

NMFS will refund any excess fee receipts, on a last-in/first-out basis, to the fish buyers. Fish buyers must return the refunds, on a last-in/first-out basis, to the fish sellers who paid the amounts refunded.

(h) *Program regulations.* If any special circumstances in a reduction fishery require fee collection deposit and/or record keeping regulations in addition to, or different from, those contained in this section in order to ensure full, complete, accurate and timely fee deposit, disbursement, accounting, record keeping, and reporting, NMFS may include such regulations in the program regulations for that reduction program.

#### **§ 253.38 Prohibitions and penalties.**

(a) The following activities are prohibited, and it is unlawful for any party to:

(1) Vote in any referendum under this subpart if the party is ineligible to do so;

(2) Vote more than once in any referendum under this subpart;

(3) Sign or otherwise cast a ballot on behalf of a voter in any referendum under this subpart unless the voter has fully authorized the party to do so and doing so otherwise comports with this subpart;

(4) Interfere with or attempt to hinder, delay, buy, or otherwise unduly influence any eligible voter's vote in any referendum under this subpart;

(5) Submit a fraudulent, unauthorized, incomplete, misleading, unenforceable (by specific performance) or inaccurate bid in response to an invitation to bid under this subpart or, in any other way, interfere with or attempt to interfere with, hinder, or delay, any invitation to bid, any bid submitted under any invitation to bid, or any other reduction program process in connection with any invitation to bid;

(6) Revoke or attempt to revoke any bid under this subpart;

(7) Fail to comply with the terms and conditions of any invitation to bid, bid, or reduction contract under this subpart;

(8) Avoid, decrease, interfere with, hinder, or delay payment, collection, deposit, or disbursement of any fee due and payable under this subpart or convert any paid, collected, or deposited fee or otherwise use any fee for any purpose other than the purpose this subpart intends;

(9) Fail to fully and properly deposit on time all fees collected under this subpart into a deposit account and to disburse deposit principal to the Fund's lockbox account—all as this subpart requires;

(10) Fail to maintain full, timely, and proper fee payment, collection, deposit,

and/or disbursement records or to make full, timely, and proper reports of such information to NMFS—all as this subpart requires;

(11) Fail to advise NMFS of any fish seller's refusal to pay, or of any fish buyer's refusal to collect, any fee due and payable under this subpart;

(12) Refuse to allow agents designated by NMFS to review and audit at reasonable times all books and records reasonably pertinent to fee payment, collection, deposit, and disbursement under this subpart or otherwise to interfere with, hinder, or delay agents in the course of their activities under this subpart;

(13) Make false statements to NMFS, any of its employees, or any of its agents about any of the matters in this subpart; and

(14) Obstruct, prevent, or unreasonably delay or attempt to obstruct, prevent, or unreasonably delay any investigation

NMFS or its agents conduct, or attempt to conduct, in connection with any of the matters in this subpart.

(b) Any party who violates one or more of the prohibitions of paragraph (a) of this section is subject to the full range of penalties the Magnuson-Stevens Act and 15 CFR part 904 provide (including, but not limited to: civil penalties, sanctions, forfeitures, and punishment for criminal offenses) and to the full penalties and punishments otherwise provided by any other applicable law of the United States.

#### **§ 253.39 Implementation regulations for each reduction program. [Reserved]**

Dated: February 4, 1999.

**Gary C. Matlock,**

*Director, Office of Sustainable Fisheries,  
National Marine Fisheries Service.*

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### **DEPARTMENT OF COMMERCE**

#### **National Oceanic and Atmospheric Administration**

#### **50 CFR Part 300**

[Docket No. 990128037-9037-01; I.D. 010899B]

RIN 0648-AM11

#### **Pacific Halibut Fisheries; Catch Sharing Plan**

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

**ACTION:** Proposed changes to catch sharing plan and sport fishing

management; availability of draft environmental assessment and regulatory impact review.

**SUMMARY:** NMFS proposes, under authority of the Northern Pacific Halibut Act (Halibut Act), to approve and implement changes to the Area 2A Pacific halibut Catch Sharing Plan (Plan) to adjust the management of the sport fisheries off Oregon and Washington, to clarify catch-sharing language in the commercial fisheries portion of the Plan, and to clarify halibut retention language for the portion of the Plan that addresses treaty Indian ceremonial and subsistence fisheries. NMFS also proposes sport fishery regulations to implement the Plan in 1999. A draft environmental assessment and regulatory impact review (EA/RIR) on this action is also available for public comment.

**DATES:** Comments must be received by February 26, 1999.

**ADDRESSES:** Send comments or requests for a copy of the Plan and/or the EA/RIR to William Stelle, Jr., Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way, Seattle, WA 98115. An electronic copy of the Plan, including proposed changes for 1999, is also available at the NMFS Northwest Region website: <http://www.nwr.noaa.gov>.

**FOR FURTHER INFORMATION CONTACT:** Yvonne deReynier, 206-526-6120.

**SUPPLEMENTARY INFORMATION:** The Halibut Act, at 16 U.S.C. 773c, gives the Secretary of Commerce (Secretary) general responsibility for carrying out the Halibut Convention between the United States and Canada and requires the Secretary to adopt such regulations as may be necessary to carry out the purposes and objectives of the Convention and the Halibut Act. Section 773c(c) of the Halibut Act authorizes the Regional Fishery Management Councils to develop regulations that are not in conflict with regulations adopted by the International Pacific Halibut Commission (IPHC) to govern the Pacific halibut catch that occurs in their regions. Each year since 1988, the Pacific Fishery Management Council (Council) has developed a catch sharing plan in accordance with the Halibut Act, to allocate the total allowable catch (TAC) of Pacific halibut between treaty Indian and non-Indian harvesters and among non-Indian commercial and sport fisheries in IPHC statistical Area 2A (off Washington, Oregon, and California).

In 1995, upon recommendation of the Council, NMFS implemented the Plan (60 FR 14651, March 20, 1995) as

recommended by the Council. Several minor revisions, primarily pertaining to sport fishery structuring, were made in 1996 (61 FR 1137, March 20, 1996), in 1997 (62 FR 12759, March 18, 1997), and in 1998 (63 FR 13000, March 17, 1998). The Plan allocates 35 percent of the Area 2A TAC to Washington treaty Indian tribes in Subarea 2A-1 and 65 percent to non-Indian fisheries in Area 2A. The allocation to non-Indian fisheries is divided into three shares, with the Washington sport fishery (north of the Columbia River) receiving 36.6 percent, the Oregon/California sport fishery receiving 31.7 percent, and the commercial fishery receiving 31.7 percent. The commercial fishery is further divided into a directed commercial fishery that is allocated 85 percent of the 31.7 percent and an incidental catch in the salmon troll fishery that is allocated 15 percent of the commercial allocation. The directed commercial fishery in Area 2A is confined to southern Washington (south of 46°53'18" N. lat.), Oregon, and California. The Plan also divides the sport fisheries into seven geographic subareas, each with separate allocations, seasons, and bag limits.

#### **Council Recommended Changes to the Plan**

At its September 1998 public meeting, the Council adopted for public comment the following changes to the Plan: (1) A re-structuring of the Washington south coast subarea sport fishery including allowance of landings from a small nearshore area on days that the offshore fishery is closed, changes to the Columbia River subarea bag limit, and modification to the boundaries of a sport fishing closed area; (2) modification of the Oregon sport fishery south of Cape Falcon including changes in all-depth season and sub-area allocations, changing the possession and bag limit for south of Cape Falcon, and modification of Oregon sport fishery allocations at TACs in excess of 550,000 lb (249.5 metric tons (mt)); and (3) clarification of current catch sharing plan language that describes the inseason division of the commercial quota.

At its November 1998 public meeting, the Council considered the results of State-sponsored workshops on the proposed changes to the Plan and public comments and made final recommendations for six modifications to the Plan as follows:

(1) Modify the sport season structuring intent for the Washington south coast subarea (Queets River southward to Leadbetter Point) to specify a goal of maximizing the season

length while "maintaining a quality fishing experience." To that end, allow the nearshore fishery (east of 124°40'00" W. long. and north of 47°00'00" N. lat.) to fish 7 days a week whenever the halibut season is open. This change is expected to give the nearshore fishery the opportunity to land incidentally caught halibut during the 2-days per week that the offshore fishery in this subarea is usually closed.

(2) Reduce the size of a sport fishing closed "hot spot" within the Washington south coast subarea to better reflect the location and size of this zone of halibut concentration. The closed area would have the following dimensions: 47°19'00" N. lat., 124°53'00" W. long.; 47°19'00" N. lat., 124°48'00" W. long.; 47°16'00" N. lat., 124°53'00" W. long.; and 47°16'00" N. lat., 124°48'00" W. long. The purpose of closing a "hot spot" is to lengthen the season in this subarea by preventing fishers from having access to this area of high halibut abundance. Changing the size of the closed "hot spot" is not expected to shorten the season in this subarea. The new dimensions are expected to more accurately reflect the area where halibut are most concentrated.

(3) Revise the sport season structure for Oregon central coast and south coast subareas so that the nearshore fisheries (inside the 30-fathom depth contour) open on May 1 and continue until their subquotas are taken or on September 30, whichever occurs first. This change is proposed to separate quota set aside for the nearshore fisheries from quota set aside for the larger offshore fisheries. In the past, the nearshore fisheries for these subareas were structured to occur between the May and August all-depth fisheries. The August all-depth fisheries had access to any nearshore fisheries quota during the August all-depth season. Under this system, the August all-depth fisheries could conceivably take both the all-depth and the nearshore fisheries quotas, which would close the nearshore fisheries in mid-August. This proposal separates the all-depth quotas from the nearshore quotas so that the nearshore fishery may have a longer season.

(4) Move the boundary of the southernmost Oregon/California subarea from the Oregon-California border north to Humbug Mountain, Oregon (42°40'30" N. lat.) and increase the subarea quota allocation from 2.6 percent to 3.0 percent of the Oregon/California recreational allocation. Halibut landed from Oregon waters south of Humbug Mountain are few. This change would be consistent with management for southernmost Oregon

halibut landings to California halibut landings management. Because halibut landings south of Humbug Mountain would be separated from the larger northern fishery season structures, the season south of Humbug Mountain is expected to be longer than past seasons in southernmost Oregon waters.

(5) Set the daily possession and bag limit for halibut sport fisheries south of Leadbetter Point equal to the first Pacific halibut caught that is 32 inches (81.3 cm) or longer in length. This possession and bag limit would be similar to the limit that was in place in 1998 in the Columbia River and California subareas. For other subareas south of Leadbetter Point, the Central and South Coast of Oregon subareas, the daily bag limit would change from two halibut per person, one with a minimum 32-inch (81.3 cm) size limit and the second with a minimum 50-inch (125.5 cm) size limit to the first halibut caught that is 32 inches (81.3 cm) or longer in length. This change is expected to eliminate confusion by unification of the bag limit for a large stretch of Area 2A coast, and to reduce incidental hooking mortality for Oregon coast areas by elimination of the incentive for fishers to continue fishing until they have caught a second, larger sized halibut.

(6) Confirm the commercial season catch division by clarifying catch sharing language within the commercial portion of the Area 2A Halibut Catch Sharing Plan. This is a housekeeping change intended to clarify Plan language without changing Plan intent or implementation.

NMFS is proposing to implement the six changes to the Plan recommended by the Council as well as a minor correction to the Plan that would distinguish between the take of halibut for subsistence purposes and for ceremonial purposes by treaty Indians. The current Plan restricts treaty Indian fishing for halibut for ceremonial purposes to two halibut per day, per person. This restriction unnecessarily prevents a single treaty Indian fishing vessel from fishing for halibut on behalf of a tribe in the event of a ceremony requiring halibut. The restriction on ceremonial fishing was mistakenly set into the Plan through instructions from the tribes. The treaty Indian tribes that harvest halibut have requested clarification of Plan language to distinguish between subsistence and ceremonial fishing. NMFS proposes a correction to Plan language to provide this distinction between the two types of fishing to provide this clarification. Any halibut taken for subsistence or ceremonial purposes are counted as part

of the overall tribal share. Halibut caught in treaty Indian ceremonial or subsistence fisheries may not be offered for sale or sold.

#### Proposed Changes to the Catch Sharing Plan

NMFS is proposing to approve the Council recommendations and to make the following changes to the Plan:

In section (d) of the Plan, Treaty Indian Fisheries, paragraph (1) would be revised to read as follows:

The tribal ceremonial and subsistence fishery begins on January 1 and continues through December 31. No size or bag limits will apply to the ceremonial and subsistence fishery except that, when the tribal commercial fishery is closed, treaty Indians may take and retain not more than two halibut per day per person for subsistence purposes. Ceremonial fisheries shall be managed by tribal regulations promulgated inseason to meet the needs of specific ceremonial events. Halibut taken for ceremonial or subsistence purposes may not be offered for sale or sold.

In section (e) of the Plan, Non-Indian Commercial Fisheries, paragraph (1)(iii) would be revised to read as follows:

If the quota for this fishery is not harvested during the May/June salmon troll fishery, the IPHC will move any remaining quota from this fishery to the directed halibut fishery on July 1.

In section (e) of the Plan, Non-Indian Commercial Fisheries, the first sentence of paragraph (1)(iv) would be revised to read as follows:

If the overall quota for the non-Indian commercial fishery has not been harvested by July 31 and the quota for the salmon troll fishery was not harvested during the May/June fishery, landings of halibut caught incidentally during salmon troll fisheries will be allowed effective August 1 and will continue (while additional directed fishery openings are set to harvest all of the remaining commercial allocation) until the amount of halibut that was initially available as quota for the troll fishery is taken or the overall non-Indian commercial quota is estimated to have been achieved by the IPHC.

In section (e) of the Plan, Non-Indian Commercial Fisheries, paragraph (2) would be revised to read as follows:

*Directed fishery targeting halibut.* Eighty-five percent of the non-Indian commercial fishery allocation is allocated to the directed fishery targeting halibut (e.g., longline fishery) in southern Washington, Oregon, and California. The allocation for this directed catch fishery is approximately 17.5 percent of the Area 2A TAC. This

fishery is confined to the area south of Subarea 2A-1 (south of Point Chehalis, WA; 46°53'18" N. lat.). After June 30, the overall quota for the non-Indian commercial fishery will be available to the directed commercial fishery in accordance with the specifications provided in sections (e)(1)(iii) and (iv) above. The commercial fishery opening date(s), duration, and vessel trip limits, as necessary to ensure that the quota for the non-Indian commercial fisheries is not exceeded, will be determined by the IPHC and implemented in IPHC regulations. If the IPHC determines that poundage remaining in the quota for the non-Indian commercial fisheries is insufficient to allow an additional day of directed halibut fishing, the remaining halibut will be made available for incidental catch of halibut in the fall salmon troll fisheries (independent of the incidental harvest allocation).

In section (f) of the Plan, Sport Fisheries, paragraph (1)(iii) would be revised as follows:

(iii) *Washington south coast subarea.* This sport fishery is allocated 12.3 percent of the first 130,845 lb (59.4 mt) allocated to the Washington sport fishery and 32 percent of the Washington sport allocation between 130,845 lb (59.4 mt) and 224,110 lb (101.7 mt) (except as provided in section (e)(3) of this Plan). This subarea is defined as waters south of the Queets River (47°31'42" N. lat.) and north of Leadbetter Point (46°38'10" N. lat.). The structuring objective for this subarea is to maximize the season length, while maintaining a quality fishing experience. The fishery will open on May 1. If May 1 falls on a Friday or Saturday, the fishery will open on the following Sunday. The fishery will be open Sunday through Thursday in all areas, except where prohibited, and the fishery will be open 7 days per week in the area from Queets River south to 47°00'00" N. lat. and east of 124°40'00". The fishery will continue until September 30, or until 1,000 lb (0.45 mt) are projected to remain in the subarea quota, whichever occurs first. Immediately following this closure, the area from the Queets River south to 47°00'00" N. lat. and east of 124°40'00" W. long. will reopen for 7 days per week until either the subarea quota is estimated to have been taken and the season is closed by the IPHC, or until September 30, whichever occurs first. The daily bag limit is one halibut per person, with no size limit. Sport fishing for halibut is prohibited in the area within a rectangle defined by these four corners: 47°19'00" N. lat., 124°53'00" W. long.; 47°19'00" N. lat., 124°48'00"

W. long.; 47°16'00" N. lat., 124°53'00" W. long.; 47°16'00" N. lat., 124°48'00" W. long.

In section (f) of the Plan, Sport Fisheries, the last sentence in paragraph (iv) would be revised to read as follows:

The daily bag limit is the first halibut taken, per person, of 32 inches (81.3 cm) or greater in length.

In section (f) of the Plan, Sport Fisheries, paragraphs (v), (vi), and (vii) for the Oregon central and south coast subareas, and for the California (now south of Humbug Mountain) subarea are revised to read as follows:

(v) *Oregon central coast subarea.* If the Area 2A TAC is 388,350 lb (176.2 mt) and greater, this subarea extends from Cape Falcon to the Siuslaw River at the Florence north jetty (44°01'08" N. lat.) and is allocated 88.03 percent of the Oregon/California sport allocation, which is approximately 18.13 percent of the Area 2A TAC. If the Area 2A TAC is less than 388,350 lb (176.2 mt), this subarea extends from Cape Falcon to the Humbug Mountain, Oregon (42°40'30" N. lat.) and is allocated 95.0 percent of the Oregon/California sport allocation. The structuring objectives for this subarea are to provide two periods of fishing opportunity in May and in August in productive deeper water areas along the coast, principally for charterboat and larger private boat anglers and to provide a period of fishing opportunity in the summer for nearshore waters for small boat anglers. Fixed season dates will be established preseason for the May and August openings and will not be modified inseason, except that the August openings may be modified inseason if the combined Oregon all-depth quotas are estimated to be achieved. Recent year catch rates will be used as a guideline for estimating the catch rate for the May and August fishery each year. The number of fixed season days established will be based on the projected catch per day with the intent of not exceeding the subarea season subquotas. The Oregon Department of Fish and Wildlife (ODFW) will monitor landings and provide a post-season estimate of catch within 2 weeks of the end of the fixed season. If sufficient catch remains for an additional day of fishing after the May season or the August season, openings will be provided if possible in May and August respectively. Potential additional open dates for both the May and August seasons will be announced preseason. If a decision is made inseason to allow fishing on 1 or more additional days, notice of the opening will be announced on the NMFS hotline (206) 526-6667 or (800) 662-9825. No all-depth halibut

fishing will be allowed on the additional dates unless the opening date has been announced on the NMFS hotline. Any poundage remaining unharvested in the May all-depth subquota will be added to the August all-depth sub-quota. Any poundage that is not needed to extend the inside 30-fathom fishery through to September 30 will be added to the August all-depth season if it can be utilized, and any poundage remaining unharvested from the August all-depth fishery will be added to the inside 30-fathom fishery subquotas. The daily bag limit for all seasons is the first halibut taken, per person, of 32 inches (81.3 cm) or greater in length. ODFW will sponsor a public workshop shortly after the IPHC annual meeting to develop recommendations to NMFS on the open dates for each season each year. The three seasons for this subarea are as follows.

A. The first season opens on May 1, only in waters inside the 30-fathom (55 m) curve, and continues daily until 7 percent of the subarea quota is taken, or until September 30, whichever is earlier. Poundage that is estimated to be above the amount needed to keep this season open through September 30 will be transferred to the August all-depth fishery if it can be utilized. Any overage in the all-depth fisheries would not affect achievement of allocation set aside for the inside 30-fathom curve fishery.

B. The second season is an all-depth fishery that begins on the second Thursday in May and is allocated 68 percent of the subarea quota. Fixed season dates will be established preseason based on projected catch per day and number of days to achievement of the subquota for this season. No inseason adjustments will be made, except that additional opening days (established preseason) may be allowed if any quota for this season remains unharvested. The fishery will be structured for 2 days per week (Friday and Saturday) if the season is for 4 or fewer fishing days. The fishery will be structured for 3 days per week (Thursday through Saturday) if the season is for 5 or more fishing days.

C. The last season is a coastwide (Cape Falcon, Oregon to Humbug Mountain, Oregon) all-depth fishery that begins on the first Friday in August and is allocated 25 percent of the subarea quota. Fixed season dates will be established preseason based on projected catch per day and number of days to achievement of the combined Oregon all-depth quotas for the Central and South Oregon Coast subareas. The fishery will be structured for 2 days per week (Friday and Saturday). No

inseason adjustments will be made (unless the combined Oregon all-depth quotas are estimated to be achieved), except that additional opening days may be allowed if quota remains unharvested. If quota remains unharvested, but is insufficient for one day of an all-depth fishery, that additional quota will be transferred to the fisheries inside the 30-fathom (55 m) curve.

(vi) *Oregon south coast subarea.* If the Area 2A TAC is 388,350 lb (176.2 mt) and greater, this subarea extends from the Siuslaw River at the Florence north jetty (44°01'08" N. lat.) to Humbug Mountain, Oregon (42°40'30" N. lat.) and is allocated 6.97 percent of the Oregon/California sport allocation, which is approximately 1.43 percent of the Area 2A TAC. If the Area 2A TAC is less than 388,350 lb (176.2 mt), this subarea will be included in the Oregon Central Coast subarea. The structuring objective for this subarea is to create a south coast management zone that has the same objectives as the Oregon central coast subarea and is designed to accommodate the needs of both charterboat and private boat anglers in the south coast subarea where weather and bar crossing conditions very often do not allow scheduled fishing trips. Fixed season dates will be established preseason for the May and August openings and will not be modified inseason except that the August openings may be modified inseason if the combined Oregon all-depth quotas are estimated to be achieved. Recent year catch rates will be used as a guideline for estimating the catch rate for the May and August fishery each year. The number of fixed season days established will be based on the projected catch per day with the intent of not exceeding the subarea season subquotas. ODFW will monitor landings and provide a post season estimate of catch within 2 weeks of the end of the fixed season. If sufficient quota remains for an additional day of fishing after the May season or the August season, openings will be provided if possible in May and August respectively. Potential additional open dates for both the May and August seasons will be announced preseason. If a decision is made inseason to allow fishing on 1 or more additional days, notice of the opening will be announced on the NMFS hotline (206) 526-6667 or (800) 662-9825. No all-depth halibut fishing will be allowed on the additional dates unless the opening date has been announced on the NMFS hotline. Any poundage remaining unharvested in the May all-depth subquota will be added to the

August all-depth sub-quota. Any poundage that is not needed to extend the inside 30-fathom fishery through to September 30 will be added to the August all-depth season if it can be utilized, and any poundage remaining unharvested from the August all-depth fishery will be added to the inside 30-fathom fishery subquotas. The daily bag limit for all seasons is the first halibut taken, per person, of 32 inches (81.3 cm) or greater in length. ODFW will sponsor a public workshop shortly after the IPHC annual meeting to develop recommendations to NMFS on the open dates for each season each year. The three seasons for this subarea are as follows.

A. The first season opens on May 1, only in waters inside the 30-fathom (55 m) curve, and continues daily until 20 percent of the subarea quota is taken, or until September 30, whichever is earlier. Poundage that is estimated to be above the amount needed to keep this season open through September 30 will be transferred to the August all-depth fishery if it can be utilized. Any overage in the all-depth fisheries would not affect achievement of allocation set aside for the inside 30-fathom curve fishery.

B. The second season is an all-depth fishery that begins on the second Thursday in May and is allocated 80 percent of the subarea quota. Fixed season dates will be established preseason based on projected catch per day and number of days to achievement of the subquota for this season. No inseason adjustments will be made, except that additional opening days (established preseason) may be allowed if any quota for this season remains unharvested. The fishery will be structured for 2 days per week (Friday and Saturday) if the season is for 4 or fewer fishing days. The fishery will be structured for 3 days per week (Thursday through Saturday) if the season is for 5 or more fishing days.

C. The last season is a coastwide (Cape Falcon, OR, to Humbug Mountain, OR) all-depth fishery that begins on the first Friday in August. Fixed season dates will be established preseason based on projected catch per day and number of days to achievement of the combined Oregon all-depth quotas for the Central and South Oregon Coast subareas. The fishery will be structured for 2 days per week (Friday and Saturday). No inseason adjustments will be made (unless the combined Oregon all-depth quotas are estimated to be achieved), except that additional opening days may be allowed if quota remains unharvested. If quota remains unharvested, but is insufficient for 1 day

of an all-depth fishery, that additional quota will be transferred to the fisheries inside the 30 fathom (55 m) curve.

(vii) *South of Humbug Mountain subarea.* This sport fishery subarea is allocated 3.0 percent of the Oregon/California subquota, which is approximately 0.62 percent of the Area 2A TAC. This area is defined as the area south of Humbug Mountain, OR (42°40'30" N. lat.), including California waters. The structuring objective for this subarea is to provide anglers the opportunity to fish in a continuous, fixed season that is open from May 1 through September 30. The daily bag limit is the first halibut taken, per person, of 32 inches (81.3 cm) or greater in length. Due to inability to monitor the catch in this area inseason, a fixed season will be established preseason by NMFS based on projected catch per day and number of days to achievement of the subquota; no inseason adjustments will be made; and estimates of actual catch will be made postseason.

In section (f), Sport Fisheries, paragraph (3) is revised to read as follows:

(3) *Possession limits.* The sport possession limit on land north of Leadbetter Point, WA, is two daily bag limits, regardless of condition, but only one daily bag limit may be possessed on the vessel. The possession limit on land south of Leadbetter Point, WA, is the same as the bag limit.

#### **Proposed 1999 Sport Fishery Management Measures**

NMFS is proposing sport fishery management measures that are necessary to implement the Plan in 1999. The 1999 TAC is unknown at this time, but IPHC staff have made a preliminary catch limit recommendation of an Area 2A TAC of 660,000 lb (299.4 mt). The final TAC will be determined by the IPHC at its annual meeting in January 1999. The proposed 1999 sport fishery regulations are based on an Area 2A TAC that ranges between the IPHC staff preliminary recommendation of 660,000 lb (299.4 mt) and the 1998 Area 2A TAC of 820,000 lb (372 mt), as follows:

##### *Washington Inside Waters Subarea Puget Sound and Straits*

This subarea would be allocated between 45,011 and 57,191 lb (20.4–25.9 mt) at an Area 2A TAC of 660,000–820,000 lb (299.4–372 mt) in accordance with the Plan. The season would be reduced from 54 days in 1998 because of an increased catch per day in recent years of 1,470 lb (0.7 mt) per day in 1997 and of 1,357 lb (0.62 mt) per day in 1998, compared with 844 lb (0.4 mt)

per day in 1996. In accordance with the procedure developed with IPHC to project the catch in this subarea based on past catch per "fishing day equivalent" (FED), where a weekday is equal to 1 FED and a weekend/holiday is equal to 2.5 FEDs, a range of 36–46 FEDs were calculated for the subarea quota range described above. This calculation was based on an average catch of 1,224 lb (0.56 mt) per FED in the past 3 years. The proposed number of fishing days was based on setting a season that opens in May and continues at least through July 4 in accordance with the Plan. At the low end of the TAC range, there would not be enough FEDs available to accommodate that time-span. A subquota allocation of 45,011 lb (2.4 mt) would result in an approximately 22-day season, beginning May 28 (Friday), and continuing for 5 days per week (Thursday through Monday) and ending on June 26 (Saturday). At the higher end of the subarea allocation range, season setting provisions of the Plan could be met without exceeding the number of FEDs available. Under the higher subarea allocation, there would be a 27-day season that would open on May 28 (Friday) and continue for 5 days per week (Thursday through Monday) through July 3 (Saturday). The final determination of the season dates would be based on the allowable harvest level, projected 1999 catch rates and on recommendations developed in a public workshop sponsored by Washington Department of Fish and Wildlife after the 1999 TAC is set by the IPHC. The daily bag limit would be one halibut of any size per day per person.

##### *Washington North Coast Subarea (North of the Queets River)*

This subarea would be allocated between 83,872 and 96,052 lb (38–43.6 mt) at an Area 2A TAC of 660,000–820,000 lb (299.4–372 mt) in accordance with the Plan. The fishery would open on May 1 and continue for 5 days per week (Tuesday through Saturday) until the quota is taken. Based on the 1998 catch of 1,567 lb (0.71 mt) per day, it is anticipated that the season would extend past July 4 regardless of where the subarea allocation falls within the possible range, thereby achieving the three priorities for this subarea in the Plan. The daily bag limit would be one halibut of any size per day per person. A portion of this subarea located about 19 nm (35 km) southwest of Cape Flattery would be closed to sport fishing for halibut. The size of this closed area is described in the Plan, but may be modified preseason by NMFS to maximize the season length.

##### *Washington South Coast Subarea*

This subarea would be allocated between 24,467 and 36,348 lb (11.1–16.6 mt) at an Area 2A TAC of 660,000–820,000 lb (299.4–372 mt) in accordance with the Plan. The fishery would open on May 2 (Sunday) and continue 5 days per week (Sunday through Thursday) until 1,000 lb (0.45 mt) are projected to remain in the quota. The fishery would be open Sunday through Thursday in all areas, except where prohibited, and Friday and Saturday only in the area from the Queets River south to 47°00'00" N. lat. and east of 124°40'00" W. long. When 1,000 lb (0.45 mt) are projected to remain in the quota, fishing would be allowed 7 days per week in the area from the Queets River south to 47°00'00" N. lat. and east of 124°40'00" W. long. The daily bag limit would be one halibut of any size per day per person. A portion of this area would be closed to sport fishing for halibut. The closed area is a rectangle with the following dimensions: 47°19'00" N. lat., 124°53'00" W. long.; 47°19'00" N. lat., 124°48'00" W. long.; 47°16'00" N. lat., 124°53'00" W. long.; 47°16'00" N. lat., 124°48'00" W. long.

##### *Columbia River Subarea*

This subarea would be allocated between 6,384 and 8,565 lb (2.9–3.9 mt) at an Area 2A TAC of 660,000–820,000 lb (299.4–372 mt) in accordance with the Plan. The fishery would open on May 1 and continue 7 days per week until the quota is reached or September 30, whichever occurs first. The daily bag limit would be the first halibut taken, per person, of 32 inches (81.3 cm) or greater in length.

##### *Oregon Central Coast Subarea*

This subarea would be allocated between 119,715 and 149,362 lb (54.3–67.8 mt) at an Area 2A TAC of 660,000–820,000 lb (299.4–372 mt) in accordance with the Plan. The May all-depth season would be allocated between 81,406 and 101,141 lb (36.9–45.9 mt). Based on an observed catch per day trend in this fishery, an estimated 13,700 lb to 17,000 lb (6.21 mt to 7.71 mt) would be caught per day in 1999, resulting in a 5- to 6-day fixed season. In accordance with the Plan, the season dates would be May 13, 14, 15, 20, 21, and 22 (if the Area 2A TAC is 820,000 lb (372 mt)). If the quota is not taken, an appropriate number of fishing days would be scheduled for late May or early June. The restricted depth fishery inside 30 fathoms would be allocated between 8,380 lb and 10,412 lb (3.8–4.7 mt) and would be open

starting May 1, and continue until September 30, or until the allocation is attained. The August coastwide all-depth fishery (Cape Falcon to Humbug Mountain) would be allocated between 29,929 and 37,185 lb (13.6–16.9 mt), which may be sufficient for a 1-day opening on August 6, based on the expected catch per day. If sufficient quota remains after this season for additional days of fishing, the dates for an all-depth fishery would be in mid-August. The final determination of the season dates will be based on the allowable harvest level, projected catch rates, and recommendations developed in a public workshop sponsored by ODFW after the 1999 TAC is set by the IPHC. The daily bag limit would be the first halibut taken, per person, of 32 inches (81.3 cm) or greater in length.

#### *Oregon South Coast Subarea*

This subarea would be allocated between 9,479 and 11,777 lb (4.3–5.3 mt) at an Area 2A TAC of 660,000–820,000 lb (299.4–372 mt) in accordance with the Plan. The May all-depth season would be allocated between 7,583 and 9,421 lb (3.4–4.3 mt) and, based on observed catch per day trend in this fishery, an estimated 1,400–1,900 lb (0.64–0.86 mt) would be caught per day in 1999, resulting in a 5- to 6-day fixed season. In accordance with the Plan, the season dates would be May 13, 14, 15, 20, 21, and 22 (if the Area 2A TAC is 820,000 lb (372 mt)). If the quota is not taken, an appropriate number of fishing days would be scheduled for late May or early June. The restricted depth fishery inside 30 fathoms would be allocated between 1,896 and 2,355 lb (0.86–1.1 mt) and would open on May 1 and continue until September 30 or attainment of its allocation. The August coastwide all-depth fishery (Cape Falcon to Humbug Mountain) would be open for 1 day on August 6, based on the expected catch per day. If sufficient quota remains for additional fishing days after this season, the dates for an all-depth fishery would be in mid-August. The final determination of the season dates would be based on the allowable harvest level, projected catch rates, and recommendations developed in a public workshop sponsored by ODFW after the IPHC sets the 1999 TAC. The daily bag limit would be the first halibut taken, per person, of 32 inches (81.3 cm) or greater in length.

#### *Humbug Mountain, OR, through California Subarea*

This subarea would be allocated between 4,080 and 5,069 lb (1.9–2.3 mt) at an Area 2A TAC of 660,000–820,000 lb (299.4–372 mt) in accordance with

the Plan. The proposed 1999 sport season for this subarea would be the same as last year, with a May 1 opening and continuing 7 days per week until September 30. The daily bag limit would be modified to be the first halibut taken, per person, of 32 inches (81.3 cm) or greater in length.

NMFS requests public comments on the Council's recommended modifications to the Plan and the proposed sport fishing regulations. The Area 2A TAC will be set by the IPHC at its annual meeting on January 25 through 28, 1999, in Prince Rupert, British Columbia. Comments are requested by February 16, 1999, after the IPHC annual meeting, so that the public will have the opportunity to consider the final Area 2A TAC before submitting comments on the proposed sport fishing regulations. The States of Washington and Oregon will conduct public workshops shortly after the IPHC meeting to obtain input on the sport season dates. After the Area 2A TAC is known, and after NMFS reviews public comments and comments from the States, NMFS will issue final rules for the Area 2A Pacific halibut sport fishery concurrent with the IPHC regulations for the 1999 Pacific halibut fisheries.

#### **Classification**

NMFS has prepared a draft EA/RIR on the proposed changes to the Plan. Copies of the "Draft Environmental Assessment and Regulatory Impact Review of Changes to the Catch Sharing Plan for Pacific Halibut in Area 2A" are available from NMFS (see ADDRESSES). Comments on the EA/RIR are requested by February 26, 1999.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that the changes to the Plan would not have a significant economic impact on a substantial number of small entities as follows:

The Regulatory Flexibility Act (RFA), 5 U.S.C. 603 *et seq.*, requires agencies to consider the impacts of proposed actions on small entities. NMFS has established standards for determining whether an action will have a significant economic impact on a substantial number of small entities. NMFS has determined that, in general, a substantial number of small entities would be 20 percent of those small entities affected by the rule. Economic impacts on small entities are considered to be "significant" if the proposed action would result in any of the following: (a) reduction in annual gross revenues by more than 5 percent; (b) increase in total costs of production by more than 5 percent as a result of an increase in compliance costs; (c) compliance costs as a percent of sales for

small entities are at least 10 percent higher than compliance costs as a percent of sales for large entities; (d) capital costs of compliance represent a significant portion of capital available to small entities, considering internal cash flow and external financing capabilities; or, (e) as a rule of thumb, 2 percent of small business entities being forced to cease business operations. For the fishing industry, a small entity is a small business with receipts of up to \$3 million annually. Charterboats operating in Washington and Oregon sport fisheries are viewed as small entities affected by the proposed changes to the Plan.

The proposed action would result in minor adjustments and refinements to existing management measures that, based on 1998 permits data, could affect up to 140 charter vessels. One proposed change would move the management line for the southernmost subarea north to include a small amount of the southern Oregon coast and move a small portion of the Oregon/California sport quota (0.4 percent of the Oregon/California recreational fishery subquota, or 0.08 percent of the Area 2A TAC), to match the movement of the management line. Historically, halibut landings south of Humbug Mountain (the location of the new proposed management line) have been incidental to sport fisheries directed at other species, similar to sport landings of Pacific halibut in California. The incidental nature of halibut landings in these southernmost Oregon waters is more similar to California fisheries than to the larger, northern Oregon sport fisheries. This action is expected to allow the retention of incidentally caught halibut south of Humbug Mountain without significantly increasing halibut landings. This proposed action is not expected to result in a shortened season for fishers landing halibut north of Humbug Mountain. Therefore, there would be no adverse impacts from this change.

Other proposed changes to the Plan are expected to have no adverse effect, but to provide a modest increase in fishery and regulatory convenience. The proposal to modify the boundaries of a sport fishing closed area within the Washington south coast subarea does not defeat the original purpose of creating a closed area, which was to prohibit fishing in a zone of high halibut abundance so that the season might be lengthened by eliminating access to that zone. Reducing the size of the current closed area is expected to better define the actual boundaries of the zone of halibut abundance and to allow fishing in a larger area, without actually increasing the halibut landings rate in this subarea. Restructuring the Washington south coast subarea sport fishery to allow landing from a small nearshore area on days that the offshore fishery is closed is also not expected to significantly increase the halibut landings rate for this subarea. Halibut landings rates from the nearshore area are significantly lower than from the offshore area. The purpose of this change is to acknowledge that halibut may be caught incidentally in nearshore waters on days that the deepwater fishery is closed, and that it is desirable to allow fishers to land halibut that they may catch incidentally on fishing trips targeting other species, such as rockfish.

Modifying the Oregon sport fishery south of Cape Falcon to allow the nearshore fisheries better access to its quota is not expected to reduce the number of open days in the all-depth fisheries. Under the current Plan, the August all-depth fisheries have access to both the all-depth quota and to the nearshore quota in setting the all-depth season length. In recent years, the all depth fisheries have landed about 20,000 lb (90.7 mt) of halibut per day, while daily catch rates for the nearshore fisheries may have been less than 150 lb (68 kg) per day and usually in the 25–75 lb (11.3–34 kg) range. Given that the quota for the nearshore fisheries south of Cape Falcon is expected to be 10,276–12,767 lb (466.1–5,791 kg) in 1999, eliminating all-depth fishery access to the portion of that quota that would remain unharvested in August would not preempt a day of fishing in the all-depth fishery.

Sport fishers operating in the subareas south of Leadbetter Point had expressed concern over the possible hooking mortality

associated with a 2-fish bag limit with one fish being over 32 inches (81.3 cm) in length and the other fish exceeding 50 inches (125.5 cm) in length. By allowing anglers to pursue a fish over 50 inches (125.5 cm), the risk of mortality of the discards of fish under 32 inches (81.3 cm) in length was too high in their opinion. Hoping to reduce such practices and to possibly lengthen the large, Oregon all-depth fisheries south of Cape Falcon, anglers proposed changing the bag and possession limits for all areas south of Leadbetter Point, Washington to the first fish longer than 32 inches (81.3 cm). Many charterboat operators already limit their angler clients to one halibut per person and this bag limit change is not expected to affect participation in the popular all-depth Oregon sport fisheries.

Proposed changes to clarify current Plan language that describes the inseason division of the commercial quota and to clarify the current halibut retention language for treaty Indian ceremonial and subsistence fisheries

are housekeeping changes that are expected to have no effect on the fisheries managed by those sections of the Plan. Proposed changes to the Plan have no adverse effect on the managed fisheries. The proposed sport management measures for 1999 would implement the Plan at an appropriate level of TAC; their impacts are within the scope of the impacts analyzed for the Plan. Therefore, a regulatory flexibility analysis was not prepared.

This action has been determined to be not significant for purposes of E.O. 12866.

Dated: February 5, 1999.

**Andrew A. Rosenberg,**

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

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