B-, and C-category QS in Area 3A. The vessel category restrictions are discussed in more detail in Section 4.8.1.2.5 of the Analysis.

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

Block Restrictions

In addition to vessel category restrictions for RQE purchases of QS, this final rule places limits on the size of QS blocks that the RQE may purchase. The RQE is prohibited from purchasing (i.e., receiving by transfer) blocks of QS by category that equate to 1,500 pounds or less (based on 2015 pounds). For Area 2C, this means that the RQE cannot purchase blocked QS of 24,250 units or less. For Area 3A, the RQE is prohibited from purchasing blocked QS of 35,620 units or less. Block restrictions are discussed in more detail in Section 4.8.1.3 of the Analysis.

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

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

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

On October 1 of each year, the RQE's QS holdings will be used as the basis for estimating the number of RFQ pounds to add to the charter allocation under the CSP for the following calendar year. This estimated combined allocation will be used to recommend the charter fishery management measures for the following year. The process and timeline for setting annual management measures remains unchanged. Once the IPHC annual management measures are approved, typically in late February or early March, NMFS will issue pounds of RFQ to the RQE based on the number of QS units held by the RQE on October 1 of the previous year. This RFQ will augment the charter catch limit established under the CSP. The regulations establish October 1 as the date for

determining how many QS units will yield RFQ so that the Council's Charter Committee and the Council is able to estimate the pounds of RFQ that the RQE receives in the following year. The Charter Committee will then be able to factor that amount into its recommendations for the following year's charter management measures.

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

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

In December of each year, the Council will recommend a range of potential charter management measures for Areas 2C and 3A that are expected to limit charter

harvests in an area to the estimated charter catch limit, plus the estimated supplemental pounds provided by the RFQ.

In this final rule, NMFS is revising § 679.40(c)(2) to clarify that NMFS will use the QS pool for the IFQ regulatory area, including Areas 2C and 3A, on record with the NMFS Alaska Region, on January 15 of that year for the purpose of calculating the amount of IFQ and RFQ for that regulatory area for that year. The revision to move the date of record from January 31 to January 15 of each year ensures that IPHC will be able to determine the amount of IFQ and RFQ and that the total allocations are assigned to the respective commercial IFQ and charter fisheries when it adopts annual management measures at its annual meeting in late January.

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

Redistribution of Excess RFQ

This final rule establishes a temporary redistribution of RFQ from the RQE to the commercial IFQ fishery if the RQE holdings of QS provide a charter harvest opportunity greater than the unguided recreational management measures in either Area 2C or 3A. Under this final rule, NMFS will not issue annual RFQ in excess of the adjusted charter catch limit needed for charter anglers to obtain the unguided recreational management measures for that area. For more information on the charter catch limit, see the preamble of the proposed rule (82 FR 46016, October 3, 2017).

The Council and the Analysis use the term “reallocate” to describe the temporary (1-year) redistribution of excess RFQ to the commercial IFQ fishery. NMFS notes that

the term reallocate is often used in other regulations to describe a permanent transfer of harvest privileges from one group of participants to another. NMFS uses the term “redistribute” in this rule to clarify for fishery participants and the public that the distribution of excess RFQ to commercial IFQ fishery participants is in effect for one year, and is not a permanent reallocation.

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

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

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

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

This final rule requires the QS holder to hold the QS in the year prior to the redistribution to meet the clear intent of the Council, as well as in the year that the

redistribution occurs in order to ensure the proper administration of this provision. This requirement ensures that IFQ is issued to persons who hold the underlying QS eligible to receive the redistribution.

Under this final rule, the remaining 50 percent of RFQ in excess of the amount needed to achieve the unguided sport management measures in either Area 2C or 3A will be redistributed equally among all CQEs that held halibut QS in the applicable area (Area 2C or Area 3A) in the year prior to the redistribution as well as in the year that the redistribution occurs. If no CQE holds QS in the applicable area (Area 2C or Area 3A) in the preceding year and in the year that the redistribution occurs, this 50 percent of the excess RFQ will not be redistributed in that area. In other words, the excess RFQ will be unfished or “left in the water” for conservation.

Section 4.8.1.3 of the Analysis describes the options considered by the Council and NMFS in developing this portion of this final rule.

NMFS adds regulations under § 679.40(c) to describe how excess RFQ will be redistributed.

Cost Recovery Fees

The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) at section 304(d)(2)(A) requires that cost recovery fees be collected for the costs directly related to the management, data collection, and enforcement of any limited access privilege programs. This includes programs such as the commercial halibut IFQ Program, under which a dedicated allocation is provided to IFQ permit holders. Fees owed are a percentage, not to exceed 3 percent, of the ex-vessel value of fish landed and debited from IFQ permits. Each year, NMFS sends fee statements to IFQ holders whose

annual IFQ was landed; those holders must remit fees by January 31 of the following year. Under this rule, the RQE is responsible for all cost recovery fees on their annual RFQ.

In years when the RQE holds QS and the RFQ is issued to augment the charter fishery's catch limit, the charter fishery will be effectively using all of this RFQ; therefore, the RQE will be required to pay cost recovery fees on all of its RFQ. Since all annual RFQ issued to the RQE will be considered "used," NMFS will levy the fee calculated for the RQE's annual RFQ pounds that are issued, rather than estimating RFQ harvest at each point of charter landings. The fee will be calculated using the standard price calculated for Area 2C or 3A and the RFQ held by the RQE. This is similar to the method used to apply an ex-vessel value for GAF. The IFQ cost recovery fee will be levied on the RQE each year the RQE holds QS, and the resulting RFQ is issued to augment the catch limit in the charter fishery. All holdings acquired by the RQE on October 1 of the prior year are subject to the IFQ cost recovery fee.

For purposes of cost recovery, the RQE is required to pay fees on all resulting pounds of RFQ, even if the charter fishery's harvest is under its catch limit in Area 2C or 3A for that year. In December of each year, NMFS will 1) determine the standard prices and the cost recovery fee percentage, 2) announce the standard prices and the cost recovery fee percentage in the **Federal Register**, and 3) issue the RQE a fee assessment. The RFQ fee assessment will be based on the number of RFQ pounds added to either the Area 2C or 3A charter catch limit based on QS holdings as of October 1 of the prior year multiplied by the standard price for Area 2C or Area 3A, and multiplied by the cost

recovery fee percentage (approximately 3 percent in recent years). The cost recovery fee payment from the RQE to NMFS is due by January 31 of each year.

Additional information about assessing cost recovery fees for an RQE is provided in Section 4.8.1.4.1 of the Analysis.

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

General Reporting

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

Annual Report

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

The RQE is required to include the following general information in its annual report: 1) any changes to the bylaws, board of directors, or other key management personnel of the RQE during the preceding year; 2) amounts and descriptions of annual administrative expenses; 3) amounts and descriptions of funds spent on conservation,

research, and promotion of the halibut resource and a summary of the results; and 4) amounts and descriptions of all other expenses. Additionally, the RQE is required to submit the following information by regulatory area: 1) the total amount of halibut QS by vessel category and block held by the RQE at the start of the calendar year, on October 1, and at the end of the calendar year; 2) a list of all transfers (purchases, sales, and any other transfers) of halibut QS, including transaction prices if applicable; and 3) the number of CHPs and associated angler endorsements purchased and held by the RQE.

Section 679.41(c)(10)(ii) requires a CQE to submit a timely and complete annual report to NMFS before a transfer of QS will be approved or IFQ will be issued. A similar requirement for the RQE annual report is added at new paragraph § 679.41(c)(11)(i). If the RQE held QS in the previous year and has not submitted a timely and complete annual report by the January 31 deadline, NMFS will not approve a transfer of QS or issue RFQ until the report is submitted. To confirm receipt of the report, this rule requires that the RQE submit the annual report to both the Council and NMFS.

NMFS is adding §§ 679.5(v) and 679.41(c)(11)(i) to include the RQE annual report requirements.

Other Regulatory Changes

NMFS revises the IFQ regulations at 50 CFR part 679 that refer to “an IFQ permit holder” to also include the term “RQE” where applicable.

NMFS revises regulations at 50 CFR part 679 that refer to the IFQ permit that also pertain to the RQE to include the term “RFQ permit account.” NMFS revised this language because the RQE will not be issued an IFQ fishing permit. Instead, NMFS will

establish an RFQ permit account for the RQE that will be used to administer RFQ as described in this rule.

NMFS revises regulations at 50 CFR part 679 that refer to IFQ to include the term “RFQ” when the regulations refer to IFQ and RFQ.

The locations of these minor changes are shown in the table in the regulatory text at the end of this rule.

Appeals

This rule changes several references within §§ 679.41 and 679.45 that describe the former procedure for appealing an IAD to the NMFS Alaska Office of Administrative Appeals. Those procedures are described at § 679.43. NMFS has centralized the appeals process in the National Appeals Office, which operates out of NMFS' headquarters in Silver Spring, MD. The National Appeals Office is now charged with processing appeals that were filed with the Office of Administrative Appeals, Alaska Region. The procedure for appealing an IAD through the National Appeals Office is at 15 CFR part 906 (79 FR 7056, February 6, 2014). This rule updates the regulations referring to appeals procedures for the IFQ Program to refer to 15 CFR part 906 instead of to 50 CFR 679.43.

Changes from Proposed to Final Rule

NMFS made the following changes to the final rule from the proposed rule:

- Section 679.7(f)(3)(i)(C) confirms that fixed gear may not be used to retain RFQ halibut. The regulatory language is changed to conform with wording used in similar regulations in this sub-section. The phrase “as defined in § 679.2” is removed as a reference to fixed gear, and to add clarity, “halibut RFQ” is replaced with “RFQ halibut”.

- The proposed regulatory text at § 679.41(g)(11)(ii), (iii), and (iv) is changed to clarify that the regulatory references for RQE eligibility in these three paragraphs refer to all the paragraphs and requirements that fall under (n)(1) of that section.
- The proposed regulatory text at § 679.42(g)(1)(iii) is changed to more clearly reflect the Council's intent that the RQE is prohibited from receiving halibut QS blocks of 1,500 pounds or less in Areas 2C and 3A, based on 2015 pounds. The phrase "is limited to receiving" was replaced with "may not receive;"
- Section 679.45(f)(4) is changed to clarify that the paragraph applies to IFQ permit holders and to the RQE. The phrase "the IFQ permit holder" is replaced with "the IFQ permit holder or RQE."

Comments and Responses

NMFS received 18 comment letters on the proposed rule. One of the comment letters was outside the scope of this action. Of the remaining 17 comment letters, NMFS identified and considered 19 unique, relevant comments, which are summarized and responded to below. The commenters consisted of individuals, representatives of the charter sector, and representatives of the commercial fishing sector.

Comment 1: Several commenters expressed support for the RQE Program and noted it would bring stability to the charter fishery and create long-term efficiency by allowing transfers of QS between commercial QS holders and the charter fishery and will help lessen restrictive harvest measures for guided anglers whose fishing opportunities are closely linked to the economics of the charter fishery.

Response: NMFS acknowledges the comment.

Comment 2: We support restricting the maximum number of shares transferred annually. We support fixing October 1 QS holdings as the basis for estimating the number of IFQ pounds for the following fishing year. We support NMFS assessing cost recovery fees for RFQ holdings.

Response: NMFS acknowledges the comment, and notes that the provisions the commenter supports are contained in this final rule.

Comment 3: Charter fishing is a main source of income for some Alaskans. Allowing charter catch limits to increase would bring fishing back to the sport fishing industry.

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

Comment 4: The RQE should remain as a non-profit organization and as a single entity. As a single entity, it should not be limited on how much QS it should be able to obtain. The charter fishery should maintain the daily catch limit of two fish per day with no size restrictions. There should be a cap on the number of charter boats.

Response: This final rule establishes the RQE as a single, non-profit entity to represent and manage the separate QS holdings for Area 2C and Area 3A. The Council recommended, and NMFS has adopted, regulations that limit the amount of QS that the

RQE can purchase and use. These regulations are adopted primarily to mitigate the potentially disruptive impacts on the QS market with the entry of the RQE, and to take into account the importance of commercial halibut IFQ on fishing communities.

The current CHLAP program caps the number of charter operations in Areas 2C and 3A. Upon implementation of this final rule, three primary factors will determine whether charter anglers will be able to retain two fish per day of any size: 1) the abundance of halibut and the resulting catch limits established by IPHC and allocated under the CSP; 2) the number of anglers and the size of halibut that are projected to be retained from charter boats; and 3) the amount of QS that the RQE purchases and holds on October 1 of each year, and is made available to augment the charter allocation.

Comment 5: The 11 vessels that NMFS considered large entities should give the RQE 2 percent of their quota.

Response: The Council did not recommend and this final rule does not implement regulations to reallocate QS from specific QS holders to the RQE. The commenter's recommendation is outside of the scope of this action. The commenter notes that some of the QS holders are considered to be large entities. We assume that the commenter is referring to information provided in the initial regulatory flexibility analysis prepared in the proposed rule (82 FR 46016, October 3, 2017). In that analysis, NMFS estimates that the owners of 11 vessels that harvest halibut IFQ would be considered large entities because they showed revenues that exceeded a specific threshold in the most recent year for which we have records (2014). Additional information on the revenues of vessels active in the halibut IFQ fishery is provided in Section 5.6 of the Analysis.

Comment 6: National Standard Guidelines that interpret specific provisions of the Magnuson-Stevens Act state that fishery management plans should prevent overfishing and consider the value of fishery resources to fishing communities.

Response: NMFS notes that the National Standard Guidelines cited by the commenter do not apply to the halibut fishery because it is managed under the authority of the Halibut Act as described in the section of this preamble titled “Authority for Action,” and not the Magnuson-Stevens Act. As described in the proposed rule (82 FR 46016, October 3, 2017), creation of an RQE Program does not change conservation or management of the halibut resource in Areas 2C and 3A. The Analysis at Section 4.8.2 describes how the Council and NMFS considered the value of fishery resources to fishing communities. This action does not change the current process for establishing annual catch limits or the management measures that have been established to meet specific social and economic goals for the halibut IFQ fishery or the RQE Program.

Comment 7: Halibut harvested by the commercial sector are weighed at the point of sale. It would be impossible to determine the pounds of halibut harvested by the charter fleet.

Response: NMFS disagrees. The pounds of halibut harvested by the charter fleet are accounted for by the Alaska Department of Fish and Game logbook program, which is a requirement for all guided angler operations in Alaska. All halibut caught and retained by charter anglers are required to be measured in a standardized fashion. From these measurements, IPHC length-weight conversion tables are used to establish the pounds of halibut harvested by the charter fleet. The logbook program provides the basis for determining the charter sector’s harvests under the CSP and is used to develop annual

management measures for guided anglers in IPHC Areas 2C and 3A. This method of catch accounting will not change when the RQE acquires halibut QS and the associated pounds of halibut from that QS is added to the charter sector allocation under the CSP.

Comment 8: The last twenty years have led to overfishing and halibut are small.

Response: According to the most recent stock assessment by IPHC, Pacific halibut are not considered to be subject to overfishing (see <https://iphc.int>). The stock assessment prepared by the IPHC indicates that halibut stocks in Areas 2C and 3A have declined over the last decade, and that over that period the average size-at-age of adult halibut has become smaller. However, the extent of the decline varies by geographic area, and the reasons behind it cannot be fully explained solely by commercial or charter fishing removals. NMFS also notes that this rule does not increase the combined halibut commercial and charter catch limits adopted by IPHC and implemented by NMFS.

Comment 9: We oppose passage of the RQE Program. The charter sector does not share in the burden of conservation. In times of low abundance, all sectors should share in conserving resources. Stocks are beginning to rebuild after a long decline, and the RQE compromises years of rebuilding.

Response: NMFS disagrees. As described in the preamble to the proposed rule (82 FR 46016, October 3, 2017), under the CSP both the commercial and charter sectors share the burden of conservation by having reduced catch limits in times of low abundance. The RQE Program allows, but does not require, persons in the commercial sector to choose to transfer their QS to the RQE; however, irrespective of those transfers, each sector will continue to be constrained by the combined catch limits established by

the IPHC. This final rule also implements regulations that allow the transfer of QS back to the commercial sector from the RQE.

Comment 10: Neither the Council nor NMFS have defined the “need” for an RQE. Demand for charter services has remained relatively constant in Areas 2C and 3A despite changes to guided angler bag limits.

Response: In December 2014, the Council developed a purpose and need statement that can be found in Section 2.1 of the Analysis. Restrictions have increased for the guided angler sport sector. Allowing an RQE to hold a limited amount of commercial halibut QS on behalf of guided recreational halibut anglers under a “willing seller and willing buyer” approach may result in less restrictive annual harvest measures for guided recreational anglers in times of low halibut abundance, while complying with total halibut removals under the guided halibut catch limits determined by the IPHC.

Comment 11: The RQE will further erode the owner-operated nature of the halibut fleet, undermining goals and principles of the halibut quota share program. The price of halibut quota is already a significant barrier to entry for young fishermen. The RQE creates an unbalanced advantage for the charter fleet to compete for halibut quota in an already fully-utilized fishery.

Response: The Council considered its goals of an owner-operated fleet in the halibut IFQ Program when it developed its recommendation to authorize the RQE. This information, combined with public testimony, factored into the Council’s recommendation and NMFS’ regulations that place constraints on QS purchases by the RQE. Specifically, the Council recommended and this final rule implements provisions that limit RQEs from purchasing more than a specific amount of QS on an annual basis

and in total. This final rule also limits the RQE from purchasing specific categories of QS that are typically purchased by new entrants to the halibut IFQ fishery. The preamble to the proposed rule and Section 4.8.1.2 of the Analysis provides additional information on QS transfer provisions and restrictions implemented by this final rule and how these provisions balance the interests of owner-operators, new entrants, and the charter fishery.

Comment 12: Allowing additional halibut quota to be reallocated to the charter fleet exacerbates local depletion. The charter fleet competes directly with the non-charter resident sport anglers, and this proposal allows the charter sector to harvest most of the halibut near towns. It would be very difficult for a resident Alaskan angler fishing out of a small boat to catch halibut.

Response: This final rule will not result in an increase in the total amount of halibut that may be harvested, and NMFS does not have information to suggest that the transfer of QS from commercial operators to the RQE will necessarily change harvesting locations or patterns. The location of charter fishing and commercial harvests varies widely. In areas where there is a significant overlap in both charter and commercial fishing operations, the localized effects from this action are expected to be minimal as fishing pressure shifts from the commercial sector to the charter section in the same area. Local resource abundance may be a factor in harvest rates, but its influence is intertwined with other significant influences, such as stock abundance, angler demand, and other factors.

Comment 13: Scheduled Council actions to establish an annual CHP renewal process, to stop the transfer of non-transferable CHPs, and address latency capacity in the charter sector will address the charter sector's perceived need for an RQE.

Response: The commenter refers to several actions that are currently under consideration by the Council. The potential effects of these management measures have not been fully analyzed, and the Council has not recommended these actions for implementation. At this time, NMFS does not have the information available to conclusively determine whether these actions under consideration would provide benefits to the charter fishery consistent with this final rule.

Comment 14: Annual limits on RQE QS purchases are essential as are limits on RQE purchases of category D and (in Area 2C) B class quota, and the limit on the size of QS blocks the RQE may purchase. Unused QS should be returned to the commercial sector each season.

Response: This final rule implements all the measures noted in the comment, and described in the proposed rule, that constrain the quantity and type of QS purchases that can be made by the RQE. Although these restrictions may impact the efficacy of the RQE Program, they are implemented primarily to mitigate the effects of the RQE upon QS markets, to prevent an accumulation of excessive shares by the RQE, and to take into consideration the importance of the commercial halibut fishery on fishing-dependent communities. The preamble to the proposed rule described the limitations on the use of QS that apply to RQEs (82 FR 46016, October 3, 2017).

Comment 15: This RQE action does not identify a mechanism for funding the RQE, and an RQE CHP acquisition limit is omitted. We recommend that RQE CHP limits be at least 10 times higher than individual CHP limits.

Response: This final rule does not prescribe the means by which persons or entities finance their purchases of QS. The Council and NMFS did not identify a

management need for the RQE to identify the methods that may be used to purchase QS prior to NMFS considering approving the transfer of QS to the RQE. This final rule does implement annual reporting requirements by the RQE to the Council and NMFS as described in the section of this preamble titled “Provisions of Final Rule.” Among other things, the report requires that each year the RQE detail all QS transactions, including the amount paid for QS, and also for the activities and expenses of the RQE.

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

Comment 16: There are insufficient regulations in the proposed rule to limit how the RQE may profit by buying and selling QS. The RQE undermines the owner-operator characteristics of the fleet and forces individual commercial fishermen to compete against a subsidized entity in the quota share market. The RQE must be prohibited from trading QS on the market for profit. Not limiting RQE acquisition will have an impact to current IFQ Category C shares. The proposed minimum QS block that the RQE may purchase in Area 2C is too low of a minimum. This will create an incentive for IFQ holders to sweep up and sell small blocks to the RQE, limiting blocks available to new IFQ entrants.

Response: This rule establishes that the RQE will be a non-profit entity, created for the purpose of adding social and economic flexibility to the charter fishery. To

accomplish this, the RQE is authorized to purchase a limited amount of QS, which is to be used to provide additional harvest opportunity and less restrictive management measures in times of low abundance. This rule contains provisions for monitoring the RQE activities by requiring an annual report. Among other things, the RQE must document in the report all the buying, selling, and other transfers of QS during the relevant year, including the QS prices paid for or received by the RQE. The annual report must also contain descriptions and amounts of the RQE's expenses during the year. Although all QS transactions, whether between or among sectors, will occur under a "willing seller and willing buyer" scenario, NMFS has implemented several constraints on the amount and type of halibut QS that may be purchased by the RQE. This includes restrictions that prohibit purchases of QS blocks that equate to 1,500 pounds or less. These constraints will likely reduce the efficacy of the RQE Program by limiting the pool of QS that may be purchased by the RQE. However, the Council and NMFS have determined that these constraints are necessary to balance with other considerations, such as the RQE's effects on the availability of QS to commercial fishermen.

Comment 17: There has not been sufficient analysis of the GAF's impacts to justify discontinuing this model of compensated reallocation.

Response: NMFS is not discontinuing the GAF Program. The GAF Program has distinct advantages that are not available through the RQE. GAF are designed to work on an individual operator level by authorizing limited annual transfers of commercial halibut IFQ as GAF to qualified CHP holders. The GAF Program provides additional harvest opportunities for charter anglers by allowing them to retain halibut up to the limit for unguided anglers when charter management measures limit charter anglers to a more

restrictive harvest limit. This program will remain in place for individual CHP holders to receive an IFQ transfer. In some cases, CHP holders also hold QS, and have the opportunity to use their QS either commercially or as a means to augment their charter fishing. The GAF Program is described in more detail in proposed rule for the CSP (78 FR 39122, June 28, 2013). Under this rule, RFQ could not be transferred as GAF.

Comment 18: The incidental bycatch limits for the trawl fleet should be included in the RQE calculation. There should be a mechanism in the RQE action where the RQE could purchase bycatch from the trawl fleet.

Response: The purpose of this final rule is to provide for the transfer of QS between commercial QS holders and the RQE, and not to establish alternative methods for establishing the amount of catch available for commercial and charter operators. The IPHC accounts for incidental bycatch by all vessels when determining total halibut removals and catch limits. This includes the halibut catch limits established for the commercial and charter sectors in Areas 2C and 3A.

Comment 19: The Analysis failed to adequately show the effect this program would have on the stability of the commercial fishermen, processors, and consumers of the product. The action kept touching on possible funding sources that the RQE may use to purchase QS, but ignored the implications of not addressing funding issues which is against National Environmental Policy Act (NEPA) requirements.

Response: The social and economic impacts of this action were analyzed in the regulatory impact review (RIR) (see **ADDRESSES**). Because both commercial and charter fisheries will still be restricted by the total catch limits set for each regulatory area based on halibut abundance, the total removals of halibut and relative timing of the

commercial and charter fisheries are expected to remain the same. Possible funding sources for the RQE's purchase of QS are also discussed in the RIR.

The environmental assessment (EA) provides a comprehensive discussion of this action to authorize an RQE to purchase and hold commercial halibut quota share for use by charter halibut anglers (see **ADDRESSES**). The EA analyzes the impacts of QS holdings and use under a wide range alternative QS use limits. After considering this analysis, NMFS prepared a Finding of No Significant Impact based on the EA analysis. Regardless of the funding mechanism used by the RQE, the EA considered the environmental impact of the transfer of QS from the commercial to the charter fishery consistent with the requirements under NEPA. NMFS disagrees that this rule violates NEPA requirements by not limiting or otherwise determining which funding sources might be appropriate for the RQE.

OMB Revisions to PRA References in 15 CFR 902.1(b)

Section 3507(c)(B)(i) of the Paperwork Reduction Act (PRA) requires that agencies inventory and display a current control number assigned by the Director of the Office of Management and Budget (OMB), for each agency's information collection. Section 902.1(b) identifies the location of NOAA regulations for which OMB approval numbers have been issued. Because this final rule revises and adds data elements within a collection-of-information for recordkeeping and reporting requirements, 15 CFR 902.1(b) is revised to reference correctly the sections resulting from this final rule.

Classification

Regulations governing the U.S. fisheries for Pacific halibut are developed by the IPHC, the Pacific Fishery Management Council, the Council, and the Secretary of

Commerce. Section 5 of the Halibut Act (16 U.S.C. 773c) allows the regional fishery management council having authority for a particular geographical area to develop regulations governing fishing for halibut in U.S. Convention waters as long as those regulations do not conflict with IPHC regulations. The Halibut Act, at sections 773c(a) and (b), provides the Secretary of Commerce with the general responsibility to carry out the Convention with the authority to, in consultation with the Secretary of the department in which the U.S. Coast Guard is operating, adopt such regulations as may be necessary to carry out the purposes and objectives of the Convention and the Halibut Act. This rule is consistent with the Halibut Act and other applicable laws.

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

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a final regulatory flexibility analysis, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as “small entity compliance guides.” The preambles to the proposed rule and this final rule serve as the small entity compliance guide. This action does not require any additional compliance from small entities that is not described in the preambles. Copies of the proposed rule and this final rule are available from the NMFS website at <http://alaskafisheries.noaa.gov>.

Final Regulatory Flexibility Act (FRFA)

This FRFA incorporates the initial regulatory flexibility analysis (IRFA), a summary of the significant issues raised by the public comments, NMFS' responses to those comments, and a summary of the analyses completed to support this action. Section 604 of the Regulatory Flexibility Act (RFA) requires that, when an agency promulgates a final rule under section 553 of Title 5 of the U.S. Code, after being required by that section or any other law to publish a general notice of proposed rulemaking, the agency shall prepare a FRFA. Section 604 describes the required contents of a FRFA: 1) A statement of the need for, and objectives of, the rule; 2) a statement of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a statement of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments; 3) the response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA) in response to the proposed rule, and a detailed statement of any change made to the proposed rule in the final rule as a result of the comments; 4) a description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available; 5) a description of the projected reporting, recordkeeping and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; and 6) a description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other

significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

Descriptions of this action, its purpose, and the legal basis are contained in the preamble to the proposed rule (82 FR 46016, October 10, 2017) and are not repeated here.

Summary of Significant Issues Raised During Public Comment

NMFS published the proposed rule on October 10, 2017 (82 FR 46016). An IRFA was prepared and summarized in the “Classification” section of the preamble to the proposed rule. The comment period closed on November 17, 2017. NMFS received 18 letters of public comment on the proposed rule. None of the comments raised issues in response to the IRFA. One comment requested NMFS require the 11 large entities in the IFQ Program to redistribute 2 percent of their quota to the RQE. No changes were made to this final rule based on this comment. The Chief Counsel for Advocacy of the SBA did not file any comments on the proposed rule.

Number and Description of Small Entities Regulated by Action

This final rule directly regulates three classes of small entities: QS holders, CQEs, and the newly implemented RQE. For RFA purposes only, NMFS established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (NAICS code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$11 million for all its affiliated operations worldwide.

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

NMFS considers commercial halibut fishing vessels as proxies for small entities because IFQ from more than one QS holder is often fished from the same vessel. NMFS estimates that 812 vessels across all IPHC regulatory areas landed halibut in 2014, which in the Analysis is the most recent year of complete data on the value of halibut landings by vessel. Of those, 11 vessels are considered large entities because they showed revenues that exceeded the \$11 million threshold. The remaining 801 vessels are considered directly regulated small entities for this rule. See Section 5.6 of the Analysis for more information.

Recordkeeping, Reporting, and Other Compliance Requirements

The RFA requires a description of the projected reporting, recordkeeping, and other compliance requirements of this rule, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record. This rule requires new information

collections from an RQE. Under this rule, a non-profit entity that wants to become an RQE will need to complete an application and submit it to NMFS for approval. This application requires submission of the entity's articles of incorporation, the corporate by-laws, and a list of key personnel, including the Board of Directors, officers, representatives, and managers. NMFS will approve the first complete RQE application it receives.

If the RQE intends to receive or transfer halibut QS, it will use the “Application for Transfer QS To or From an RQE” available on the NMFS Alaska Region web site at <https://alaskafisheries.noaa.gov/>. Additionally, the RQE is required to submit an annual report detailing its activities to NMFS and the Council. The RQE is also subject to cost recovery fees; therefore, it needs to comply with the existing cost recovery fee payment requirements for IFQ permit holders. These recordkeeping and reporting requirements are expected to be administrative in nature and not require additional professional expertise.

Description of Significant Alternatives That Minimize Adverse Impacts on Small Entities

This rule minimizes the impact on small entities and still meets the objectives for this final rule. The impacts on small entities for this action are defined in the IRFA and are not repeated here. As noted in the IRFA, this final rule is expected to create a net benefit for the directly regulated small entities. The benefits of this action are expected to outweigh the reporting, recordkeeping, and other compliance costs described in the previous section. This action is not expected to have negative economic impacts on the small entities directly impacted by the action.

The Council considered a status quo alternative (Alternative 1) in addition to this final rule, which is Alternative 2, the Council’s preferred alternative. Alternative 1 would

not have provided more benefits to the directly regulated small entities or reduced reporting, recordkeeping, or compliance costs more than the preferred alternative that is implemented by this final rule.

Collection-of-Information Requirements

This final rule contains collection-of-information requirements subject to the PRA, which have been approved by OMB under Control Number 0648-0758 and will be merged with OMB Control Numbers 0648-0272 and 0648-0711.

Public reporting burden is estimated to average per response: 200 hours for Application for a Non-profit Corporation to be Designated as a Recreational Quota Entity; 2 hours for Application for Transfer of QS To or From a Recreational Quota Entity; 40 hours for RQE Annual Report; 1 minute for electronic submission of IFQ Permit Holder Fee Submission Form. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding these burden estimates or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and by e-mail to *OIRA_Submission@omb.eop.gov*, or fax to 202-395-5806.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number. All currently approved NOAA collections of information may be viewed at http://www.cio.noaa.gov/services_programs/prasubs.html.

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 300

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

50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: September 14, 2018.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS amends 15 CFR part 902 and 50 CFR parts 300 and 679 as follows:

Title 15—Commerce and Foreign Trade

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

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

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

2. In § 902.1, in the table in paragraph (b), under the entry “50 CFR”:

a. Add an entry in alphanumeric order for “679.5(v)”; and

b. Revise the entry for “679.41(b), (c)(1) through (9), (d) through (f), (g)(1) through (4), (h) through (k), and (m)”.

The addition and revision read as follows:

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

* * * * *

(b) * * *

| CFR part or section where the information collection requirement is located | Current OMB control number (all numbers begin with 0648-) |
|---|---|
| * * * * * | |
| 50 CFR: | |
| * * * * * | |
| 679.5(v) | -0272 |
| * * * * * | |
| 679.41(b), (c)(1) through (9), (d) through (f), (g)(1) through (4), (h) through (k), (m), and (n) | -0272 |
| * * * * * | |

* * * * *

Title 50—Wildlife and Fisheries

PART 300—INTERNATIONAL FISHERIES REGULATIONS

Subpart E—Pacific Halibut Fisheries

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

Authority: 16 U.S.C. 773-773k.

4. In § 300.65:

a. Add paragraph (c)(1)(iii);

- b. Revise paragraph (c)(4)(i); and
- c. Add paragraphs (c)(4)(iii) and (c)(5)(ii)(D)(I)(iv).

The additions and revision read as follows:

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

* * * * *

(c) * * *

(1) * * *

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

* * * * *

(4) * * *

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

* * * * *

(iii) The amount of QS held by the RQE for Commission regulatory area 2C and 3A as of October 1 each year will be the basis for determining the amount of RFQ

pounds that will be added to the annual guided sport catch limit for the corresponding area in the upcoming year.

(5) * * *

(ii) * * *

(D) * * *

(I) * * *

(iv) In the applicable Commission regulatory area, either Area 2C or Area 3A, the sum of IFQ halibut equivalent pounds, as defined in § 679.2 of this title, from the transfer of IFQ to GAF and the pounds of RFQ issued to the RQE during a calendar year does not exceed an amount that is greater than the amount derived from: 5,947,740 units of Area 2C QS, or 22,187,161 units of Area 3A QS.

* * * * *

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

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

Authority: 16 U.S.C. 773 *et seq.*; 1801 *et seq.*; 3631 *et seq.*; Pub. L. 108-447; Pub. L. 111-281.

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

§ 679.2 Definitions.

* * * * *

Recreational Fishing Quota (RFQ) means the pounds of halibut issued annually to a Recreational Quota Entity to supplement the annual guided sport catch limit under

the catch sharing plan for IFQ regulatory areas 2C and 3A pursuant to § 300.65(c) of this title.

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

* * * * *

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

§ 679.4 Permits.

* * * * *

(d) * * *

(1) * * *

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

* * * * *

8. In § 679.5:

a. Revise paragraphs (l)(7)(ii)(A), (C), and (D); and

b. Add paragraphs (l)(9) and (v).

The revisions and additions read as follows:

§ 679.5 Recordkeeping and reporting (R&R).

* * * * *

(I) * * *

(7) * * *

(ii) * * *

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

* * * * *

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

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

* * * * *

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

* * * * *

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

(2) *Time limits and submittal.* By January 31, the RQE must submit a complete annual report for the prior calendar year to the North Pacific Fishery Management Council, 605 West 4th Ave., Suite 306, Anchorage, AK 99501-2252, and to NMFS-Alaska Regional Administrator, P.O. Box 21668, Juneau, AK, 99802-1668.

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

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

(i) Any changes to the bylaws, board of directors, or other key management personnel of the RQE from the preceding year;

(ii) Amount and description of annual administrative expenses;

(iii) Amount and description of funds spent on conservation and research, including a summary of the results of those expenditures; and

(iv) Amount and description of all other expenses incurred by the RQE.

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

(i) The total amount of halibut QS by category and blocks held by the RQE at the start of the calendar year, on October 1, and at the end of the calendar year;

(ii) A list of all transfers (purchases or sales) of halibut QS, including the transaction price; and

(iii) A description of the number of charter halibut permits and number of angler endorsements purchased and held by the RQE.

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

§ 679.7 Prohibitions.

* * * * *

(f) * * *

(3) * * *

(i) * * *

(C) Use fixed gear to retain RFQ halibut.

* * * * *

10. In § 679.40:

a. Revise paragraphs (b), (c) heading, and (c)(2);

b. Add paragraphs (c)(4) and (g)(2)(iii);

- c. Revise paragraph (h)(3) introductory text; and
- d. Add paragraph (h)(3)(iii).

The revisions and additions read as follows:

§ 679.40 Sablefish and halibut QS.

* * * * *

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

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

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

* * * * *

(4) *RFQ allocation to RQE—(i) RQE QS amounts.* For purposes of calculating RFQ for any fishing year, the amount of halibut QS held by the RQE for either IFQ

regulatory area 2C or 3A for the corresponding IFQ regulatory area will be the amounts on record with the Alaska Region, NMFS on October 1 of the year prior.

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

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

(iii) *Excess RFQ.* NMFS will not issue the RQE any excess RFQ. Excess RFQ is the difference between the amount of RFQ based on the QS held by the RQE and the amount of RFQ needed to provide charter fishery management measures that are equivalent to unguided recreational fishery management measures. If the annual management measures published pursuant to § 300.62 of this title specify charter fishery management measures that are equivalent to the unguided recreational management measures, NMFS will:

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

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

specified in the annual management measures and issue that amount of RFQ to the RFQ permit account.

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

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

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

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

* * * * *

(g) * * *

(2) * * *

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

(h) * * *

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

* * * * *

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

11. In § 679.41:

- a. Redesignate paragraph (c)(11) as paragraph (c)(12);
- b. Add new paragraph (c)(11);
- c. Revise paragraphs (d)(1) and (g)(1); and
- d. Add paragraphs (g)(9) through (11) and (n).

The additions and revisions read as follows:

§ 679.41 Transfer of quota shares and IFQ.

* * * * *

(c) * * *

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

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

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

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

* * * * *

(d) * * *

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

* * * * *

(g) * * *

(1) Except as provided in paragraph (f), (g)(2), (l), or (n) of this section, only persons who are IFQ crew members, or who were initially issued QS assigned to vessel categories B, C, or D, and meet the eligibility requirements in this section, may receive by transfer QS assigned to vessel categories B, C, or D, or the IFQ resulting from it.

* * * * *

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

(10) For transfers of QS from an RQE:

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

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

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

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

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

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

- (A) Revoking authorization of the RQE;
- (B) Disallowing the RQE from receiving any QS by transfer;
- (C) Requiring the RQE to divest of any QS that it holds; and
- (D) Withholding the issuance of RFQ based on any QS that the RQE holds.

(v) The RQE will have the opportunity to appeal the IAD through the National Appeals Office under the provisions established at 15 CFR part 906.

* * * * *

(n) *Transfer of halibut QS to an RQE*—(1) *RQE organizational structure.* (i) The RQE must be a single entity representing IFQ regulatory Areas 2C and 3A.

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

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

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

<https://alaskafisheries.noaa.gov/>). NMFS will approve only one entity as the RQE. A complete application to become an RQE must include:

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

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

(iii) Management organization information, including:

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

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

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

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

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

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

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

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

12. In § 679.42:

- a. Add paragraph (a)(2)(v);
- b. Revise paragraph (f)(1) introductory text; and
- c. Add paragraphs (f)(8) and (g)(1)(iii).

The additions and revision read as follows:

§ 679.42 Limitations on use of QS and IFQ.

(a) * * *

(2) * * *

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

* * * * *

(f) * * *

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

* * * * *

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

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

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

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

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

(g) * * *

(1) * * *

(iii) The RQE may not receive:

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

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

* * * * *

13. In § 679.45:

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

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

c. Revise paragraphs (a)(3), (a)(4)(i), (b)(1), and (f)(2).

The revisions and addition read as follows:

§ 679.45 IFQ cost recovery program.

(a) * * *

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

(2) * * *

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

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

(B) * * *

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

* * * * *

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

* * * * *

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

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

(4) * * *

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

* * * * *

(b) * * *

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

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

* * * * *

(f) * * *

(2) After the expiration of the 30-day period, the Regional Administrator will evaluate any additional documentation submitted by an IFQ permit holder or RQE in

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

* * * * *

§§ 679.41 and 679.45 [Amended]

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

| Location | Remove | Add |
|---|--------------------------------------|--|
| § 679.41(l)(3) introductory text, and (l)(3)(v)(E)(3) | 50 CFR 679.43 | 15 CFR part 906 |
| § 679.41(m)(5)(ii) | § 679.43 | 15 CFR part 906 |
| § 679.45(b)(2) | landed as GAF. | landed as GAF or issued as RFQ. |
| § 679.45(b)(3)(ii) | landed GAF | landed GAF and RFQ issued to an RQE |
| § 679.45(b)(3)(v) introductory text | aggregated IFQ regulatory area 2C | aggregated by IFQ regulatory area 2C or 3A, to GAF landings |

| | | |
|--|---|---|
| | or 3A, to GAF landings. | and RFQ issued to an RQE. |
| § 679.45(d)(2)(i)(A) and (B) | IFQ and GAF | IFQ, RFQ, and GAF |
| § 679.45(d)(2)(i)(C) | include GAF costs. | include RQE and GAF costs. |
| § 679.45(d)(2)(ii) | as commercial catch or as GAF | as commercial catch, RFQ, or GAF |
| § 679.45(d)(4) | IFQ and GAF | IFQ, RFQ, and GAF |
| § 679.45(d)(4) | IFQ permit holder | IFQ permit holder or RQE |
| § 679.45(e)(1) introductory text | IFQ permit holder | IFQ permit holder or RQE |
| § 679.45(e)(1)(i) and (ii) | IFQ permit holder | IFQ permit holder or RQE |
| § 679.45(e)(1)(i) | the IFQ permit holder's estimated fee liability | the estimated fee liability |
| § 679.45(e)(2) | IFQ fishing permit held | IFQ fishing permit or RFQ permit account held |
| § 679.45(e)(2), (f)(1)(i) and (ii), and (f)(5) | IFQ permit holder | IFQ permit holder or RQE |
| § 679.45(f)(1) introductory text | IFQ permit holder has | IFQ permit holder or RQE has |

| | | |
|-------------------------------------|---|---|
| § 679.45(f)(1) introductory text | by the IFQ permit holder. | by the IFQ permit holder or RQE. |
| § 679.45(f)(3) | § 679.43 | 15 CFR part 906 |
| § 679.45(f)(4) | the IFQ permit holder | the IFQ permit holder or RQE |
| § 679.45(g) | IFQ permit holder unless the permit holder requests | IFQ permit holder or RQE unless the IFQ permit holder or RQE requests |
| § 679.45(g) | IFQ permit holder's | IFQ permit holder's or RQE's |
| § 679.45(h) | § 679.43 | 15 CFR part 906 |

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