

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: March 25, 2005.

David I. Maurstad,

*Acting Director, Mitigation Division,
Emergency Preparedness and Response
Directorate.*

[FR Doc. 05-6434 Filed 3-31-05; 8:45 am]

BILLING CODE 9110-12-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 573

[Docket No. NHTSA-2001-10856; Notice 3]

RIN 2127-AI29

Motor Vehicle Safety; Disposition of Recalled Tires

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule; response to petition for reconsideration.

SUMMARY: This document responds to the Rubber Manufacturers Association's (RMA) September 27, 2004 petition for reconsideration of the August 13, 2004 final rule addressing the disposal of recalled tires. RMA requested that NHTSA reconsider a statement in the preamble to the final rule that Section 7 of the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act prohibits the use of recalled tires in the construction of landfills. NHTSA has decided that the TREAD Act does not prohibit the use of recalled tires in landfill construction.

FOR FURTHER INFORMATION CONTACT: For technical issues: Mr. George Person, Office of Defects Investigation, NHTSA. Telephone 202-366-5210. For legal issues: Ms. Jennifer Timian, Office of Chief Counsel, NHTSA. Telephone 202-366-5263.

SUPPLEMENTARY INFORMATION: On November 1, 2000, the TREAD Act, Pub. L. 106-414, 114 Stat. 1800, was enacted. The Act mandated, among other things, that a manufacturer's remedy program for recalled tires "include a plan addressing how to limit, to the extent reasonably within the control of the manufacturer, the disposal of replaced tires in landfills, particularly through shredding, crumbling, recycling, recovery, and other alternative beneficial non-vehicular uses." Section 7 TREAD Act, codified at, 49 U.S.C. 30120(d).

To implement Section 7 of the TREAD Act, on December 18, 2001, we

published a Notice of Proposed Rulemaking that, among other things, would require manufacturer remedy programs to address how the manufacturer will limit the disposal of the recalled tires in landfills and instead channel them into positive categories of reuse. 66 FR 65165. RMA and the National Solid Waste Management Association (NSWMA) commented that certain States and local jurisdictions currently permit the use of scrap tires in landfills in certain applications like lining and engineering fill. Accordingly, RMA asked NHTSA in its final rule to distinguish between the use of tires as landfill construction materials, which RMA argued was an alternative beneficial non-vehicular use encouraged under the statute, and the discarding of tires into landfills.

On August 13, 2004, NHTSA published a final rule implementing Section 7. 69 FR 50077. In the preamble, we rejected the request by RMA and NSWMA that we affirmatively authorize the use of scrap tires in landfills in the final rule.

On September 27, 2004, RMA petitioned the agency to reconsider its views. It asserted that Section 7's and the final rule's language addressed disposal of tires in landfills, and that use of tires in landfill construction does not meet this definition. The association argued that this end-use application is considered in the scrap tire industry and market to be an "alternative beneficial non-vehicular use" specifically allowed and encouraged under the TREAD Act. In support of its petition, RMA provided a copy of its report, "U.S. Scrap Tire Markets, 2003 edition," which noted that the use of shredded tires in landfill construction and operation was the fastest growing civil engineering application for scrapped tires.

RMA's petition presents the narrow question of whether Section 7 of the TREAD Act prohibits the use of recalled tires or parts thereof in landfill construction. We conclude that it does not. Section 7 employs the term "disposal," and also refers to beneficial non-vehicular uses. In the context of Section 7, disposal does not include the use of tires or parts thereof in landfill construction.

This notice is limited to Section 7 of the TREAD Act. Our interpretation of Section 7 does not limit how any Federal, State, or local regulatory authorities address replaced tires under the laws and regulations they administer. Moreover, NHTSA does not authorize or endorse the use of tires or parts thereof in landfill construction or

any other particular application for scrapped tires.

Regulatory Analyses and Notices

This notice does not alter the burdens and impacts discussed in the Regulatory Analyses in the preamble to the final rule. 69 FR 50083-84. To the extent that the Regulatory Analyses may be relevant, they are hereby incorporated by reference. The analysis of the Paperwork Reduction Act is updated as follows. On January 11, 2005, OMB approved the information collection necessitated by the final rule. The approval number associated with this information collection is OMB No. 2127-0004 (expiration date January 31, 2008).

Issued on: March 29, 2005.

Jeffrey W. Runge,

Administrator.

[FR Doc. 05-6471 Filed 3-31-05; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 300 and 679

[Docket No. 040607171-5078-02; I.D. 051804C]

RIN 0648-AR88

Pacific Halibut Fisheries; Subsistence Fishing

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

ACTION: Final rule.

SUMMARY: NMFS issues a final rule to amend the subsistence fishery rules for Pacific halibut in waters off Alaska. This action is necessary to address subsistence halibut management concerns in densely populated areas. This action is intended to meet the conservation and management requirements of the Northern Pacific Halibut Act of 1982 (Halibut Act) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Effective on May 2, 2005.

ADDRESSES: Copies of the environmental assessment (EA), regulatory impact review (RIR), Initial Regulatory Flexibility Analysis (IRFA), and Final Regulatory Flexibility Analysis (FRFA) prepared for this action are available from NMFS, Alaska Region, P.O. Box 21668, Juneau, AK 99802-1668, Attn:

Lori Gravel-Durall, or from NMFS, Alaska Region, 709 West 9th Street, Room 453, Juneau, AK 99801, or by calling the Sustainable Fisheries Division, Alaska Region, NMFS, at 907-586-7228. Send comments on collection-of-information requirements to NMFS at the address specified above and to OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attention: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT:

Bubba Cook, 907-586-7425 or bubba.cook@noaa.gov.

SUPPLEMENTARY INFORMATION:

Management of the fisheries for Pacific halibut (*Hippoglossus stenolepis*, hereafter halibut) in waters in and off Alaska is based on an international agreement between Canada and the United States. This agreement, titled the "Convention between United States of America and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea" (Convention), was signed in Ottawa, Canada, on March 2, 1953, and amended by the "Protocol Amending the Convention," signed in Washington, D.C., on March 29, 1979. This Convention, administered by the International Pacific Halibut Commission (IPHC), is given effect in the United States by the Halibut Act. Generally, fishery management regulations governing the halibut fisheries are developed by the IPHC and recommended to the U.S. Secretary of State. When approved, these regulations are published by NMFS in the **Federal Register** as annual management measures. For 2004, the annual management measures were published February 27, 2004 (69 FR 9231).

The Halibut Act also provides for the North Pacific Fishery Management Council (Council) to develop halibut fishery regulations, including limited access regulations, in its geographic area of concern that would apply to nationals or vessels of the U.S. (Halibut Act, section 773(c)). Such an action by the Council is limited only to those regulations that are in addition to and not in conflict with IPHC regulations, and they must be approved and implemented by the U.S. Secretary of Commerce (Secretary). Any allocation of halibut fishing privileges must be fair and equitable and consistent with other applicable Federal law. This is the authority under which the Council acted in October 2000, to adopt a subsistence halibut policy. This policy was originally implemented by regulations published on April 15, 2003,

at 68 FR 18145 (corrected May 15, 2003 at 68 FR 26230), and codified at 50 CFR 300 under subpart E.

A proposed rule to amend the subsistence halibut policy was published in the **Federal Register** on July 9, 2004 (69 FR 41447). Comments on the proposed rule were invited through August 9, 2004. Forty-one letters were received that included 43 separate comments, which are summarized and responded to below.

The principal elements of this amendment are described and explained in the preamble to the proposed rule and are not repeated here for brevity. In brief, these elements include: (1) changing the boundaries of the Anchorage/Matsu/Kenai non-subsistence area, (2) eliminating gear restrictions in Areas 4C, 4D, and 4E, (3) increasing gear and harvest restrictions in Area 2C, (d) allowing retention of legal sized subsistence halibut with CDQ halibut in Areas 4C, 4D, and 4E, (4) creating a Community Harvest Permit (CHP) system to mitigate increased gear and harvest restrictions in affected areas, (5) creating a Ceremonial and Educational Permit system to recognize customary and traditional tribal practices, and (6) including the Subsistence Halibut Program in the appeals process.

This final rule is substantively the same as the proposed rule published July 9, 2004 (69 FR 41447), except that certain technical changes have been made in response to comments received on the proposed rule. These changes are explained below under the Response to Comments and under Changes from the Proposed Rule.

Response to Comments

NMFS received 41 letters of comment that contained 43 separate comments from various agencies, Alaska Native organizations, and individuals. These comments are grouped into three categories, including: (1) the content of the proposed rule (comments 1-19); (2) alternatives for proposed changes addressed by the Council in December 2004, but not part of this action (comments 20-27); and (3) the overall subsistence halibut policy, but also not part of this action (comments 28-43). The following summarizes and responds to these comments.

Comments on the Content of the Proposed Rule

Comment 1: We oppose the increased gear restriction of 30 hooks per vessel in Area 2C.

Response: The Council recommended increased restrictions in Area 2C primarily to address localized depletion

concerns due to increased subsistence halibut fishing effort. Area 2C has one of the highest population densities with proximity to easily accessible local fishing grounds, which allows for increased exploitation of the halibut resource in those areas. Based on public testimony, written comments, and analysis, the Council determined that increased gear restrictions were necessary in Area 2C to address localized depletion concerns.

The Council proposed superseding the 30-hook-per-person restriction with a 30-hook-per-vessel restriction in Area 2C. By reducing the number of hooks allowed to be fished from a single vessel, the Council effectively reduced the daily catch per vessel when two or more subsistence fishermen are on the vessel. The reduction in allowable gear also would reduce incidental catch of additional species that might also be subject to localized depletion, including rockfish and lingcod. NMFS agrees with this rationale for increasing the subsistence gear restrictions in Area 2C.

Comment 2: We support increased gear and harvest restrictions for all users. However, no distinction should be made in the regulations between Alaska Natives and non-Natives because the Subsistence Halibut Program was intended to help all rural and tribal residents feed their families.

Response: Halibut harvested while subsistence fishing are intended for the sustenance of the persons that are subsistence fishing, their families, and their communities in accordance with cultural traditions of Alaska Native and rural lifestyles. However, the Subsistence Halibut Program is designed to make distinctions among users based on State of Alaska (State) and Council findings of customary and traditional use of halibut by persons living in certain rural Alaska communities and by members of certain Alaska Native tribes. Hence, neither all rural Alaska communities nor all Alaska Native tribes are found to be eligible for subsistence halibut fishing privileges. The Halibut Act provides the authority to allocate or assign halibut fishing privileges among various fishermen.

This rule recognizes the unique customary and traditional practices of tribes by implementing Ceremonial and Educational Permits and a CHP program. These provisions were created to improve the original subsistence rule, which did not adequately meet the customary and traditional needs of Alaska Native tribes and are consistent with the authority granted by the Halibut Act.

Comment 3: Area 2C should be included in the CHP program.

Response: The CHP program applies only in Area 2C as described at 50 CFR 300.65(i) of this action.

Comment 4: Designated subsistence fishers should provide their signature in the harvest logbooks for special permits to verify participation in harvests conducted under the special permits.

Response: The Council authorized the development of special permits to mitigate increased restrictions in areas where rural communities and tribes practiced customary and traditional use of the halibut resource. The CHP, Ceremonial Permit, and Educational Permit were developed in a cooperative effort to provide more local control of monitoring of subsistence halibut removals, thereby increasing the accuracy and availability of harvest data.

Because of the liberal limits applied to the special permits, NMFS recommended a substantial increase in the recordkeeping and reporting requirements under those permits. The permit coordinator is responsible for ensuring that all recordkeeping and reporting is conducted in accordance with regulatory requirements. As part of this responsibility, the permit coordinator must ensure that the designated harvester is identified on the applicable permit log. Any abuse of these recordkeeping and reporting requirements could result in NMFS withholding issuance of future special permits or, in certain cases, an enforcement action. Therefore, NMFS believes that the proposed system using a permit coordinator provides sufficient verification and that requiring the signatures of designated subsistence fishers is unnecessary at this time.

Comment 5: Reducing the number of hooks from a per-fishermen to a per-vessel limit is disadvantaging the public's efforts to feed their families by making subsistence fishing more intensive and costly. Halibut removals are more effectively controlled through bag limits.

Response: NMFS understands the increased cost and effort required under the proposed gear and harvest restrictions. However, the Council imposed increased gear restrictions based on localized depletion concerns. See also Response under Comment 1.

Harvest (bag) limits constitute one method of controlling the removal of a single species. However, harvest limits without gear limits would have less of an effect in reducing incidental catch of non-halibut species. As the amount of allowable gear increases, the potential for incidental catch of non-target species increases. Incidental catch of rockfish and lingcod represents one of the

concerns regarding increased restrictions in high-productivity and high-use areas such as Areas 2C and 3A. Based on the incidental catch and localized depletion concerns, the Council concluded that further gear restrictions were necessary in Area 2C in addition to more restrictive harvest limits.

Comment 6: Increasing restrictions will discourage the affected public from following the rules.

Response: One of the original goals of the Subsistence Halibut Program was to enable Alaska Natives and non-Natives, who have a customary and traditional use of halibut, to continue to take halibut for that purpose. Additionally, the Council stated that it intended to legitimize an existing fishery and not create a new fishery.

In attempting to achieve these goals, the Council proposed certain restrictions consistent with customary and traditional use patterns in specific areas. The Council recognized that each of the areas differed significantly in its demographics, population density, and cultural backgrounds. Based on that recognition, the Council proposed increasing or decreasing restrictions in the different areas to accommodate these differences. In areas where increased restrictions were proposed, the Council determined through public testimony, written comments, and analysis that concerns regarding the subsistence halibut fishery exist. Therefore, NMFS believes that a rational basis exists for increased restrictions in these areas.

Comment 7: We oppose the reduction of the daily retention limit to 20 halibut per vessel per day.

Response: The Council recommended increased restrictions in Area 2C primarily to address localized depletion concerns due to increased subsistence halibut fishing effort in this area. Area 2C has one of the highest human population densities in Alaska with proximity to easily accessible local fishing grounds, which allows for increased exploitation of the halibut resource in those areas. Based on public testimony, written comments, and analysis, the Council determined that increased gear restrictions were necessary in Area 2C to address localized depletion concerns.

The Council proposed superseding the 20-halibut-per-person restriction with a 20-halibut-per-vessel restriction to address localized depletion concerns in Area 2C. The reduction in allowable harvest also would help prevent incidental catch of additional species that might also be subject to localized

depletion, including rockfish and lingcod.

Comment 8: Regulations should not be liberalized to allow tribal members to harvest more halibut. The existing regulations provide a reasonable opportunity for tribes and others to meet their subsistence needs.

Response: The Council received public testimony and written comments indicating that Alaska Native tribes and other affected rural communities would be unable to meet their customary and traditional levels of harvest if increased restrictions were applied beyond those provided in the original subsistence halibut action. In response to these concerns, the Council chose to implement special permits that mitigate increased restrictions in localized areas where certain tribes and rural communities would be adversely affected. NMFS believes the special permits adequately balance the subsistence needs of the affected public with the goal of preventing localized depletion in areas of concern.

Comment 9: We are opposed to the regulation of the halibut fishery with regard to ceremonial use because the Council has no definition of ceremonial use.

Response: The Alaska Native Subsistence Halibut Working Group recommended the creation of Ceremonial Permits and the Council directed an analysis of that recommendation. In the analysis, a qualifying ceremonial use is defined as "one in which the use of halibut is customary and traditional and is related to some act or occasion of cultural significance." This definition would include deaths, potlatches, or other events of cultural significance.

NMFS recognizes that different tribes have different cultural requirements. Therefore, NMFS chose not to list events or occasions that would qualify as "ceremonial" because it might lead to the unintended exclusion of a legitimate culturally significant event from eligibility for a Ceremonial Permit. In an effort to promote cooperative management with the tribes, NMFS instead chose to allow the individual tribes to decide what constitutes a ceremonial purpose and to require a tribe to indicate on their permit application the occasion of cultural or ceremonial significance. NMFS does not intend to make a subjective decision on the validity of an indicated ceremonial purpose. However, if NMFS discovers that a tribe is abusing the Ceremonial Permit it could withhold issuance of future special permits or, in certain cases, initiate an enforcement action.

Comment 10: Any mixing of community development quota (CDQ) fishing and subsistence fishing will compromise enforcement of normal CDQ regulations. Therefore, all halibut should be offloaded and weighed from combined subsistence and CDQ trips. If legal-sized halibut can be retained and not counted as part of the CDQ, any overage above the CDQ enforced trip limit could be claimed as subsistence.

Response: Mixing of CDQ and subsistence fishing halibut harvests will not compromise enforcement. The purpose of allowing subsistence fishermen in Areas 4C, 4D, and 4E to retain subsistence halibut with CDQ halibut is to allow sufficient opportunity to conduct subsistence fishing when conditions are not restricted by sea ice coverage and inclement weather. In short, if a CDQ fisherman who is also eligible to subsistence fish for halibut found himself in good weather when the fish are biting, he could harvest his CDQ allotment and his subsistence halibut as well. This scenario specifically contemplated that the harvest of legal-sized halibut in excess of a CDQ limit would be claimed as subsistence halibut. However, a CDQ fisherman who is not eligible for subsistence fishing would remain subject to an overage violation. Therefore, NMFS does not believe that allowing retention of CDQ and subsistence halibut in Areas 4C, 4D, and 4E will compromise enforcement.

NMFS also disagrees that all subsistence halibut should be offloaded and weighed. NMFS does not believe that the estimated removals in Areas 4C, 4D, and 4E warrant reporting requirements any more stringent than those required of subsistence fishermen in other areas. NMFS understands and agrees with the desire to obtain an accurate accounting of halibut removals. However, according to the 2003 subsistence halibut survey, only 7.9 percent of the total removals of halibut in the subsistence fishery occurred in Areas 4C, 4D, and 4E combined. The estimated subsistence removals in Areas 4C, 4D, and 4E combined account for only 0.1 percent of the total halibut removals in Alaska. Therefore, NMFS sees no reason to increase the reporting burden on the subsistence fishermen in Areas 4C, 4D, and 4E by requiring them to weigh subsistence halibut when caught with CDQ halibut given the relatively low impact on the halibut resource in those areas.

Comment 11: The IPHC supports the proposed change to eliminate gear restrictions in the subsistence fishery in Areas 4C, 4D, and 4E because it

prevents a conflict with commercial fishery gear.

Response: NMFS notes this support.

Comment 12: NMFS should wait for more factual information and should not rely on unsubstantiated perceptions of increased halibut removals because of the subsistence fishery before imposing more restrictions. There should be no increase in restrictions in the Sitka area unless there is factual evidence to justify the increase.

Response: Increased restrictions in Area 2C and the Sitka Local Area Management Plan (LAMP) were recommended by the Council as part of this action in response to public testimony and written comments. Based on public testimony and other available anecdotal information about localized depletion in Area 2C and the Sitka LAMP, NMFS agrees that the restrictions implemented in this action are necessary to address those concerns about localized depletion based on the correlation of increased access in areas of high human population density. See also Response under Comments 1 and 7.

Comment 13: The daily retention limit of 20-fish-per-vessel in Area 2C should be 10 or less.

Response: The Council assessed alternative harvest limits based on the need to balance customary and traditional needs with concerns about localized depletion and the use of the halibut resource by commercial and sport fishermen. Based on these alternatives, the Council determined that 20-halibut-per-vessel strikes the most appropriate balance.

Comment 14: The CHP system as described in the proposed rule is far too restrictive and will not allow for tribes and rural communities to meet their subsistence needs through the customary and traditional use of community harvesters. The CHP system should allow up to five vessels per day to harvest halibut under the proposed system.

Response: The Council recommended a CHP program that would serve as an alternative to proxy fishing in addition to mitigating the impacts of the more restrictive measures in Area 2C. The Council also clarified that a CHP may be issued by NMFS only to Alaska Native tribes or government entities of small, remote coastal communities where a pattern of subsistence harvest is established that includes community harvesters and that such permits may be developed and implemented through cooperative agreements. Also, the Council recommended including restrictions on gear and harvest limits, which are consistent with customary and traditional harvest patterns and

practices, and are sufficient to meet the subsistence needs of the community.

In July 2002, the Council's Halibut Subsistence Committee suggested that only one CHP be issued per tribal or community entity. However, NMFS was left broad discretion to develop the details of the limits and administration of the CHP. Following consultation with tribal representatives, NMFS agrees that each eligible tribe or community should be qualified to receive up to five permit cards with each CHP, which would allow for increased efficiency and would nominally change the administration of the permit at the CHP Permit Coordinator level.

Comment 15: Tribes are concerned about the implications of holding the tribe, the permit coordinator, and the harvester "jointly and severally liable" for violations involving the special permits. It may be hard to convince someone to serve as a permit coordinator if the consequence of a mistake results in jail or a fine.

Response: Because of the liberalized restrictions under the special permits, the Council recommended that the permits be subject to sanctions under NMFS authority. Because of their indirect administration through a tribal or community entity, special permits would be subject to joint and several liability. This approach is consistent with NOAA Enforcement's approach to joint and several liability in other fisheries, which places responsibility for violations on the vessel owner, vessel operator, and, potentially, crew members.

Joint and several liability means each liable party is individually responsible for the entire obligation. For instance, if NMFS finds a CHP harvester in violation of the regulations, depending on the facts of the case, the harvester, the CHP Coordinator, and the tribe may all be subjects of an enforcement action. NOAA Enforcement retains a high degree of discretion in administering penalties under 15 CFR part 904.

Comment 16: Thirty days is too few for an educational permit. Educational permits should last at least 90 days.

Response: The Ceremonial and Educational Permits were based on existing U.S. Fish and Wildlife (USFWS) and National Park Service (NPS) ceremonial permits as requested by the tribes. The permits administered by USFWS and NPS provided a 15-day effective permit period. NMFS decided that 15 days would be too restrictive and burdensome on the tribes and determined that the effective permit period should be 30 days.

NMFS understands that tribes would like the Educational Permits to extend

90 days to accommodate the summer culture camps. However, NMFS believes providing multiple permits over the same 90-day period will enhance data quality and ensure that permits are not misused.

Comment 17: It seems unreasonable to limit the administration of the special permits to only one permit coordinator. What if the permit coordinator gets sick or is unable to attend to their duties? Taking the opportunity to subsistence fish when the time is right is too important to forfeit if the coordinator is not available.

Response: One of the purposes of the CHP Coordinator, Ceremonial Permit Coordinator, or the Instructor is to ensure a verifiable point of contact and sufficient control of the permit. As proposed, the tribes must designate a single individual as the primary person responsible for the Ceremonial or Educational Permit. Making a single individual responsible for the permit ensures accuracy of data and proper administration. However, as proposed, the regulations would not allow for any delegation of permit responsibilities in the event of incapacitation of the permit coordinator. Therefore, the regulations will be revised to indicate that the permit coordinator remains the principal authority responsible for the administration of the permit, but will allow flexibility for an alternate to be designated in the absence or unavailability of the designated permit coordinator.

Comment 18: If a CHP is to expire after only one year, it should be reissued automatically.

Response: The potential for abuse of the liberal provisions of the CHP requires an annual expiration and application process. The annual application process would allow NMFS to assess subsistence halibut harvests, ensure compliance with the CHP regulations, and withhold new permits if necessary.

Comment 19: The CHP program should be open only to tribes and those communities without tribal governments that can demonstrate a customary and traditional pattern of community harvesters.

Response: The Council clarified its intent that all eligible Area 2C communities listed in 50 CFR 300.65(f) would be eligible for CHPs because they are subject to the additional vessel limit restrictions. The Council's Advisory Panel (AP) recommendations specifically referenced the Halibut Subsistence Committee description of the CHP system, which suggested population size (i.e., 500) as a potential criterion for CHP eligibility. However,

the Council did not adopt this recommendation. Therefore, all Area 2C communities, except those in which an eligible tribe exists, and tribes listed in 50 CFR 300.65(f) may request these permits under this rule.

One of the principle tenets of the Subsistence Halibut Program and customary and traditional use is the sharing of halibut with others. Objectively determining at what level of sharing a single individual becomes a "community harvester" would be difficult without defined criteria. Therefore, NMFS does not intend to define a customary and traditional pattern of community harvesters beyond the criteria provided by the Council that establishes the CHP program.

Comments on the Analysis of Proposed Changes Addressed by the Council in December 2004

Comment 20: The halibut stocks in the Sitka LAMP are not suffering from the subsistence halibut fishery.

Response: The Council recommended a longline closure area around Low Island in the Sitka Lamp during the summer months. The local waters south of Low Island are reported to be the center of high halibut production for fishermen using small skiffs. The prohibition on use of longline gear in this area would improve the harvesting success of those fishermen. This action is not intended to resolve a resource conservation issue in the Sitka LAMP, but instead attempts to equitably allocate the resource among different users.

In December 2004, the Council recommended increased gear and harvest restrictions in the Sitka LAMP. This action does not address those recommendations. Proposed implementing rules for the increased gear and harvest restrictions in the Sitka LAMP will be published in the **Federal Register** for public comment at a later date.

Comment 21: Fishing for subsistence halibut from a registered charter vessel should be limited to the immediate family members of the vessel owner.

Response: In December 2004, the Council recommended a revision to the definition of a charter vessel. This action does not address the use of charter vessels for the harvest of subsistence halibut. Proposed implementing rules for the revised charter vessel definition will be published in the **Federal Register** for public comment at a later date.

Comment 22: The number of charter clientele on a charter boat should be capped.

Response: This action does not address the management of charter vessels.

Comment 23: The State of Alaska Department of Fish and Game recommends changing gear restrictions in the Kodiak Island road zone, Prince William Sound, and Cook Inlet to 5-hooks-per-fisher to achieve consistency with State regulations for groundfish in those areas.

Response: In December 2004, the Council recommended increased gear and harvest restrictions in the Kodiak Island road zone. This action does not address those increased gear restrictions. Proposed implementing rules for the gear restrictions in the Kodiak Island road zone will be published in the **Federal Register** for public comment at a later date.

Comment 24: The \$400 annual limit for customary and traditional exchange should be eliminated so that there are no cash sales.

Response: This rule does not address customary trade of halibut. In December 2004, the Council recommended revising the customary trade limit for subsistence halibut. Proposed implementing rules for changes in the customary trade limit will be published in the **Federal Register** for public comment at a later date.

Comment 25: There should be a possession limit equal to the daily bag limit.

Response: This rule does not address a possession limit for halibut. In December 2004, the Council recommended a possession limit for IPHC Areas 2C, 3A, and 3B. Proposed implementing rules for a possession limit will be published in the **Federal Register** for public comment at a later date.

Comment 26: NMFS should impose a 20-fish-per-season or annual limit like commercial halibut because the 20-fish-per-day limit is excessively high and a threat to the fishery.

Response: The 20-halibut-per-day catch limit is not excessive in light of its purpose, which is to provide a reasonable daily catch limit for a person that is subsistence fishing in order to supply food for his or her family and community. Proxy fishing is not provided for under the Subsistence Halibut Program. Therefore, the daily catch limit should be sufficient to allow the fisherman to supply fish to persons other than himself. Moreover, subsistence fishermen typically do not harvest more fish than they actually need and will use.

The customary and traditional practice of subsistence fishing does not include wasting fish. Hence, subsistence

fishing is self-limiting by the amount of halibut that a subsistence fisherman and his or her family can reasonably use for food. Although a 20–fish-per-day limit appears high for an individual, it allows a subsistence fisherman to harvest a sufficient amount of halibut to share with his or her family and community. It does not mean that a subsistence halibut fisherman will be going out every day to catch 20 halibut. The 20–halibut-per-day-limit merely allows for efficiency in harvesting subsistence halibut up to an amount that they will reasonably be able to prepare and store. NMFS intends for the restrictions on halibut harvest in Area 2C to continue to allow for a reasonable daily catch limit while addressing localized depletion concerns.

NMFS also disagrees that subsistence fishermen should be subject to an annual allocation and the associated monitoring and reporting requirements analogous to the individual fishing quota program for the commercial halibut fishery. Surveying registered fishermen is the same methodology used to estimate sport halibut harvests by the State of Alaska and NMFS does not believe the subsistence halibut fishery should be subjected to a more robust estimation procedure than is the sport halibut fishery when, according to existing data, the latter group harvests several times as many halibut as the former. Therefore, NMFS does not believe the subsistence fishery should be subject to an annual limit or quota and the associated monitoring and reporting requirements as the commentator would suggest.

Nevertheless, subsistence use of halibut may conflict with other uses of the resource, particularly in more populated areas of Alaska. In response to this concern, the Council in December 2004, recommended additional gear and harvest restrictions in the densely populated areas of the Sitka LAMP and the Kodiak Island road zone in addition to a possession limit in IPHC Areas 2C, 3A, and 3B. However, this action does not address the Council's December recommendations. Proposed implementing rules for the Council's December recommendations will be published in the **Federal Register** for public comment at a later date.

Comment 27: Recordkeeping requirements should be imposed on subsistence fishermen to track customary trade of halibut. Customary trade can also lead to inaccurate data on the actual level of subsistence harvest because it encourages halibut IFQ holders to characterize “home pack” as subsistence harvest.

Response: This rule does not address customary trade of halibut. In December 2004, the Council recommended revising the customary trade limit for subsistence halibut. Proposed implementing rules for customary trade of subsistence halibut will be published in the **Federal Register** for public comment at a later date.

Comments Directed at the Overall Subsistence Halibut Policy

Comment 28: Commercial IFQ permit holders are using the subsistence fishery as a means to increase their quota without proper accounting and are fishing for untold family members. The subsistence halibut regulations on retention and customary trade remain too permissive, allowing for large scale abuses by commercial interests such as lodge operators and the entry of subsistence halibut into commercial markets.

Response: One of the purposes of the Subsistence Halibut Program was to allow for the customary and traditional practice of sharing. This purpose is achieved by allowing harvesters to retain halibut beyond their own immediate needs for distribution to members of their family, friends, or others in the community. Under 50 CFR 300.66(h) retention of subsistence halibut with commercial halibut is prohibited except in limited circumstances in Areas 4C, 4D, and 4E. Additionally, under 50 CFR 300.66(j), it is unlawful for persons to retain or possess subsistence halibut for commercial purposes, cause subsistence halibut to be sold, bartered or otherwise enter commerce, or solicit exchange of subsistence halibut for commercial purposes. Therefore, fishing for or retaining subsistence halibut by an IFQ holder when commercial fishing for halibut or allowing subsistence halibut to enter commerce would be illegal.

NOAA Enforcement will pursue identified abuses of the Subsistence Halibut Program, including any violations of the regulations regarding customary trade. NMFS also encourages anyone who observes illegal activity in the subsistence halibut fishery to contact NOAA Enforcement.

Comment 29: Subsistence halibut should be required to be marked or identified in some manner, and mandatory logs or reports of fishing locations, quantities harvested, and amounts of gear used, should be required.

Response: The harvest of subsistence halibut and certain species taken incidental to subsistence halibut fishing is estimated based on the subsistence halibut survey. This survey indicates

that subsistence halibut harvests are low relative to other sources of halibut fishing mortality. Hence, NMFS determined that the estimation of subsistence harvests does not need to be any more precise, or the reporting requirements any more robust than those used for estimating the sport harvest of halibut. Sport harvest of halibut is 9.3 percent of total halibut removals, which is substantially larger than subsistence harvest, which is 1.3 percent of total halibut removals.

Marking fish would constitute a regulatory burden with no corresponding enforcement or data collection value.

Comment 30: The non-subsistence areas in Juneau, Sitka, and Ketchikan have wrongfully restricted Alaska Native's right to subsist in areas that have been traditionally used to subsistence fish for halibut.

Response: The Council adopted and NMFS approved the definition developed by the Alaska Joint Board of Fisheries and Game for non-subsistence areas. The designated areas include the Anchorage-Matsu-Kenai, Prince William Sound, Juneau, and Ketchikan non-subsistence areas as defined in the Alaska Administrative Code (5 AAC 99.105) and 50 CFR 300.65. No subsistence fishing for halibut may occur within the boundaries described under these designations. Since the implementation of the Subsistence Halibut Program, NMFS and the Council received public testimony and written comments stating the non-subsistence areas exclude eligible tribes from their customary and traditional fishing grounds and result in a safety hazard by forcing eligible subsistence fishermen to travel excessive distances to fish for subsistence halibut.

In December 2004, the Council recommended allowing the use of Ceremonial and Educational Permits in the non-subsistence areas. Proposed implementing rules for allowing the Ceremonial and Educational Permits in non-subsistence areas will be published in the **Federal Register** for public comment at a later date.

Comment 31: Alaska Natives have customary and traditional use rights which supersede State and Federal restrictions in the Subsistence Halibut Program. Subsistence fishing for halibut should have priority over commercial or sport fisheries.

Response: The Halibut Act, under which the Subsistence Halibut Program is authorized, provides for fair and equitable allocation of halibut fishing privileges among U.S. fishermen, but does not establish an order of priority for those allocations. Allocation policy

is made by the Council. NMFS will review policy recommendations for fairness, equity, and consistency with the Halibut Act and other applicable law.

Comment 32: NMFS should employ a catch record card (CRC) system for the Subsistence Halibut Program.

Response: Although the suggested CRC method for estimating subsistence harvests is a reasonable alternative to the methodology used in the subsistence halibut survey conducted by ADF&G, the CRC method would be more complex and burdensome for the subsistence fishermen. The suggested CRC method presents the following problems: (1) agency action would be required to record and calculate the data reported on the CRCs, (2) the CRC method may produce a marginal increase in the precision and accuracy of the subsistence halibut harvest estimates, but surveying registered fishers is the same methodology used to estimate sport halibut harvests in Alaska and it is not clear why the subsistence halibut fishery should be subjected to a more robust estimation procedure than is the sport halibut fishery when, according to existing data, the latter harvests several times as many halibut as the former, (3) conducting a mail survey in parallel with a CRC requirement would substantially increase the reporting burden on affected fishermen, and (4) the SHARC system serves the same purpose, i.e., to distinguish the group of persons who intend to fish for subsistence halibut from the universe of those eligible to do so. This burden may be justified in the future, based on experience with the survey method, but for now is deemed unnecessary.

Comment 33: NMFS should set a size limit on halibut in order to protect future stocks.

Response: Size limits for biological purposes are established by the IPHC and do not represent an allocation measure assigned to the Council or NMFS under the Halibut Act. Proposals for biological management measures for halibut may be submitted to the IPHC.

Comment 34: Subsistence fishermen should be required to retrieve their gear in a timely manner.

Response: Currently, no regulations exist in any Federally managed fishery in the North Pacific that restricts the amount of time any form of gear is allowed to remain or "soak" in the water. Moreover, NMFS has no information on which to base such a restriction. Therefore, NMFS has no intention of regulating the soak time of subsistence fishing gear until information on the need for and

implementation of such a management measure is developed.

Comment 35: NMFS should cooperate more with the tribal representatives to gather information about the subsistence fishery.

Response: Executive Order 13175 directs agencies to consult and coordinate with tribes on regulatory issues. NMFS regularly consults with Alaska Native representatives through the Alaska Native Subsistence Halibut Working Group. NMFS agrees that cooperating with the affected Alaska Native tribes will foster trust between the agency and subsistence fishermen and generally assure the success of the Subsistence Halibut Program. In developing its subsistence policy, the Council specifically recommended cooperative agreements with tribal, state, and Federal governments for harvest monitoring and general oversight of issues affecting subsistence halibut fishing. NMFS intends to continue to adhere to the Council's guidance and to consult with Alaska Native tribal representatives.

Comment 36: The subsistence halibut fishery should be discontinued and a valid accounting made of the commercial catch.

Response: The subsistence halibut fishery occurred for a long time before NMFS recognized longstanding customary and traditional practices among Alaska Native and rural residents of Alaska through regulations. The subsistence halibut fishery serves a valid purpose in allowing those eligible to provide sustenance for themselves, their families, and their communities. NMFS believes that the Subsistence Halibut Program has been successful in achieving that purpose. Therefore, NMFS does not intend to discontinue the Subsistence Halibut Program.

This rule does not address the commercial halibut fishery. The commercial catch of halibut is managed through an individual fishery quota (IFQ) system. The IFQ program provides a specific allocation of the total allowable catch of a species or fishery to a qualified person. Fishing for that allocation is subject to strict recordkeeping and reporting requirements and the responsible person may not exceed that limit without significant penalties. Consequently, the IFQ halibut fishery management system constitutes an appropriately valid accounting of IFQ halibut and sablefish.

Comment 37: Regulations should legitimize the existing halibut subsistence fishery without expanding or creating a new one.

Response: One of the stated goals of the original subsistence halibut action was to formalize a heretofore unrecognized fishery (68 FR 18145, April 15, 2003, EA/RIR). In the original analysis for the Subsistence Halibut Program the Council originally estimated harvest of subsistence halibut to be approximately 1.5 million pounds net (68 FR 18145, April 15, 2003, EA/RIR). The subsistence halibut survey conducted by ADF&G for 2003 indicates with a relatively high degree of confidence that the subsistence halibut fishery removed only 1.041 million pounds net. Prior estimates for subsistence halibut removals in individual IPHC areas are also fairly consistent with findings in the subsistence halibut survey. For instance, modest increases to subsistence halibut removals were recorded in Areas 2C and 3A of roughly 125,000 pounds each, but little or no increase was measured in the remaining IPHC areas. Therefore, based on the best available information provided in the 2003 subsistence halibut survey, NMFS believes that it has recognized in regulations the existing halibut subsistence fishery without expanding or creating a new one.

Comment 38: NMFS seriously underestimated interest in subsistence halibut fishing in Alaska, which has resulted in higher levels of subsistence halibut harvest than originally anticipated.

Response: The analysis prepared for the original Subsistence Halibut Program estimated that approximately 89,000 individuals would be eligible to harvest subsistence halibut (68 FR 18145, April 15, 2003, EA/RIR). NMFS originally estimated that approximately 10 percent of the eligible population would apply for the Subsistence Halibut Program. Thus, NMFS originally anticipated approximately 8,900 individuals to apply for and potentially participate with a subsistence halibut registration certificate.

According to the recent subsistence halibut survey conducted by ADF&G, of the 11,625 individuals registered to fish for subsistence halibut only an estimated 4,935 individuals actually fished in the subsistence halibut fishery. Therefore, actual participation in the fishery is well below the original estimate.

Additionally, the analysis estimated harvest of subsistence halibut would be approximately 1.5 million pounds net (68 FR 18145, April 15, 2003, EA/RIR). The subsistence halibut survey conducted by ADF&G for 2003 indicates with a relatively high degree of confidence that the subsistence halibut

fishery removed only 1.04 million pounds net, which is considerably less than the Council's original estimate of 1.5 million pounds net. Therefore, actual subsistence halibut harvest is lower than originally anticipated as indicated by the best available data.

Comment 39: NMFS has failed to set adequate limits for the new subsistence halibut fishery or for the unguided sport fishery for halibut.

Response: The gear and harvest restrictions proposed by the Council and implemented by NMFS strike an adequate balance between the needs of subsistence fishermen and conservation of the resource. See also Response under Comments 1 and 7.

This rule does not address the sport fishery for halibut.

Comment 40: Inaccurate estimates by NMFS of the actual levels of subsistence halibut harvest pose a risk to the halibut biomass as a whole, especially in light of recent IPHC data estimating that the exploitable biomass of halibut will continue to decline. This will potentially result in adverse effects to the halibut resource and all users of the halibut resource.

Response: In the original analysis for the Subsistence Halibut Program, the Council estimated total harvest for the subsistence fishery at 1.5 million pounds net (68 FR 18145, April 15, 2003, EA/RIR). The subsistence halibut survey conducted by ADF&G for 2003 indicates with a relatively high degree of confidence that the subsistence halibut fishery removed only 1.04 million pounds net, which is considerably less than the Council's original estimate. Additionally, the subsistence halibut survey indicates that only 1.3 percent of the total halibut removals in Alaska are attributed to the subsistence fishery. The level of subsistence halibut removals for subsistence is far less than the commercial harvest (73.5 percent), bycatch in other commercial fisheries (13.9 percent), the sport harvest (9.3 percent), or even wastage within the commercial halibut fishery (2.0 percent). Therefore, no reasonable basis exists to indicate the subsistence fishery poses a conservation risk or will adversely affect the halibut resource.

Nonetheless, the allocation for the commercial fishery may be adversely affected as the IPHC calculation of exploitable biomass continues to decrease. Recent subsistence and sport removals have tended to either remain constant or increase consistent with population trends and economic factors in Alaska. Because subsistence and sport caught removals are deducted from the exploitable biomass before

allocation to the commercial fishery, this could result in a lower proportional share of the overall halibut resource for commercial exploitation as biomass decreases.

Comment 41: NMFS should not allow retention of any sport or commercial fish species with subsistence halibut because it increases the risk that subsistence halibut could be used clandestinely as bait, sold, or abused in other ways.

Response: The current halibut regulations prohibit the retention of subsistence halibut with commercial or sport caught halibut with limited exceptions in the Bering Sea. However, no prohibition exists regarding the retention of other commercial or sport caught species with subsistence halibut. For instance, a subsistence halibut fisherman could lawfully retain Dungeness crab caught using a sport fishing license along with subsistence halibut. Likewise, a commercial salmon troller could retain subsistence halibut along with commercially caught salmon, provided he or she is an eligible subsistence fisherman and abides by the gear and harvest restrictions for subsistence halibut.

NMFS currently does not perceive a problem with allowing the retention of sport caught fish of other species with subsistence halibut. Fishermen often harvest and retain a variety of species simultaneously subject to their personal tastes and subsistence needs. However, NMFS may seek to restrict retaining sport caught fish of other species with subsistence halibut in the future if available information suggests that allowing that practice adversely affects management of the Subsistence Halibut Program.

NMFS recognizes that a "substitution effect" could occur when a commercial fisherman has the opportunity to retain subsistence halibut with commercial fish of other species. This means the salmon troller might retain a subsistence halibut for personal use where he otherwise would have retained a commercially caught salmon. There potentially would also be an "income effect" that would encourage the salmon troller to sell the commercially caught salmon he might have otherwise kept absent the availability of subsistence halibut. However, there are many variables that might influence a commercial fisherman to substitute subsistence halibut for salmon or any other commercially caught species and retention of subsistence halibut is self limiting to the needs of the individual, their family, or their community. Therefore, NMFS does not believe there is sufficient reason to restrict the

retention of subsistence halibut along with commercially caught fish of other species. Nonetheless, NMFS encourages the commentator to provide his comment to the Council for further review and consideration.

Comment 42: A full EIS should have been prepared for the original proposed subsistence halibut rules because substantial uncertainty and biological controversy exists. The Subsistence Halibut Program underestimates the magnitude of the actual subsistence halibut harvest and insufficiently discerns areas where harvest impacts on halibut and other species are likely to be concentrated.

Response: For the original subsistence halibut policy, the Council prepared an environmental assessment (EA) that analyzed and described the impact on the human environment that would result from implementation of this action. The EA indicated that the preferred alternative for the Subsistence Halibut Program did not pose public health and safety impacts, had no known risks to the human environment, and was not expected to cause significant cumulative impacts. NMFS believes that the EA adequately addressed the impact on the human environment and appropriately concluded that there were no significant cumulative impacts.

Comment 43: There is an unacceptable risk of cumulative impacts on non-halibut species of fish that will be retained as bycatch by subsistence halibut fishermen.

Response: The EA for the original Subsistence Halibut Program used incidental catch rates for commercial longline gear to estimate potential incidental catch in the subsistence halibut fishery. The EA estimated that halibut longline gear could result in incidental catch rates of 10–18 percent for rockfish in Area 2C; 27 percent for sablefish and 12 percent for Pacific cod in the Gulf of Alaska; and 15 percent for rockfish, 29 percent for sablefish, 14 percent for Pacific cod and 11 percent for Greenland turbot in the Bering Sea and Aleutian Islands. Although the estimates of these percentages based on commercial incidental catch rates provide an indication of potential incidental catch rates in the subsistence halibut fishery, no directed studies have been done to assess the effects of the subsistence halibut fishery on non-halibut species. However, as part of the 2003 subsistence halibut survey, the incidental catch of rockfish and lingcod was estimated in the subsistence halibut fishery. The increased restrictions for Area 2C were based in part on the potential incidental catch of rockfish

and lingcod in the subsistence halibut fishery. Therefore, for the purposes of this response, NMFS will focus on Area 2C.

The ADF&G Sport Fish Division survey for Southeast Alaska (IPHC Area 2C) indicates that 55,394 rockfish and 10,656 lingcod were harvested in the sport fishery in 2003. The subsistence halibut survey indicates that 14,870 rockfish and 3,298 lingcod were harvested from Area 2C as incidental catch in the subsistence halibut fishery in 2003. Therefore, the subsistence fishery harvested only 31 percent of the amount of lingcod and 27 percent of the amount of rockfish harvested by the sport fishery in Area 2C.

Commercial landings for lingcod and rockfish are reported in landed pounds and no adequate conversion factors exist to extrapolate commercial landed pounds into total individual fish harvested or vice versa for comparison with sport and subsistence harvests. However, the ADF&G Commercial Fish division data for 2003 indicate that 1,729,812 pounds of rockfish and 288,173 pounds of lingcod were landed from Area 2C.

Given the relatively low numbers of rockfish and lingcod retained by subsistence fishermen as indicated by the subsistence halibut survey in comparison with the commercial and sport fisheries, NMFS does not believe that the subsistence halibut fishery will have a significant direct or cumulative impact on non-halibut species. Consequently, NMFS does not believe that the subsistence halibut fishery represents an unacceptable risk to the non-halibut species caught as incidental catch in the fishery.

Changes from the Proposed Rule

The comments received on the proposed rule made some suggestions for change with which NMFS agrees. Hence, NMFS has changed regulatory text in this action from what was published in the proposed rule. None of these changes make substantive changes to the subsistence halibut management program described in the preamble to the proposed rule. These changes are identified and explained as follows.

1. NMFS intended that the fishing gear used under a CHP be limited to 30 hooks per person in possession of a valid subsistence halibut registration certificate and on board the vessel and not exceed 3 times the per-person hook limit. NMFS also intended that the gear used under a Ceremonial or Educational Permits be limited to 30 hooks per vessel. These limitations were clear in the preamble to the proposed rule. The regulatory text published in the

proposed rule, however, was not explicitly clear. This lack of specificity and potential ambiguity in the proposed regulatory text was discovered subsequent to the publication of the proposed rule. Hence, the regulatory text at §§ 300.65(g)(1)(I), 300.65(i)(3)(iv), and (j)(3)(vi) is changed from what it was in the proposed rule to clarify the gear limitation for a CHP, Ceremonial Permit, and Educational Permit.

2. NMFS intended that the operation of the special permits consist of a permit log that is maintained by the permit coordinator and a permit card that must be on board the vessel when fishing under the applicable special permit. This was clear in the preamble to the proposed rule, but was not explicitly clear in the regulatory text. This lack of specificity and potential ambiguity in the proposed regulatory text was discovered subsequent to the publication of the proposed rule. Thus, the regulatory text at §§ 300.65(i), (i)(3)(iii), (j), and (j)(3)(iii) is changed from what it was in the proposed rule to clarify that a permit card must be on board the vessel when fishing under a special permit.

3. A change was suggested in Comment 14 to allow up to five separate vessels to fish under a CHP. NMFS agrees that the proposed CHP system is not consistent with customary and traditional harvest patterns and practices or sufficient to meet the subsistence needs of the affected communities and tribes. Under the proposed change, eligible tribes and communities would continue to receive one CHP, but could receive up to five laminated permit cards. This requirement would increase the administrative responsibilities of the CHP Permit Coordinator, but would allow for greater efficiency in conducting community harvest according to customary and traditional methods and needs. NMFS agrees with this suggestion for this purpose and finds that this change from the proposed rule is not substantive. The regulatory text at § 300.65(i) is changed from what it was in the proposed rule to indicate that five permit cards would be issued with the CHP, allowing up to five vessels to fish simultaneously under a CHP.

4. Another change, based on recommendations in Comment 17, would allow flexibility in the administration of the special permits by permit coordinators. This is necessary to allow for the use of the special permits if the permit coordinator becomes incapacitated or is otherwise unavailable. Hence, NMFS changed the regulatory text at §§ 300.65(i)(5)(i)-(iii)

and §§ 300.65(j)(5)(i)-(iii) from what was published in the proposed rule to indicate that the permit coordinator would remain ultimately responsible, but that the applicable permit may be administered by a designee.

Classification

This rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) and which has been approved by OMB under control number 0648-0512. Public reporting burden for this collection of information is estimated to average 10 minutes per response for each permit application and 30 minutes per response for each harvest log, including 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 to OMB by e-mail *David_Rostker@omb.eop.gov* or fax 202-395-7285.

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

A Final Regulatory Flexibility Analysis (FRFA) was prepared for this action that examines regulations regarding the legal harvest of halibut for subsistence use in Convention waters in and off Alaska. The FRFA evaluates the small entity impacts for an action to amend subsistence halibut regulations affecting proxy fishing and the development of a ceremonial/cultural harvest permit system and an educational harvest permit system in Areas 2C and 3A. This action is believed to have the potential to result in a significant impact on a substantial number of small entities, as defined under the Regulatory Flexibility Act. The FRFA addresses the requirements of the Regulatory Flexibility Act at section 604(a).

An Initial Regulatory Flexibility Analysis (IRFA) was prepared for two regulatory changes to issue permits to Alaska Native Tribes or community entities under the Action 1 preferred alternative, which are believed to have the potential to result in a significant impact on a substantial number of small entities. Special permits proposed in this rule would impact small entities in the form of small government

jurisdictions with fewer than 50,000 residents. The special permits represent the only aspect of this action that affects small entities. The remainder of the action bears exclusively on the non-commercial activities of "individuals," which are subsequently excluded from the RFA.

The purpose and need for this action is to provide for improved safety at sea, recognition and accommodation of traditional Native customs and practices, facilitation of efficient acquisition of subsistence food, reductions in waste and discards, and promotion of halibut conservation. Special permits administered under this action would provide for the above subsistence needs under the existing Subsistence Halibut Program. Twenty-nine rural communities and 19 tribes in IPHC Area 2C and 14 rural communities and 19 tribes in IPHC Area 3A may be affected by this action.

The proposed rule was published in the **Federal Register** on July 9, 2004 (69 FR 41453). The IRFA prepared for the preferred alternative was described in the classifications section of the preamble to the proposed rule. The public comment period ended August 9, 2004. No comments were received on the IRFA.

Specialized permits implemented by this action would require additional reporting for halibut harvest. The applications for the proposed specialized permits and additional reporting requirements would be designed to minimize the information collection burden on subsistence halibut fishermen while retrieving essential information. New recordkeeping and reporting requirements under this action would require mandatory reporting of subsistence harvests conducted under special permits that include community harvest permits (CHPs), Ceremonial Permits, and Educational Permits. All the small entities included in this analysis would be subject to the increased recordkeeping and reporting requirements. No special knowledge or training would be required for any recordkeeping and reporting requirements for the special permits implemented under this action.

The Council analyzed five alternatives for this action. These alternatives addressed varying applications of each special permit under this proposed rule including a no action alternative and the selected preferred alternative. Under Alternative 1, the no action alternative, the status quo would be maintained and no special permits would issue to Alaska Native tribes or rural communities under the Subsistence Halibut Program. Alternative 2 analyzed

the development of a proxy system, but did not include special permits. Alternative 3 analyzed the development of a proxy system in conjunction with community harvest permits. Alternative 4 and Alternative 5 (the preferred alternative) recommended the development of special permits in the form of ceremonial/cultural permits and community harvest permits.

The Council determined that the Alternatives 1 through 4 failed to meet the goals of the Subsistence Halibut Program to provide for improved safety at sea, recognition and accommodation of traditional Native customs and practices, facilitation of efficient acquisition of subsistence food, reductions in waste and discards, and promotion of halibut conservation. The Council determined that implementing special permits according to the preferred alternative would provide a means to meet these goals by establishing a system that provides for better harvest assessment and stock monitoring while recognizing the unique character of the Alaska Native tribes and rural communities. For the Community Harvest Permits, the Council selected a permit system based on the recommendations of the Halibut Subsistence Committee as opposed to a proxy system based on the model provided by the State of Alaska. The Council believed that a proxy system would fail to provide adequate harvest assessment and would present cumbersome management and enforcement problems. Therefore, the Council concluded that Community Harvest Permits would more closely adhere to the customary and traditional fishing practices of Alaska Native tribes and rural communities, which historically used individuals with particular expertise in halibut to harvest halibut for most or all of the tribe or community. For the Ceremonial and Educational Permits, the Council selected a permit system modeled after the U.S. Fish and Wildlife Service's subsistence permit programs because that permit system represented a proven system that corresponded well with the similar subsistence goals of the Subsistence Halibut Program. The Council selected the Ceremonial and Educational Permit system to recognize the unique needs and characteristics of Alaska Native tribes.

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

List of Subjects

50 CFR Part 300

Fisheries, Fishing, Indians, Reporting and recordkeeping requirements, Treaties.

50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: March 25, 2005.

William T. Hogarth

*Assistant Administrator for Fisheries,
National Marine Fisheries Service.*

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

PART 300—INTERNATIONAL FISHERIES REGULATIONS

Subpart E—Pacific Halibut Fisheries

■ 1. The authority citation for 50 CFR part 300, subpart E, continues to read as follows:

Authority: 16 U.S.C. 773–773k.

§ 300.63 [Amended]

■ 2. In § 300.63, the introductory paragraph preceding paragraph (a) is removed.

■ 3. In § 300.65, paragraphs (c) and (h)(4) are removed; paragraph (i) is redesignated as paragraph (c); paragraphs (d)(4) and (g)(1)(i), (g)(2), and (g)(3)(iii) are revised; and new paragraphs (i) through (k) are added to read as follows:

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

* * * * *

(d) * * *

(4) No charter vessel shall engage in sport fishing, as defined at § 300.61, for halibut within Sitka Sound, as defined in paragraph (d)(1)(ii) of this section, from June 1 through August 31.

(i) No charter vessel shall retain halibut caught while engaged in sport fishing, as defined at § 300.61, for other species, within Sitka Sound, as defined in paragraph (d)(1)(ii) of this section, from June 1 through August 31.

(ii) Notwithstanding paragraphs (d)(4) and (d)(4)(i) of this section, halibut harvested outside Sitka Sound, as defined in paragraph (d)(1)(ii) of this section, may be retained onboard a charter vessel engaged in sport fishing, as defined in § 300.61, for other species within Sitka Sound, as defined in paragraph (d)(1)(ii) of this section, from June 1 through August 31.

* * * * *

(g) * * *

(1) * * *

(i) Subsistence fishing gear set or retrieved from a vessel when fishing under a subsistence halibut registration certificate or a Community Harvest Permit (CHP) must not have more than 30 hooks per person registered in accordance with paragraph (h) of this section and on board the vessel and shall never exceed 3 times the per-person hook limit except that:

(A) No hook limit applies in Areas 4C, 4D, and 4E;

(B) In Area 2C, subsistence fishing gear set or retrieved from a vessel when persons are fishing under a subsistence halibut registration certificate must not have more than 30 hooks per vessel;

(C) In Area 2C, subsistence fishing gear set or retrieved from a vessel when fishing under a Ceremonial or Educational Permit pursuant to paragraph (j) of this section must not have more than 30 hooks per vessel; and

(D) In Area 2C within the Sitka LAMP from June 1 to August 31, setline gear may not be used in a 4 nautical mile radius extending south from Low Island at 57°00'42" N. lat., and 135°36'34" W. long.

* * * * *

(2) The daily retention of subsistence halibut in rural areas is limited to no more than 20 fish per person eligible to conduct subsistence fishing for halibut under this paragraph (g) and on board the vessel, except that:

(i) No daily retention limit applies in Areas 4C, 4D, and 4E;

(ii) No daily retention limit applies to persons fishing under a community harvest permit (CHP) pursuant to paragraph (i) of this section;

(iii) The total allowable harvest for persons fishing under a Ceremonial or Educational Permit pursuant to paragraph (j) of this section is 25 fish per permit; and

(iv) In Area 2C the daily retention limit is 20 fish per vessel.

(3) * * *

(iii) The Anchorage-Matsu-Kenai non-subsistence marine waters area in Commission Regulatory Area 3A (see Figure 4 to subpart E) is defined as:

(A) All waters of Cook Inlet north of 59°30.40' N. lat., except those waters within mean lower low tide from a point one mile south of the southern edge of the Chuitna River (61°05.00' N. lat., 151°01.00' W. long.) south to the easternmost tip of Granite Point (61°01.00' N. lat., 151°23.00' W. long.) (Tyonek subdistrict); and

(B) All waters of Alaska south of 59°30.40' N. lat. on the western shore of Cook Inlet to Cape Douglas (58°10' N. lat.) and in the east to Cape Fairfield (148°50.25' W. long.), except those

waters of Alaska west of a line from the westernmost point of Jakolof Bay (151°31.09' W. long.) and following the shore to a line extending south from the easternmost point of Rocky Bay (151°18.41' W. long.); and

* * * * *

(i) *Community Harvest Permit (CHP).* An Area 2C community or Alaska Native tribe listed in paragraphs (f)(1) or (f)(2) of this section may apply for a CHP, which allows a community or Alaska Native tribe to appoint one or more individuals from its respective community or Alaska Native tribe to harvest subsistence halibut from a single vessel under reduced gear and harvest restrictions. The CHP consists of a harvest log and up to five laminated permit cards. A CHP is a permit subject to regulation under § 679.4(a) of this title.

(1) *Qualifications.* (i) NMFS may issue a CHP to any community or Alaska Native tribe that applies according to paragraph (i)(2) of this section and that is qualified to conduct subsistence fishing for halibut according to paragraph (f) of this section.

(ii) NMFS will issue a CHP to a community in Area 2C only if:

(A) The applying community is listed as eligible in Area 2C according to paragraph (f)(1) of this section; and

(B) No Alaska Native tribe listed in paragraph (f)(2) exists in that community.

(iii) NMFS will issue a CHP to an Alaska Native tribe in Area 2C only if the applying tribe is listed as eligible in Area 2C according to paragraph (f)(2) of this section.

(iv) Eligible communities or Alaska Native tribes may appoint only one CHP Coordinator per community or tribe.

(2) *Application.* A community or Alaska Native tribe may apply for a CHP by submitting an application to the Alaska Region, NMFS. Applications must be mailed to: Restricted Access Management Program, NMFS, Alaska Region, P.O. Box 21668, Juneau, AK 99802-1668. A complete application must include:

(i) The name of the community or Alaska Native tribe requesting the CHP;

(ii) The full name of the person who is designated as the CHP Coordinator for each community or Alaska Native tribe, the designated CHP Coordinator's mailing address (number and street, city, state, and zip code), community of residence (the rural community or residence from paragraph (f)(1) of this section) or the Alaska Native tribe if applicable (as indicated in paragraph (f)(2) of this section), and the daytime telephone number; and

(iii) Any previously issued CHP harvest logs.

(3) *Restrictions.* Subsistence fishing for halibut under a CHP shall be valid only:

(i) In Area 2C, except that a CHP may not be used:

(A) Within the Sitka LAMP defined in paragraph (d) of this section (see Figure 1 to subpart E); or

(B) Within the Juneau and Ketchikan non-rural areas defined in paragraph (g) of this section (see Figures 2 and 3 to subpart E);

(ii) To persons in possession of a valid subsistence halibut registration certificate issued in accordance with paragraph (h) of this section for the same community or Alaska Native tribe listed on the CHP;

(iii) On a single vessel on which a CHP card is present; and

(iv) If subsistence fishing gear set or retrieved from a vessel on which the CHP card is present does not exceed the restrictions of paragraph (g) of this section.

(4) *Expiration of permit.* Each CHP will be valid only for the period of time specified on the permit. A CHP will expire one year from the date of issuance to a community or Alaska Native tribe eligible to harvest halibut under paragraph (f) of this section. A community or Alaska Native tribe eligible to harvest subsistence halibut under paragraph (f) of this section may renew its CHP that is expired or will expire within three months by following the procedures described in paragraph (i)(2) of this section.

(5) *Duties of the CHP coordinator.* Each CHP Coordinator must ensure:

(i) The designated harvesters who may fish under the CHP are identified on the Community Harvest Permit harvest log when the CHP is issued to the designated harvesters;

(ii) The CHP remains in the possession of the CHP Coordinator or other tribal or government authority when not in use and is issued to the designated harvesters when necessary; and

(iii) All required recordkeeping and data reporting of subsistence harvests under the CHP are performed.

(6) *Harvest log submission.* Each Community Harvest Permit harvest log must be submitted to NMFS on or before the date of expiration by facsimile or mail. Harvest logs must be mailed to RAM at the address given in paragraph (i)(2) of this section or faxed to 907-586-7354. The log must provide information on:

(i) The subsistence fisher's identity including his or her full name, subsistence halibut registration

certificate number, date of birth, mailing address (number and street, city, state, and zip code), community of residence, daytime phone number, and tribal identity (if appropriate); and

(ii) The subsistence halibut harvest including whether the participant fished for subsistence halibut during the period specified on the permit, and if so, the date harvest occurred, the number and weight (in pounds) of halibut harvested, the type of gear and number of hooks used, the Commission regulatory area and local water body from which the halibut were harvested, and the number of lingcod and rockfish caught while subsistence fishing for halibut.

(j) *Ceremonial Permit or Educational Permit.* An Area 2C or Area 3A Alaska Native tribe that is listed in paragraph (f)(2) of this section may apply for a Ceremonial or Educational Permit, allowing the tribe to harvest up to 25 halibut per permit issued. The Ceremonial and Educational Permits each consist of a harvest log and a single laminated permit card. Ceremonial and Educational Permits are permits subject to regulation under § 679.4(a) of this title.

(1) *Qualifications.* (i) NMFS may issue a Ceremonial or Educational Permit to any Alaska Native tribe that completes an application according to paragraph (j)(2) of this section and that is qualified to conduct subsistence fishing for halibut according to paragraph (f)(2) of this section.

(ii) Eligible Alaska Native tribes may appoint only one Ceremonial Permit Coordinator per tribe.

(iii) Eligible educational programs may appoint only one authorized Instructor per Educational Permit.

(2) *Application.* An Alaska Native tribe may apply for a Ceremonial or Educational Permit by submitting an application to the Alaska Region, NMFS. Applications must be mailed to: Restricted Access Management Program, NMFS, Alaska Region, P.O. Box 21668, Juneau, AK 99802-1668.

(i) A complete application must include:

(A) The name of the Alaska Native tribe requesting the Ceremonial or Educational Permit;

(B) The name of the person designated as the Ceremonial Permit Coordinator for each Alaska Native tribe or the name of the person designated as the Instructor for an Educational Permit, the Ceremonial Permit Coordinator or Instructor's mailing address (number and street, city, state, and zip code), and the daytime telephone number;

(C) Any previously issued Ceremonial Permit harvest logs from any expired

Ceremonial Permit if applying for a Ceremonial Permit; and

(D) Any previously issued Educational Permit harvest logs from any expired Educational Permit if applying for a Educational Permit.

(ii) NMFS will issue a Ceremonial Permit for the harvest of halibut associated with traditional cultural events only if the application:

(A) Indicates the occasion of cultural or ceremonial significance; and

(B) Identifies the person designated by the eligible Alaska Native tribe as the Ceremonial Permit Coordinator.

(iii) NMFS will issue an Educational Permit only if the application:

(A) Includes the name and address of the educational institution or organization;

(B) Includes the instructor's name;

(C) Demonstrates the enrollment of qualified students;

(D) Describes minimum attendance requirements of the educational program; and

(E) Describes standards for the successful completion of the educational program.

(3) *Restrictions.* Subsistence fishing for halibut under Ceremonial or Educational Permits shall be valid only:

(i) In Area 3A, except in the Anchorage-Matsu-Kenai and Valdez non-rural areas defined in paragraph (g) of this section (see Figures 4 and 5 to subpart E);

(ii) In Area 2C, except in the Juneau and Ketchikan non-rural areas defined in paragraph (g) of this section (see Figures 2 and 3 to subpart E) and a Ceremonial Permit may not be used within the Sitka LAMP from June 1 through August 31;

(iii) On a single vessel on which the Ceremonial or Educational Permit card is present;

(iv) On the vessel on which the instructor is present for Educational Permits;

(v) To persons in possession of a valid subsistence halibut registration certificate issued in accordance with paragraph (h) of this section for the same Alaska Native tribe listed on the Ceremonial or Educational Permit, except that students enrolled in an educational program may fish under an Educational Permit without a subsistence halibut registration certificate; and

(vi) If subsistence fishing gear set or retrieved from a vessel on which the Ceremonial or Educational Permit card is present does not exceed the restrictions of paragraph (g) of this section.

(4) *Expiration of permits.* Each Ceremonial or Educational Permit will

be valid only for the period of time specified on the permit. Ceremonial and Educational Permits will expire 30 days from the date of issuance to an Alaska Native tribe eligible to harvest halibut under paragraph (f)(2) of this section. A tribe eligible to harvest subsistence halibut under paragraph (f)(2) of this section may apply for additional Ceremonial or Educational Permits at any time.

(5) *Duties of Ceremonial Permit Coordinators and Instructors.* Each Ceremonial Permit Coordinator or Instructor must ensure:

(i) The designated harvesters or students who may fish under the Ceremonial or Educational Permit are identified on the Ceremonial/Educational Permit harvest log when the permit is used;

(ii) The Ceremonial Permit remains in the possession of the Ceremonial Permit Coordinator or other tribal authority when not in use and is issued to designated harvesters when necessary; and

(iii) All required recordkeeping and data reporting of subsistence harvests under the Ceremonial or Educational Permit are performed.

(6) *Harvest log submission.* Submission of a Ceremonial or Educational Permit log shall be required upon the expiration of each permit and must be received by Restricted Access Management within 15 days of the expiration by facsimile or mail. Harvest logs must be mailed to RAM at the address given in paragraph (j)(2) of this section or faxed to 907-586-7354. The log must provide information on:

(i) The subsistence fisher's identity including his or her full name, subsistence halibut registration certificate number if applicable (students do not need a SHARC), date of birth, mailing address (number and street, city, state, and zip code), community of residence, daytime phone number, and tribal identity;

(ii) The subsistence halibut harvest including whether the participant fished for subsistence halibut during the period indicated on the permit, and if so, the date when harvest occurred, the number and weight (in pounds) of halibut harvested, the type of gear and number of hooks used, the Commission regulatory area and local water body from which the halibut were harvested, and the number of lingcod and rockfish caught while subsistence fishing for halibut.

(k) *Appeals.* If Restricted Access Management (RAM) determines that an application is deficient, it will prepare and send an Initial Administrative Determination (IAD) to the applicant.

The IAD will indicate the deficiencies in the application or any additional provided information. An applicant who receives an IAD may appeal RAM's findings pursuant to § 679.43 of this title.

■ 4. In § 300.66, paragraphs (e) and (h) are revised; paragraph (k) is redesignated as paragraph (l) and republished, and a new paragraph (k) is added to read as follows:

§ 300.66 Prohibitions.

* * * * *

(e) Fish for subsistence halibut in and off Alaska unless the person is qualified to do so under § 300.65(f), possesses a valid subsistence halibut registration certificate pursuant to § 300.65(h), and makes this certificate available for inspection by an authorized officer on request, except that students enrolled in a valid educational program and fishing under an Educational Permit issued pursuant to § 300.65(j) do not need a subsistence halibut registration certificate.

* * * * *

(h) Retain on board the harvesting vessel halibut harvested while subsistence fishing with halibut harvested while commercial fishing or from sport fishing, as defined at § 300.61(b), except that persons authorized to conduct subsistence fishing under § 300.65(f), and who land their total annual harvest of halibut:

(1) In Commission regulatory Areas 4D or 4E may retain, with harvests of Community Development Quota (CDQ) halibut, subsistence halibut harvested in Commission regulatory areas 4D or 4E that are smaller than the size limit specified in the annual management measures published pursuant to § 300.62; or

(2) In Commission regulatory Areas 4C, 4D or 4E may retain, with harvests of CDQ halibut, subsistence halibut harvested in Commission regulatory areas 4C, 4D or 4E that are equal to or greater than the size limit specified in the annual management measures published pursuant to § 300.62.

* * * * *

(k) Retain subsistence halibut harvested under a CHP, Ceremonial Permit, or Educational Permit together in any combination or with halibut harvested under any other license or permit.

(l) Fillet, mutilate, or otherwise disfigure subsistence halibut in any manner that prevents the determination of the number of fish caught, possessed, or landed.

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.*; 1540(f); 1801 *et seq.*; 1851 note; 3631 *et seq.*

■ 6. In § 679.4, paragraphs (a)(1) introductory text and (a)(2) are revised and paragraph (a)(1)(xi) is added to the table to read as follows:

§ 679.4 Permits.

(a) * * *

(1) *What permits are available?*

Various types of permits are issued for programs codified at 50 CFR parts 300 and 679. These permits are listed in the following table. The date of effectiveness for each permit is given along with certain reference paragraphs for further information.

If program permit or card type is:	Permit is in effect from issue date through end of:	For more information, see...
* * * * *		
(xi) Special Subsistence Permits		
(A) Community Harvest Permit	1 year	§ 300.65 of this title
(B) Ceremonial or Educational Permit	30 days	§ 300.65 of this title

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

* * * * *

■ 7. In § 679.43, paragraph (a) is revised to read as follows:

§ 679.43 Determinations and appeals.

(a) *General.* This section describes the procedure for appealing initial administrative determinations made in this title under parts 679, 680, and under subpart E of part 300. This section does not apply to initial administrative determinations made under § 679.30(d).

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[FR Doc. 05-6507 Filed 3-31-05; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 050314073-5073-01; I.D. 030705B]

RIN 0648-AS99

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Reopening of the Application Process for the Charter Vessel and Headboat Permit Moratorium in the Gulf of Mexico

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

ACTION: Temporary rule; emergency action.

SUMMARY: NMFS issues this emergency rule to provide a limited reopening of the application process for the charter vessel/headboat permit moratorium for reef fish and coastal migratory pelagic fish in the Gulf of Mexico. This reopening allows qualifying persons, who can provide documentation of economic harm as a result of inability to obtain a moratorium permit, to apply for reconsideration of moratorium permit eligibility. In addition, NMFS informs the public of the approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of the collection-of-information requirements contained in this emergency rule and publishes the OMB control numbers for those collections. The intended effect of this emergency rule is to eliminate adverse socio-economic impacts on eligible Gulf charter vessel/headboat owners and operators while maintaining the integrity of the permit moratorium and its objectives.

DATES: This rule is effective April 1, 2005 through September 28, 2005.

ADDRESSES: Copies of the required regulatory analysis supporting this emergency rule may be obtained from the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

Comments regarding the collection-of-information requirements contained in this emergency rule should be sent to Robert Sadler, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702, and by e-mail to