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Acting Associate Administrator for Hazardous Materials Safety.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 080310411-7566-01]

RIN 0648-AU14

Pacific Halibut Fisheries; Subsistence Fishing

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to amend the subsistence fishery rules for Pacific halibut in waters in and off Alaska. These regulations are necessary to address subsistence halibut management concerns in densely populated areas. This action is intended to support the conservation and management provisions of the Northern Pacific Halibut Act of 1982.

DATES: Comments must be received no later than May 14, 2008.

ADDRESSES: Send comments to Sue Salvesson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified by "RIN 0648-AU14" by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal website at <http://www.regulations.gov>.
- Mail: P. O. Box 21668, Juneau, AK 99802.
- Fax: (907) 586-7557.
- Hand delivery to the Federal Building: 709 West 9th Street, Room 420A, Juneau, Alaska.

All comments received are a part of the public record and will be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (e.g., name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments. Attachments to electronic comments must be in Microsoft Word, Excel, WordPerfect, or Adobe portable document file (pdf) formats to be accepted.

Copies of the Categorical Exclusion (CE), Regulatory Impact Review (RIR), and Initial Regulatory Flexibility Analysis (IRFA) prepared for this action, as well as the environmental assessment (EA) prepared for the original subsistence halibut action (68 FR 18145; April 15, 2003) may be obtained from the North Pacific Fishery Management Council (Council) at 605 West 4th, Suite 306, Anchorage, Alaska 99501-2252, 907-271-2809; by mail from NMFS, Alaska Region, P. O. Box 21668, Juneau, AK 99802-1668, Attn: Ellen Sebastian, Records Officer; in person at NMFS, Alaska Region, 709 West 9th Street, Room 420A, Juneau, Alaska; or via the Internet at the NMFS Alaska Region website at <http://www.fakr.noaa.gov>.

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

FOR FURTHER INFORMATION CONTACT:

Becky Carls, 907-586-7228 or becky.carls@noaa.gov, or Peggy Murphy, 907-586-7228 or peggy.murphy@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background and Need for Action

Management of the Pacific halibut (hereafter halibut) fishery in and off Alaska is based on an international agreement between Canada and the United States. This agreement, entitled the "Convention between the United States of America and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea" (Convention), was signed at Ottawa, Canada, on March 2, 1953, and amended by the "Protocol Amending the Convention," signed at Washington, D.C., March 29, 1979. The Convention, administered by the International Pacific Halibut Commission (IPHC), is given effect in the United States by the Northern Pacific Halibut Act of 1982 (Halibut Act).

The IPHC promulgates regulations pursuant to the Convention. The IPHC's regulations are subject to approval by the Secretary of State with concurrence from the Secretary of Commerce (Secretary). After approval by the Secretary of State and the Secretary, the IPHC regulations are published in the

Federal Register as annual management measures pursuant to 50 CFR 300.62. NMFS published the IPHC's current annual management measures on March 7, 2008 (73 FR 12280).

The Halibut Act also authorizes 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 United States (Halibut Act, section 773(c)). Such an action by the Council is limited to only those regulations that are in addition to, and not in conflict with, IPHC regulations. Council-developed regulations must be approved and implemented by the Secretary. Any allocation of halibut fishing privileges must be fair and equitable and consistent with other applicable Federal law. The Council used its authority under the Halibut Act to recommend a subsistence halibut program in October 2000 to recognize and manage the subsistence fishery for halibut.

The Secretary approved the Council's recommended subsistence halibut program and published implementing regulations on April 15, 2003 (68 FR 18145), and codified the program in 50 CFR part 300-subpart E, authorizing a subsistence fishery for halibut in Convention waters off Alaska. In April 2002, the Council proposed a suite of amendments to its original subsistence halibut program while postponing several proposed amendments to be included in a separate action. Regulations implementing the initial suite of amendments to the original subsistence halibut program were published on April 1, 2005 (70 FR 16742). These regulations (1) changed the boundaries of the Anchorage/Matsu/Kenai non-subsistence area; (2) eliminated gear restrictions in Areas 4C, 4D, and 4E; (3) increased gear and harvest restrictions in Area 2C; (4) allowed retention of legal-sized subsistence halibut with Community Development Quota halibut in Areas 4C, 4D, and 4E; (5) created a Community Harvest Permit (CHP) system to mitigate increased gear and harvest restrictions in affected areas; (6) created a Ceremonial and Educational Permit system to recognize customary and traditional tribal practices; and (7) included the subsistence halibut program in the federal appeals process at 50 CFR 679.43.

The Council revisited the postponed amendments in October 2004, and took final action on them in December 2004. This action proposes implementing regulations for the postponed amendments. Specifically, this action

proposes six changes to the subsistence halibut regulations that would: (1) revise the subsistence gear restrictions in Kodiak and add seasonal gear and vessel limits in Sitka Sound; (2) add the village of Naukati to the list of eligible subsistence halibut communities; (3) implement a possession limit to enhance enforcement; (4) revise the definition of charter vessel; (5) revise regulations regarding customary trade; and (6) allow the use of special permits within non-subsistence use areas by tribes eligible for the permits. Additional administrative revisions to regulations include converting the gear and harvest restrictions from text to table format and revising language to consistently refer to Sitka Sound, rather than Sitka LAMP, and its defined area. None of the proposed actions are intended to change the amount of halibut harvested for subsistence. Information on alternatives considered and rejected may be found in the RIR and IRFA prepared for this action (see ADDRESSES).

Subsistence Halibut Gear Restrictions

The Council recommended increasing gear restrictions in two subareas of IPHC Regulatory Areas 2C and 3A. In Area 3A, the Council recommended lowering the maximum hook limit per vessel in the Kodiak Road Zone and Chiniak Bay (together referred to hereafter as Chiniak Bay) from 90 to 60 hooks. In Area 2C, the Council proposed additional seasonal gear and harvest restrictions in Sitka Sound. The Council recommended each of these provisions to address localized depletion concerns in those subareas.

This proposed action would reduce the allowable hook limit in Chiniak Bay to no more than two times the per person limit of 30, except when fishing under a Ceremonial, Educational, or Community Harvest Permit. If one registered fisher is onboard the vessel, the maximum number of hooks on the gear set or retrieved in the course of fishing would be 30. If two registered fishers are onboard, the maximum number of hooks on gear set or retrieved in the course of fishing would be 60. However, unlike other parts of Area 3A that would be allowed up to 90 hooks if three registered fishers are onboard, at no time may the maximum number of hooks on gear set or retrieved in the course of fishing exceed 60 hooks per vessel in Chiniak Bay, except that under a Ceremonial, Educational, or Community Harvest Permit the limit would be 90 hooks per vessel.

Under this action, NMFS would define Chiniak Bay based on the State of Alaska's definition of the Kodiak

Road Zone found at 05 AAC 64.005. NMFS would define Chiniak Bay as all waters bounded by the shoreline and straight lines extending from Cape Chiniak (57°37.22' N. lat., 152°9.36' W. long.), to Buoy #1 at Williams Reef (57°50.36' N. lat., 152°8.82' W. long.), to East Cape on Spruce Island (57°54.89' N. lat., 152°19.45' W. long.), to Termination Point on Kodiak Island (57°51.31' N. lat., 152°24.01' W. long.), and connecting to a line running counterclockwise along the shoreline of Kodiak Island to Cape Chiniak (57°37.22' N. lat., 152°9.36' W. long.). NMFS proposes this definition because latitude and longitude reference points do not vary and can be easily drawn on paper and electronic charting systems. The proposed area also includes the vast majority of local small-vessel sport and subsistence grounds historically fished for halibut, while maintaining consistency with the area targeted by the Council's proposed Kodiak Road Zone recommendation.

Consistent with previous applications of the Community Harvest Permit (CHP) Program, the Council recommended allowing the use of a CHP in Area 3A, including Chiniak Bay, to mitigate the proposed increased restrictions. The CHP Program allows a community or Alaska Native tribe to select individual harvesters who may possess particular expertise in halibut fishing to harvest halibut on behalf of the community or Alaska Native tribe. Possession of a CHP in Area 3A would allow an eligible tribe or community to use 30 hooks per person up to a maximum of 90 hooks per vessel.

The Council also recommended additional gear restrictions and seasonal periods for gear restrictions in Sitka Sound to further address localized depletion concerns. This proposed action would reduce the allowable gear from 30 hooks to 15 hooks per vessel and prohibit power hauling during the summer months from June 1 through August 31. From September 1 through May 31 gear restrictions would remain at 30 hooks per vessel and power hauling would be allowed.

The gear restrictions in this proposed rule would apply only to gear in use by eligible subsistence fishermen. By applying the gear restrictions to gear "set or retrieved" from a vessel, the gear restrictions apply only to gear actively engaged in subsistence fishing for halibut. A subsistence fisherman may possess any amount of gear onboard the vessel as long as that amount of gear actively being used does not exceed the prescribed limits. For instance, a box of extra hooks stored onboard a vessel or a fully rigged set of spare gear in a

vessel would not count toward the subsistence gear restriction because the gear is not in use. This proposed rule also intends to further clarify any ambiguity in the gear restrictions by converting the original text of the gear restrictions to a table format. Because of this conversion to a table format, information in the regulatory text at § 300.65(h)(1)(i)(D) concerning the use of setline gear in Sitka Sound would be moved to § 300.65(e)(5).

Eligible Subsistence Halibut Communities

Persons eligible to conduct subsistence halibut fishing include (1) residents of rural places with customary and traditional uses of halibut and (2) all identified members of federally recognized Alaska Native tribes with a finding of customary and traditional uses of halibut. A list of rural communities and Alaska Native tribes eligible to fish for subsistence halibut may be found at § 300.65(g).

The list of rural places recommended by the Council and approved by the Secretary was derived from customary and traditional findings for halibut and bottomfish made by the Alaska State Board of Fisheries (Board) prior to the Alaska Supreme Court decision, *McDowell v. State*, 785 P.2d 1 (Alaska 1989). Following *McDowell*, State regulations directed the Board to determine whether each fish stock in subsistence use areas of the State is subject to customary and traditional uses. Therefore, the customary and traditional use determination process does not focus on communities or areas that conduct the use, but on the pattern of use of a fish stock. Although the Council engages in a community-based approach, nothing prevents the Board from nominating areas, such as remote homesteads, for eligibility for subsistence halibut.

The Council and Secretary retain exclusive authority to recommend changes to the list of rural places in § 300.65(g)(1). The Council initially recognized that some rural communities not explicitly named in the list may seek a finding of customary and traditional use of halibut, and established a policy to include those communities if customary and traditional findings were made. Residents who believed that their rural place was incorrectly omitted from the eligibility listing for rural places, or who were seeking eligibility for the first time, were encouraged to seek a customary and traditional finding from the Board before petitioning the Council.

In October 2003, the Board received seven appeals from communities and

individuals requesting positive customary and traditional use findings for halibut. The Board forwarded only two proposals to the Council: Port Tongass Village and Naukati. The remaining petitions failed because the petitioners were located within non-subsistence use areas and did not fit the stated criteria.

In December 2004, the Council recommended a provision to include Naukati as an eligible rural community for subsistence halibut purposes based on the Board's recommendation. The Council declined including Port Tongass Village following testimony and evidence that indicated the proposed rural community consists of only one individual. The Council determined that this was an insufficient number of residents to qualify as a community. However, the Council affirmed the Board's determination that Naukati is a rural community with customary and traditional use of halibut and recommended adding Naukati as a rural community for subsistence halibut purposes consistent with the Council's policy to include communities for which customary and traditional findings are made by the Board. Therefore, under this proposed rule, NMFS would add only Naukati to the list of eligible communities found at § 300.65(g)(1).

Subsistence Halibut Harvest Restrictions

In general, eligible subsistence fishermen may retain up to 20 halibut per day as a daily bag limit, except in Area 2C where only 20 halibut per vessel per day may be retained, and Areas 4C, 4D, and 4E where no limits on retention apply. In October 2003, the IPHC staff suggested that subsistence regulations allowed a substantial increase in harvest that necessitated more effective monitoring. The IPHC specifically expressed concern with overall enforcement of the subsistence program and the allowable possession of halibut. The IPHC identified that enforcement officers currently possess no means to verify time on the water for subsistence halibut fishermen who possess more than one daily bag limit, thereby hampering accurate accounting of halibut removals. The Council subsequently recommended implementing a possession limit to restrict potential abuses of the daily bag limit and enhance enforcement of daily harvest limits.

Based on the recommendation of the IPHC, the Council recommended that the proposed possession limit apply to Areas 2C, 3A, and 3B, which have experienced increased fishing effort due

to higher population density. The Council determined that no possession limit was necessary for Areas 4A and 4B because those areas were not experiencing corresponding increases in fishing effort and population density.

This proposed action would implement a possession limit of one daily bag limit for Areas 2C, 3A, and 3B. For instance, current regulations restrict a fisherman in Area 2C to 20 halibut per vessel per day, thus that fisherman's possession limit would be equal to his or her daily bag limit. Likewise, current regulations restrict a fisherman in Areas 3A and 3B to 20 halibut per person per day, so that fisherman's possession limit would be equal to his or her daily bag limit. Bag limits within Sitka Sound in Area 2C also would be subject to this action. Therefore, the possession limit within Sitka Sound would be 10 halibut per vessel from September 1 to May 31 and 5 halibut per vessel from June 1 through August 31. This proposed action would not apply in Areas 4A and 4B. This proposed action would have no effect in Areas 4C, 4D, or 4E because no daily bag limit exists in those areas. This proposed action also would have no effect on the retention limits allowed for CHPs, Ceremonial Permits, or Educational Permits.

Charter Vessel Prohibition

Current regulations prohibit the retention of subsistence halibut harvested using a charter vessel, which is defined at § 300.61 as "a vessel used for hire in sport fishing for halibut, but not including a vessel without a hired operator." NOAA Enforcement expressed difficulty enforcing the prohibition under the current definition because of problems associated with determining whether a vessel operator is "for hire." The Council subsequently clarified that the prohibition was meant only to prohibit subsistence fishers from hiring someone to take them subsistence fishing, but not to prohibit the use of vessels registered as charter vessels from being used for subsistence fishing. NOAA Enforcement recommended revising the definition of charter vessel to improve enforcement of the prohibition consistent with the Council's intent.

The Council adopted NOAA Enforcement's recommendation and provided additional guidance to ensure the prohibition continued to restrict subsistence fishing on charter vessels. In December 2004, the Council recommended revising the definition of charter vessel to "a vessel registered as such with the Alaska Department of Fish and Game." NOAA Enforcement believed this definition would improve

the identification of vessels used illegally as charter vessels for subsistence halibut and the enforcement of other charter vessel restrictions. NOAA Enforcement has since recommended using the term "sport fishing guide vessel" in the regulatory definition for a charter vessel because this is the term used in State of Alaska regulations at 05 AAC 75.077.

The Council further recommended, and NMFS proposes, a provision that would allow a charter vessel to be used for subsistence halibut fishing, but use for that purpose must be restricted to the owner of record as indicated on the State of Alaska vessel registration, provided the owner is eligible to fish for subsistence halibut, and the owner's immediate family. This provision would allow qualified subsistence halibut fishers who also engage in charter fishing to use their vessels to conduct subsistence fishing, but limit such fishing to the vessel owner and his or her immediate family. The Council recommended not defining "immediate family" in regulation.

The Council recommended, and NMFS proposes, the prohibition of the use of a charter vessel for subsistence halibut fishing while charter clients are onboard the vessel and prohibiting the transfer of subsistence halibut to charter clients to prevent abuses of the proposed charter vessel allowance. The prohibition against subsistence fishing while charter clients are onboard would prevent the vessel owner or any other person onboard the vessel from engaging in subsistence fishing at any time while a charter client is onboard the vessel. This would preclude the use of any gear not classified as sport fishing gear or retaining any halibut in excess of the sport limits while charter clients are onboard any vessel. Additionally, a prohibition of the transfer of subsistence halibut to charter clients would apply at all times, meaning that at no time may subsistence halibut be provided by a charter operator to any person who has chartered a sportfishing trip with that charter operator.

Customary and Traditional Trade Restrictions

Current regulations at § 300.66(j) specify that it is unlawful for any person to retain or possess subsistence halibut for commercial purposes; cause subsistence halibut to be sold, bartered, or otherwise entered into commerce; or solicit exchange of subsistence halibut for commercial purposes, except that a qualified subsistence fisherman may engage in the customary trade of subsistence halibut through monetary exchange of no more than \$400 per year.

The Council originally intended that the \$400 annual limit would allow a person who receives subsistence halibut from an eligible subsistence halibut fisherman, to help defer the donating fisherman's costs of harvesting subsistence halibut.

The Council was concerned that continuing the \$400 customary trade limit would confound Council intent by allowing de facto "sale" of subsistence halibut outside customary and traditional trade. In June 2003, the Council's Enforcement Committee reviewed issues related to customary trade and determined that (1) despite the Council's intent to not create a new commercial fishery, current regulations essentially allow the sale of subsistence halibut up to the \$400 annual limit; (2) the \$400 annual limit lacks enforceability because enforcement officers cannot easily distinguish between sale and customary and traditional exchange for cash; and (3) current regulations do not clearly prohibit advertising and solicitation for commercial sale. The Enforcement Committee recommended the Council revise the customary trade restrictions to meet the original intent of allowing customary and traditional trade.

On the suggestion of the Enforcement Committee, the Council recommended revising the regulations to eliminate customary trade for cash. The Council additionally determined that the identification of a dollar amount for the allowance of customary trade in the regulations resulted in some subsistence users "selling" halibut to other subsistence users outside of customary and traditional practices, and that the dollar amount effectively served as a target rather than a limit. NOAA Enforcement also reported subsistence halibut illegally entering the commercial market, due in part to the difficulty of enforcing the \$400 annual limit.

This proposed action would eliminate the \$400 customary trade limit and restrict any monetary exchange for subsistence halibut specifically to reimbursement of actual trip expenses directly related to the harvest of subsistence halibut. Actual trip expenses would be limited to ice, bait, food, or fuel only. Additional restrictions would be applied separately to rural community residents and Alaska Native tribal members.

Under this proposed action, persons who qualify as rural residents under § 300.65(g)(1) and hold a subsistence halibut registration certificate (SHARC) in their name under § 300.65(i) may be reimbursed only by residents of the same rural community listed on his or

her subsistence halibut registration certificate. For example, a rural community resident in Hoonah may be reimbursed for actual trip expenses directly related to subsistence halibut fishing by another resident of Hoonah but may not be reimbursed by a resident of Sitka. The Council proposed this restriction as an additional measure to discourage the entry of subsistence halibut into commerce.

Additionally, under this proposed action, persons who qualify as Alaska Native tribal members under § 300.65(g)(2) and hold a SHARC in their name under § 300.65(i) would be eligible for reimbursement only from an Alaska Native tribe or its members. For example, a tribal SHARC holder from the Kenaitze Indian Tribe may be reimbursed by a member of the Gwich'in Athabascan Indian Tribe. However, persons possessing a SHARC designated as tribal would be ineligible to receive reimbursement from anyone other than another Alaska Native tribe or its members.

Special Permits in Non-subsistence Areas

Generally, eligible persons may harvest subsistence halibut in all Convention waters in and off Alaska except for the four designated non-subsistence marine areas: the Ketchikan non-subsistence marine waters area, the Juneau non-subsistence marine waters area, the Anchorage-Matsu-Kenai non-subsistence marine waters area, and the Valdez non-subsistence marine waters area (§ 300.65(h)(3) and Figures 2–5 to subpart E).

In December 2004, the Council recommended allowing the use of Ceremonial Permits and Educational Permits in non-subsistence marine areas by tribes whose traditional fishing grounds are located within Areas 2C and 3A. This proposed action would allow twelve Alaska Native tribes whose traditional fishing grounds fall within Areas 2C and 3A to conduct subsistence halibut fishing in areas currently designated as non-subsistence marine areas. Therefore, if persons on a vessel possess a Ceremonial Permit or an Educational Permit, they would be allowed to conduct subsistence fishing in the non-subsistence marine areas subject to other existing regulations.

Use of Ceremonial Permits and Educational Permits within non-subsistence marine areas would remain subject to gear and harvest restrictions for those permits consistent with the IPHC regulatory area in which they are used. Ceremonial Permits and Educational Permits allow Alaska Native tribes in Areas 2C and 3A as

listed in § 300.65(g)(2) to harvest up to 25 halibut per permit. Ceremonial Permits and Educational Permits in non-subsistence marine areas maintain the same gear limitations as those required when fishing under a SHARC in Areas 2C and 3A (i.e., 30 hooks per vessel in Area 2C and 30 hooks per person or up to 90 hooks per vessel in Area 3A). Ceremonial Permits and Educational Permits also have unique application and reporting requirements (§ 300.65(j) and (k)).

Classification

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

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

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

This proposed rule would implement six actions to amend the subsistence halibut regulations: (1) revise the subsistence gear restrictions in Kodiak and add seasonal gear and vessel limits in the Sitka Sound area; (2) add the village of Naukati to the list of eligible subsistence halibut communities; (3) implement a possession limit equal to one daily bag limit to enhance enforcement; (4) revise the definition of charter vessel; (5) revise regulations regarding customary trade; and (6) allow the use of special permits within non-subsistence use areas by tribes eligible for the permits. Only actions 1 and 6 would directly regulate "small entities," as defined by the RFA. The remaining four actions are not addressed because they affect individuals, rather than "entities," as defined by RFA. All attributable impacts on directly regulated small entities, accruing from either action, appear to be beneficial.

Action 1 would directly regulate Alaska Native tribes, or governmental entities in the absence of a tribe, that are eligible to participate in the subsistence halibut program off Kodiak and Chiniak Bay. Action 1 would govern nine Alaska Native tribes. Action 6 would affect thirteen Alaska Native tribes, but no governmental entities.

It is NMFS policy to consider only adverse impacts when preparing an IRFA, consistent with the intent of Congress to minimize effects on small entities. No such adverse impacts appear to be associated with Actions 1 and 6. However, detailed information and empirical data about the operational structures, strategies, and fiscal conditions of the various Alaska Native tribes, which are likely to be directly regulated by the proposed actions, are not presently available to the analysts to support preparation of a factual basis upon which to certify, under RFA provisions. Therefore, the Council prepared an IRFA to fulfill the requirements of the RFA, despite the high probability that the actions will not have a substantial adverse effect on a substantial number of small entities, as these terms are defined under the RFA.

Proposed actions 1 and 6 aim to enhance management of the subsistence halibut fishery as it pertains to use by Alaska Native tribes for the purpose of recognizing and appropriately accommodating subsistence practices. These actions are taken under the authority of the Northern Pacific Halibut Act of 1982.

The principal decisions in the preferred alternatives for actions 1 and 6 address changes to (1) gear limits and the use of Community Harvest Permits (CHPs) by Alaska Native tribes in Kodiak and Chiniak Bay, and seasonal gear and vessel limits in Sitka Sound; and (2) fishing in non-subsistence use areas. The preferred alternatives to implement CHPs for Alaska Native tribes in Kodiak and Chiniak Bay (CHPs are not allowed in Sitka Sound) under action 1, and to allow ceremonial and educational permits to be used by Alaska Native tribes in non-subsistence use areas under action 6, directly regulate small entities.

The Council addressed multiple alternatives for each action under the RFA. Under action 1, the Council analyzed three alternatives: (1) no action; (2) change gear restrictions and annual limits in Kodiak, Prince William Sound, Cook Inlet, and the Sitka LAMP; and (3) change gear restrictions and annual limits only in Kodiak and the Sitka LAMP. The Council selected alternative 3 as the preferred alternative for action 1. For action 6, the Council

analyzed three alternatives: (1) no action; (2) allow the use of CHPs, educational permits, and ceremonial permits in non-subsistence use areas by tribes whose traditional fishing grounds are located within IPHC Areas 2C and 3A, with the associated daily bag limit; and (3) allow the use of educational permits and ceremonial permits, but not CHPs, in non-subsistence use areas by tribes whose traditional fishing grounds are located within IPHC Areas 2C and 3A, with the associated daily bag limit. The Council selected alternative 3 as the preferred alternative for action 6.

Based on the best available scientific data and information, the IRFA (including the RIR) reveals that none of the significant alternatives to the proposed action, other than the preferred alternatives, have the potential to accomplish the objectives of the Council consistent with the Halibut Act, the RFA, and other applicable statutes, and minimize the adverse economic impacts of the proposed rule on directly regulated small entities.

This proposed rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA) and which have been approved by OMB. These collections are listed by control number.

OMB Control Number 0648-0460

Public reporting burden is estimated to average ten minutes for Subsistence halibut registration certificate (SHARC) for rural or individual use and ten minutes for SHARC for tribal use.

OMB Control Number 0648-0512

Public reporting burden for a Subsistence Halibut Special Permit Application for ceremonial harvest, education harvest, or community harvest is estimated to average ten minutes per response.

These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see ADDRESSES) and by e-mail to *David_Rostker@omb.eop.gov*, or fax to 202-395-7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

NMFS is not aware of any other Federal rules that would duplicate, overlap, or conflict with these actions.

Executive Order 13175 of November 6, 2000 (25 U.S.C. 450 note), the Executive Memorandum of April 29, 1994 (25 U.S.C. 450 note), and the American Indian and Alaska Native Policy of the U.S. Department of Commerce (March 30, 1995) outline the responsibilities of the National Marine Fisheries Service in matters affecting tribal interests. Section 161 of Public Law 108-199 (188 Stat 452), as amended by section 518 of Public Law 108-447 (118 Stat 3267), extends the consultation requirements of Executive Order 13175 to Alaska Native corporations.

Consultations with the Alaska Native Subsistence Halibut Working Group, under Executive Order 13175, resulted in recommendations to allow the use of special permits in non-subsistence use areas. NMFS will contact tribal governments and Alaska Native corporations which may be affected by the proposed action, provide them with a copy of this proposed rule, and offer them an opportunity to consult.

List of Subjects for 50 CFR Part 300

Pacific halibut fisheries, Alaska, Alaska Natives, Fisheries, Recordkeeping and reporting requirements.

Dated: April 8 2008.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

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

PART 300—INTERNATIONAL FISHERIES REGULATIONS

Subpart E—Pacific Halibut Fisheries

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

Authority: 16 U.S.C. 773–773k.

2. In § 300.61 add definitions of “Chiniak Bay” and “Power hauling” in alphabetical order and revise the definition of “Charter vessel” to read as follows:

§ 300.61 Definitions.

* * * * *

Charter vessel means a vessel registered as a sport fishing guide vessel with the Alaska Department of Fish and Game.

Chiniak Bay means all waters bounded by the shoreline and straight lines connecting the coordinates in the order listed:

north from Cape Chiniak (57°37.22' N. lat., 152°9.36' W. long.);
to Buoy #1 at Williams Reef (57°50.36' N. lat., 152°8.82' W. long.);
to East Cape on Spruce Island (57°54.89' N. lat., 152°19.45' W. long.);
to Termination Point on Kodiak Island (57°51.31' N. lat., 152°24.01' W. long.); and connecting to a line running counterclockwise along the shoreline of Kodiak Island to Cape Chiniak (57°37.22' N. lat., 152°9.36' W. long.).

* * * * *

Power hauling means using electrically, hydraulically, or mechanically powered devices or attachments or other assisting devices or attachments to deploy and retrieve fishing gear. Power hauling does not include the use of hand power, a hand powered crank, a fishing rod, a downrigger, or a hand troll gurdy.

* * * * *

3. In § 300.65:

A. Revise paragraphs (e)(1)(ii) introductory text, (h)(1)(i), (h)(2), (j) introductory text, (j)(1)(ii), (j)(1)(iii),

(j)(3)(i) introductory text, (j)(3)(i)(A), (k)(3)(i), and (k)(3)(ii).

B. Add paragraph (e)(5).

C. In paragraph (g)(1) in the table entitled "Halibut Regulatory Area 2C" an entry for "Naukati" is added in alphabetical order.

The additions and revisions read as follows:

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

* * * * *

(e) * * *

(1) * * *

(ii) With respect to paragraphs (e)(3), (e)(4), and (e)(5) of this section, that part of the Commission regulatory area 2C that is enclosed on the north and east:

* * * * *

(5) Setline gear may not be used in a 4 nm radius extending south from Low Island at 57°00.70' N. lat., 135°36.57' W. long. within Sitka Sound, as defined in paragraph (e)(1)(ii) of this section, from June 1 through August 31.

* * * * *

(g) * * *

(1) * * *

Halibut Regulatory Area 2C	
Rural Community	Organized Entity
* * * * *	
Naukati	Municipality
* * * * *	

* * * * *

(h) * * *

(1) * * *

(i) Subsistence fishing gear set or retrieved from a vessel while engaged in subsistence fishing for halibut must not have more than the allowable hooks per vessel, or per person registered in accordance with paragraph (i) of this section and aboard the vessel, whichever is less, according to the regulatory area and permit type indicated in the following table:

Regulatory Area	Permit Type	Gear Restrictions
2C (Except Sitka Sound)	SHARC	30 hooks per vessel
	Ceremonial Permit	30 hooks per vessel
	Educational Permit	30 hooks per vessel
	Community Harvest Permit	30 hooks per person onboard up to 90 hooks
Sitka Sound	SHARC	September 1 through May 31: 30 hooks per vessel
		June 1 through August 31: 15 hooks per vessel; no power hauling
	Ceremonial Permit	September 1 through May 31: 30 hooks per vessel
		June 1 through August 31: fishing under Ceremonial Permit not allowed
	Educational Permit	30 hooks per vessel
3A (Except Chiniak Bay)	SHARC	30 hooks per person onboard up to 90 hooks per vessel
	Ceremonial Permit	30 hooks per person onboard
	Educational Permit	30 hooks per person onboard up to 90 hooks per vessel
	Community Harvest Permit	30 hooks per person onboard up to 90 hooks per vessel
Chiniak Bay	SHARC	30 hooks per person onboard up to 90 hooks per vessel
	Ceremonial Permit	30 hooks per person onboard up to 90 hooks per vessel
	Educational Permit	30 hooks per person onboard up to 90 hooks per vessel
	Community Harvest Permit	30 hooks per person onboard up to 90 hooks per vessel
3B	SHARC	30 hooks per person onboard up to 90 hooks per vessel
4A and 4B	SHARC	30 hooks per person onboard up to 90 hooks per vessel
4C, 4D, and 4E	SHARC	no hook limit

* * * * *

(2) The retention of subsistence halibut is limited per person eligible to

conduct subsistence fishing for halibut

and onboard the vessel according to the following table:

Regulatory Area	Permit Type	Retention Limits
2C (Except Sitka Sound)	SHARC	20 halibut per day per vessel and in possession
	Ceremonial Permit	25 halibut per permit
	Educational Permit	25 halibut per permit
	Community Harvest Permit	no daily or possession limit
Sitka Sound	SHARC	September 1 through May 31: 10 halibut per day per vessel and in possession
		June 1 through August 31: 5 halibut per day per vessel and in possession
	Ceremonial Permit	September 1 through May 31: 25 halibut per permit
		June 1 through August 31: fishing under Ceremonial Permit not allowed
	Educational Permit	25 halibut per permit
	Community Harvest Permit	fishing under Community Harvest Permit not allowed
3A, including Chiniak Bay	SHARC	20 halibut per person per day and in possession
	Ceremonial Permit	25 halibut per permit
	Educational Permit	25 halibut per permit
	Community Harvest Permit	no daily or possession limit
3B	SHARC	20 halibut per person per day and in possession
4A and 4B	SHARC	20 halibut per person per day; no possession limit
4C, 4D, and 4E	SHARC	no daily or possession limit

* * * * *

(j) *Community Harvest Permit (CHP)*. An Area 2C or Area 3A community or Alaska Native tribe listed in paragraphs (g)(1) or (g)(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) * * *

(ii) NMFS will issue a CHP to a community in Area 2C or Area 3A only if:

(A) The applying community is listed as eligible in Area 2C or Area 3A according to paragraph (g)(1) of this section; and

(B) No Alaska Native tribe listed in paragraph (g)(2) of this section exists in that community.

(iii) NMFS will issue a CHP to an Alaska Native tribe in Area 2C or Area

3A only if the applying tribe is listed as eligible in Area 2C or Area 3A according to paragraph (g)(2) of this section.

* * * * *

(3) * * *

(i) In Area 2C or Area 3A, except that a CHP may not be used:

(A) Within Sitka Sound as defined in paragraph (e)(1)(ii) of this section (see Figure 1 to this subpart E); or

* * * * *

(k) * * *

(3) * * *

(i) In Area 3A;

(ii) In Area 2C, except a Ceremonial Permit may not be used within Sitka Sound from June 1 through August 31;

* * * * *

4. In § 300.66:

A. Redesignate paragraphs (j) through (m) as paragraphs (k) through (n), respectively.

B. Revise paragraph (i) and newly redesignated paragraph (k).

C. Add new paragraph (j).

The revisions and additions read as follows:

§ 300.66 Prohibitions.

* * * * *

(i) Fish for subsistence halibut from a charter vessel or retain subsistence halibut onboard a charter vessel if anyone other than the owner of record, as indicated on the State of Alaska vessel registration, or the owner's immediate family is aboard the charter vessel and unless each person engaging in subsistence fishing onboard the charter vessel holds a subsistence halibut registration certificate in the person's name pursuant to § 300.65(i) and abides by the gear and harvest restrictions found at § 300.65(h).

(j) Transfer subsistence halibut to charter vessel anglers.

(k) Retain or possess subsistence halibut for commercial purposes; cause subsistence halibut to be sold, bartered, or otherwise entered into commerce; or solicit exchange of subsistence halibut for commercial purposes, except that a person who qualified to conduct subsistence fishing for halibut under § 300.65(g), and who holds a subsistence halibut registration certificate in the person's name under § 300.65(i), may be

reimbursed for the expense of fishing for subsistence halibut under the following conditions:

(1) Persons who qualify as rural residents under § 300.65(g)(1) and hold a subsistence halibut registration certificate in the persons's name under § 300.65(i) may be reimbursed for actual expenses directly related to subsistence fishing for halibut, including only ice, bait, food, or fuel, by residents of the same rural community listed on the person's subsistence halibut registration certificate; or

(2) Persons who qualify as Alaska Native tribal members under § 300.65(g)(2) and hold a subsistence halibut registration certificate in the person's name under § 300.65(i) may be reimbursed for actual expenses directly related to subsistence fishing for halibut, including only ice, bait, food, or fuel, by any Alaska Native tribe or its members.

* * * * *

[FR Doc. E8-7902 Filed 4-11-08; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No.080326475-8477-01]

RIN 0648-XG22

Fisheries Off West Coast States; Coastal Pelagic Species Fisheries; Annual Specifications

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

ACTION: Proposed rule.

SUMMARY: NMFS proposes a regulation to implement the annual harvest guideline (HG) for Pacific sardine in the U.S. exclusive economic zone (EEZ) off the Pacific coast for the fishing season of January 1, 2008, through December 31, 2008. This HG has been determined according to the regulations implementing the Coastal Pelagic Species (CPS) Fishery Management Plan (FMP) and establishes allowable harvest levels for Pacific sardine off the Pacific coast.

DATES: Comments must be received by May 14, 2008.

ADDRESSES: You may submit comments on this proposed rule identified by 0648-XG22 by any of the following methods:• Electronic Submissions: Submit all electronic public comments

via the Federal eRulemaking Portal <http://www.regulations.gov>

• Mail: Rodney R. McInnis, Regional Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802.

• Fax: (562)980-4047

Instructions: All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Copies of the report "Assessment of Pacific Sardine Stock for U.S. Management in 2008" may be obtained from the Southwest Regional Office (see the Mailing address above).

FOR FURTHER INFORMATION CONTACT:

Joshua Lindsay, Southwest Region, NMFS, (562) 980-4034.

SUPPLEMENTARY INFORMATION: The CPS FMP, which was implemented by publication of the final rule in the **Federal Register** on December 15, 1999 (64 FR 69888), divides management unit species into two categories: actively managed and monitored. Harvest guidelines for actively managed species (Pacific sardine and Pacific mackerel) are based on formulas applied to current biomass estimates. Biomass estimates are not calculated for species that are only monitored (jack mackerel, northern anchovy, and market squid).

During public meetings each year, the biomass for each actively managed species within the CPS FMP is presented to the Pacific Fishery Management Council's (Council) Coastal Pelagic Species Management Team (Team) and the Council's Coastal Pelagic Species Advisory Subpanel (Subpanel). At that time, the biomass, the acceptable biological catch (ABC) and the status of the fisheries are reviewed and discussed. This information is then presented to the Council along with HG recommendations and comments from the Team and Subpanel. Following review by the Council and after hearing public comment, the Council makes its HG recommendation to NMFS. The annual HG is published in the **Federal Register** as close as practicable to the start of the fishing season.

For actively managed CPS stocks, full assessments and the accompanying Stock Assessment Review (STAR) process typically occur every third year and were last completed in 2004. Therefore, for this 2007 cycle, a full assessment for Pacific sardine was conducted and reviewed by a STAR Panel in La Jolla, California, September 18-21, 2007. This assessment produced an estimated biomass of 832,706 mt. Applying this biomass number to the harvest control rule in the FMP produces an acceptable biological catch (ABC) for the 2008 fishery of 89,093 metric tons (mt).

In November, the Council held a public meeting in San Diego, California (72 FR 59256) during which time the Team, Subpanel, CPS Subcommittee of the Scientific and Statistical Committee (SSC) and the Council reviewed the current stock assessment, biomass numbers and ABC. Following their review of the assessment, associated biomass and ABC and after hearing reports by the SSC, Team and Subpanel the Council adopted an ABC or HG of 89,093 mt for the 2008 fishing year. This ABC is 42 percent less than the ABC/HG adopted by the Council for the 2007 fishing season.

The Pacific sardine HG is apportioned based on the following allocation scheme established by Amendment 11 (71 FR 36999, June 29, 2006) to the CPS FMP: 35 percent is allocated coastwide on January 1; 40 percent, plus any portion not harvested from the initial allocation is reallocated coastwide on July 1; and on September 15 the remaining 25 percent, plus any portion not harvested from earlier allocations is released. If the total HG or these apportionment levels for Pacific sardine are reached at any time, the Pacific sardine fishery will be closed via appropriate rulemaking until it re-opens either per the allocation scheme or the beginning of the next fishing season. The Regional Administrator shall publish a notice in the **Federal Register** the date of the closure of the directed fishery for Pacific sardine.

Based on recommendations by the Team, and the potential that seasonal allocation totals may be attained during the 2008 fishing year due to the decrease in the HG, the Council also adopted a set aside of 8,909 mt (10 percent of the ABC). Implementation of the set aside would establish a directed harvest fishery of 80,184 mt and an incidental fishery of 8,909 mt. This incidental fishery would allow for incidental landings of Pacific sardine in other fisheries and prevent the closure of such fisheries, particularly other CPS fisheries, if a seasonal directed fishery