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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 300

[Docket No. 0808061071-81575-01]

RIN 0648-AX17

#### Pacific Halibut Fisheries; Guided Sport Charter Vessel Fishery for Halibut

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

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

**SUMMARY:** NMFS proposes regulations that would limit the harvest of Pacific halibut by guided sport charter vessel anglers in International Pacific Halibut Commission Regulatory Area 2C (Area 2C) of Southeast Alaska to one halibut per day. This proposed regulatory change is necessary to reduce the halibut harvest in the charter vessel sector to approximately the guideline harvest level for Area 2C. The intended effect of this action is to manage the harvest of halibut consistent with an allocation strategy recommended by the North Pacific Management Council for the guided sport charter vessel fishery and the commercial fishery.

**DATES:** Comments must be received no later than January 21, 2009.

**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-AX17" 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 9<sup>th</sup> Street, Room 420A, Juneau, AK.

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 (enter N/A in the required fields if you wish to remain anonymous). Attachments to electronic comments must be in Microsoft Word, Excel, WordPerfect, or Adobe portable document file (pdf) formats to be accepted.

Copies of the Environmental Assessment (EA), Regulatory Impact Review (RIR), and Initial Regulatory Flexibility Analysis (IRFA) prepared for this action may be obtained from NMFS Alaska Region, P.O. Box 21668, Juneau, Alaska 99802, Attn: Ellen Sebastian, and on the NMFS Alaska Region website at <http://alaskafisheries.noaa.gov>.

**FOR FURTHER INFORMATION CONTACT:** Julie Scheurer, 907-586-7356.

**SUPPLEMENTARY INFORMATION:** The International Pacific Halibut Commission (IPHC) and NMFS manage fishing for Pacific halibut (*Hippoglossus stenolepis*) through regulations established under the authority of the Northern Pacific Halibut Act of 1982 (Halibut Act). The IPHC promulgates regulations governing the halibut fishery under the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea (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 Secretaries of State and Commerce, the IPHC regulations are published in the **Federal Register** as annual management measures pursuant to 50 CFR 300.62 (March 7, 2008; 73 FR 12280).

The Halibut Act also provides regulatory authority to the North Pacific Fishery Management Council (Council) and the Secretary. The Council, under 16 U.S.C. 773c(c), may develop regulations applicable to U.S. nationals or vessels, which are in addition to, and not in conflict with regulations adopted by the IPHC. The regulations developed by the Council shall only be implemented with the approval of the Secretary, and must meet criteria outlined in section 773c(c), including consistency with 16 U.S.C. 1853(b)(6). The Secretary, under 16 U.S.C. 773c(a) and (b), has the general responsibility to carry out the Convention and Halibut Act. According to section 773c(b), "In fulfilling [the general responsibility to carry out the Convention and the Halibut Act], the Secretary shall, in consultation with the Secretary of the department in which the Coast Guard is operating, adopt such regulations as may be necessary to carry out the purposes and objectives of the Convention and [the Halibut Act]." The Secretary's authority to take action under the Halibut Act has been delegated to NMFS.

NMFS takes this action under section 773c(b) to adopt such regulations as may be necessary to carry out the purposes and objectives of the Convention and the Halibut Act. This action would implement, among other measures, a one halibut daily bag limit on charter vessel anglers in IPHC Area 2C. This bag limit originally was recommended by the Council in June 2007, implemented by NMFS by final rule on May 28, 2008, with an effective date of June 1, 2008 (73 FR 30504). The May 28, 2008, final rule was enjoined by the U.S. District Court for the District of Columbia on June 10, 2008, (see Order Granting Plaintiffs' Motion for a Temporary Restraining Order (TRO), dated June 11, 2008, and Order Granting Plaintiffs' Motion for a Preliminary Injunction (PI), dated June 19, 2008, *Van Valin, et al. v. Gutierrez*, Civil Action No. 1:08-cv-941). NMFS has withdrawn the May 28, 2008, final rule that was challenged in the *Van Valin* lawsuit, and now takes action in a separate rulemaking to implement a one halibut daily bag limit, giving effect to the Council's intent to keep the harvest of charter vessel anglers to approximately the established guideline harvest level (GHL).

In its Order Granting the Plaintiffs' Motion for a Preliminary Injunction, dated June 19, 2007, the U.S. District Court determined that the Plaintiffs had met the burden for granting a preliminary injunction, including demonstrating a likelihood of success

on the merits of their claims. The Plaintiffs argued that NMFS, by referencing the 2003 GH rule (68 FR 47256, August 8, 2003) in the May 28, 2008, final rule, bound itself to use certain procedures described in the preamble to the 2003 GH rule, including the requirement that a GH had to be exceeded in order for management measures to be implemented. NMFS now proposes regulations to specifically repudiate such a "policy" and, under sections 773c(a) and (b), proposes new regulations that are necessary to carry out the purposes and objectives of the Convention and the Halibut Act and that will clarify NMFS' regulatory authority.

The preamble to the 1979 Protocol Amending the Convention provides that "the Convention has served to promote and coordinate scientific studies relating to the halibut fishery of the Northern Pacific Ocean and the Bering Sea, and has aided in the conservation of these fishery resources." Management based on the best available science and conservation of the species are purposes and objectives that are familiar to NMFS in its role as resources manager. As such, NMFS proposes regulations to reduce the harvest of halibut by charter vessel anglers to one halibut per calendar day in order to limit the overall harvest of halibut by charter anglers in IPHC Area 2C to approximately the GH. The GH in IPHC Area 2C currently is 931,000 lb (422.3 mt).

As stated above, this action by NMFS is consistent with the Council's intent to limit the catch to the GH. As recently as October 2008, when the Council was taking final action on the Catch Sharing Plan (CSP) for halibut between the charter and commercial sectors in IPHC Areas 2C and 3A, the Council reaffirmed its intent for a one halibut bag limit in IPHC Area 2C in order to limit the harvest of halibut by charter anglers in IPHC Area 2C to approximately the GH. This intent was further confirmed in a letter from Chris Oliver, Executive Director, Council, to Dr. Bruce Leaman, Executive Director, IPHC. The letter, which was informing the IPHC that the Council approved a catch sharing plan for the guided sport and commercial halibut fisheries in IPHC Areas 2C and 3A, also provided that "[t]he Council reiterated its support of its previous recommendation for a one-fish bag limit in Area 2C." It is important to note that management under the Council-approved CSP, if approved by NMFS, would require a one halibut daily bag limit under current halibut abundance levels. Therefore, a one halibut daily bag limit is consistent with the past

management recommendation and the future management proposal of the Council.

This action by NMFS is also consistent with its authority under 16 U.S.C. 773c(a) and (b) to adopt such regulations as may be necessary to carry out the purposes and objectives of the Convention and the Halibut Act. This action addresses conservation of the resource, by restricting catch to approximately the GH, so that the IPHC's projected harvest of halibut by charter anglers, which is assumed by the IPHC to equal the GH, adequately reflects actual catches for purposes of managing sustainable removals of the halibut resource. This action also addresses an allocation of halibut fishing privileges among various U.S. fishermen, by giving effect to a Council recommendation on how to assign such privileges consistent with the criteria found in section 773c(c).

#### Management of the Halibut Fisheries

The harvest of halibut occurs in three basic fisheries (the commercial, sport, and subsistence fisheries). Additional fishing mortality occurs as bycatch, incidental catch, research catch, and wastage. Charter fishing for halibut in Alaska is managed as part of the sport fishery.

Based on a coastwide population model, the IPHC annually determines the amount of halibut that may be removed from the resource without causing biological conservation problems in all areas of Convention waters. In areas in and off of Alaska, the IPHC currently imposes catch limits only on the commercial sector. The IPHC estimates the exploitable biomass of halibut using a combination of harvest data from the commercial, recreational, subsistence fisheries, and information collected during scientific surveys and sampling of bycatch in other fisheries. The target amount of allowable harvest for a given area is calculated by multiplying a fixed harvest rate by the estimate of exploitable biomass. This target level is called the total constant exploitation yield (CEY) as it represents the target level for total removals (in net pounds) for that area in the coming year. The IPHC subtracts estimates of all non-commercial removals (sport, subsistence, bycatch, and wastage) from the total CEY. The remaining CEY, after the removals are subtracted, is the (fishery CEY) for an area(s) directed commercial fixed gear fishery.

This method of determining the commercial fishery(s) catch limit in an area results in a decrease in the commercial fishery(s) use of the resource

as other non-commercial uses increase their proportion of the total CEY. As conservation of the halibut resource is the overarching goal of the IPHC, it attempts to include all sources of fishing mortality of halibut within the total CEY. This method for determining the limit for the commercial use of halibut has worked well for many years to conserve the halibut resource, provided that the other non-commercial uses of the resource have remained relatively stable and small. Although most of the non-commercial uses of halibut have been relatively stable, growth in the guided sport charter vessel fishery in recent years, particularly in Area 2C, has resulted in the guided sport charter vessel fishery harvesting a larger amount of halibut, thereby reducing the amount available to the commercial fishery.

#### Guideline Harvest Level (GHL)

The guideline harvest level for Area 2C serves as a benchmark for monitoring the charter vessel fishery relative to the commercial fishery and other sources of fishing mortality. The GH does not limit the charter vessel fisheries. Although it is the Council's policy that the charter vessel fisheries should not exceed the GHs, the GH in Area 2C has been exceeded each year since 2004. Charter removals should be close to the GH or the overall harvest strategy of the IPHC is undermined, creating a conservation concern and resulting in a *de facto* reallocation from the commercial sector.

From 2003–2007, the GH for Area 2C was 1.432 million lb. In 2008, the IPHC reduced the CEY to 6.5 million lb (2,948.4 mt) from the 2007 CEY of 10.8 million lb (4,899.0 mt). This was a reduction of 4.3 million lb (1,950.4 mt) from the 2007 CEY. The reduction in the CEY triggered a reduction of the Area 2C GH from 1.432 million lb (649.5 mt) to 931,000 lb (422.3 mt) for 2008.

#### Recent Harvests of Halibut in Area 2C

In Area 2C, the commercial, sport, and other harvest of halibut over the past 11 years (1997 through 2007) has been estimated by the IPHC to average about 12.215 million lb (5,540.6 mt) per year. Of this annual average total removal from the halibut resource, the commercial fishery accounts for about 75.9 percent, the sport fishery (guided and unguided combined) accounts for about 19.6 percent, and the remaining 4.5 percent may be attributed to subsistence, bycatch, and wastage combined. Estimates of the subsistence harvest of halibut were made based on surveys conducted by the Alaska Department of Fish and Game (ADF&G)

during the past three years and average about 600,000 lb (272.2 mt) per year.

In the most recent three years (2005 through 2007), the average annual total halibut removals in Area 2C is 13.342 million lb (6,051.8 mt) of which the commercial fishery has taken about 73 percent, the sport fishery has taken about 21 percent, and about 6 percent is from other sources of halibut mortality. The commercial fishery is the primary user of the halibut resource in Area 2C followed by the sport fishery, which together account for over 90 percent of the total removals from the halibut resource.

In Area 2C, the sport fishery is comprised of guided fishing on charter vessels and unguided angling. Residents of Southeast Alaska and their family and friends are the primary unguided anglers, while non-resident tourists are the main clients for guided fishing on charter vessels. Sport harvest data collected by ADF&G show that the 1995 through 2007 average guided sport harvest of halibut has been 1.398

million lb (634.1 mt) per year and the unguided sport harvest of halibut has averaged 0.928 million lb (420.9 mt) per year. Guided charter vessel harvest averaged about 60 percent of all sport caught halibut landed in Southeast Alaska over this 13-year period. The guided sport harvest has increased its proportion of the sport harvest in recent years. From 2002 through 2007, the annual guided sport charter vessel harvest averaged 64.6 percent of the total sport harvest of halibut in Area 2C, and in 2005 reached a record 71.4 percent of the total sport harvest (Table 1).

Currently, the federal harvest restrictions implemented to reduce charter vessel harvest of halibut in Area 2C include the following:

- Halibut harvest on a charter vessel is limited to no more than two halibut per person per calendar day provided that at least one of the harvested halibut has a head-on length of no more than 32 inches (81.3 cm).

- If a person sport fishing on a charter vessel in Area 2C retains only one halibut in a calendar day, that halibut may be of any length.

In addition, the nonguided sport fishery for halibut is limited to a two halibut daily bag limit with no size restriction on either fish. Under these restrictions, the total Area 2C harvest of halibut by the sport fishery in 2007 was 3.049 million lb (1,383.0 mt), based on final ADF&G sport harvest estimates reported in September 2008. Of this amount, the charter fishery harvested 1.918 million lb (870.0 mt) or 63 percent and the unguided harvest was 1.131 million lb (513.0 mt) or 37 percent. Charter harvest exceeded the 2007 Area 2C GHl of 1.432 million lb by 486,000 lb (220.4 mt) or 34 percent (Table 1). Harvest estimates are not yet available for 2008. Assuming similar harvest patterns in 2008 as in 2007, the charter vessel harvest may be near double the 2008 GHl of 931,000 lb (422.3 mt).

TABLE 1. GUIDED AND UNGUIDED SPORT HARVEST BY YEAR IN AREA 2C IN MILLIONS OF POUNDS (MLB) AND AS A PERCENTAGE OF EACH YEAR'S GHl

Year	GHl (Mlb)	Unguided Sport Harvest (Mlb)	Charter Harvest (Mlb)	Total Sport Harvest (Mlb)	Charter harvest as percentage of GHl	Charter harvest as percentage of total sport harvest
2002	n/a	0.814	1.275	2.089	n/a	61.0 %
2003	1.432	0.846	1.412	2.258	98.6 %	62.5 %
2004	1.432	1.187	1.750	2.937	122.2 %	59.6 %
2005	1.432	0.845	1.952	2.797	136.3 %	69.8 %
2006	1.432	0.723	1.804	2.527	126.0 %	71.4 %
2007	1.432	1.131	1.918	3.049	133.9 %	62.9 %
2008	0.931	1.131*	1.918*	n/a	206.0 %	n/a

\*based on estimate of similar harvest rates as 2007

### Proposed Action

Consistent with a recommendation by the Council in June 2007, this action proposes the following management measures to reduce the charter vessel fishery harvest of halibut in Area 2C to approximately the GHl of 931,000 lb (422.3 mt). If implemented, the proposed regulations would remain in effect until changed by a new federal regulatory action.

- The number of halibut caught and retained by each charter vessel angler in Area 2C is limited to no more than one halibut per calendar day;

- A charter vessel guide, a charter vessel operator, and crew of a charter

vessel must not catch and retain halibut during a charter fishing trip; and

- The number of lines used to fish for halibut must not exceed six or the number of charter vessel anglers onboard the charter vessel, whichever is less.

*One-fish daily bag limit.* This restriction would substitute a daily catch limit for a charter vessel angler of one halibut per day of any size for the existing daily catch limit of two halibut per day with one of the two fish less than 32 inches (81.3 cm) in length. This is the only management option analyzed that is expected to reduce charter vessel harvest to the GHl of 931,000 lb. In conjunction with the proposed restrictions on harvest by skipper and

crew and line limits, the one-fish daily bag limit is estimated to reduce the charter vessel harvest to a range of 129 percent to 161 percent of the current Area 2C GHl. The one-fish daily bag limit is not expected to reduce charter harvest to below the current GHl without a concurrent reduction in client demand for charter trips.

*No harvest by skipper and crew.* A new Federal restriction is proposed prohibiting the harvest of halibut by a charter vessel guide, a charter vessel operator, and a charter vessel crew member during a charter vessel fishing trip. The language of the June 2007 Council(s) motion adopting this recommendation reads, (no harvest by skipper and crew when clients are on

board the charter vessel. (Although a sport fishing guide on a charter vessel in Area 2C is likely to be the same person as the skipper, captain, or operator of the vessel, in some cases the skipper and guide could be different persons. Hence, this proposed rule makes clear the Council's intent of applying this restriction to all persons (guide, skipper or operator, and crew) involved with the delivery of onboard services to the charter vessel angler.

The proposed regulation deviates from the Council's adopted motion language also in that the phrase (when clients are on board) is not used in the proposed regulation. Instead, the proposed regulation would limit the skipper and crew harvesting prohibition to a charter vessel fishing trip. A new definition is proposed in this action for (charter vessel fishing trip) which describes the period from the first deployment of fishing gear from a charter vessel until the offloading of any charter vessel angler or halibut. Also, an existing definition of (charter vessel) (at § 300.61) describes such a vessel as one (used for hire in sport fishing for halibut, but not including a vessel without a hired operator. Hence, the effect of the proposed regulation would be the same as that intended by the Council, which is to prohibit retention of halibut caught by the guide, skipper, and crew on a charter vessel, but not to impose this restriction when no clients or charter vessel anglers are onboard. A vessel without clients or paying anglers onboard is, by definition, not a charter vessel. Therefore, guides, skippers, and crew would not be prevented from sport fishing for halibut for themselves when they are not on a charter vessel fishing trip.

The Council recommended this restriction to make it more specific to halibut harvest on charter vessels in Area 2C. The State Commissioner of the ADF&G (Commissioner) issued an emergency order prohibiting the retention of all fish by the skipper and crew of a charter vessel in Area 2C in 2007. The Commissioner could not make his emergency order apply only to halibut because the State of Alaska is not authorized to directly regulate halibut fishing. A comprehensive application of the emergency order to all fish effectively prevented charter vessel skippers and crews from harvest of salmon, rockfish, lingcod, and other species. Charter vessel operators requested relief from this comprehensive prohibition on skipper and crew harvests by having a Federal prohibition on skipper and crew harvest apply only to halibut. Assuming that the

Commissioner does not issue an emergency order prohibiting skipper crew and harvest, this action would relieve charter vessel skippers and crew from the more comprehensive prohibition against retention of all fish on charter vessels but would impose this prohibition on the retention of halibut.

**Line limits.** A new Federal restriction is proposed that would limit the number of lines that could be fished from a charter vessel to six or the number of charter vessel anglers onboard the charter vessel, whichever is less. The existing IPHC gear limitation for a person sport fishing for halibut is a single line with no more than two hooks attached, or a spear (IPHC regulation, section 25(1) at 73 FR 12289). Hence, this restriction would prevent more than six charter vessel anglers on a vessel from fishing at the same time. This restriction is reasonable, however, because the charter vessels and charter vessel skippers in Southeast Alaska (Area 2C) typically are licensed by the U.S. Coast Guard to carry no more than six passengers. In addition, existing State of Alaska regulations (at 5 AAC 47.030(b)) limit the number of lines fished from a charter vessel generally to the number of clients onboard the vessel. A six-line limit for Area 2C has been in Alaska regulations since 1983, and limiting the number of lines fished to the number of clients onboard has been a requirement since 1997. The proposed line limits in Federal regulations would be specifically for halibut fishing.

**Remove carcass retention provision.** NMFS proposes to remove existing requirements for the retention of halibut carcasses. To help enforce the two-fish daily bag limit with size restrictions that went into place in Area 2C in 2007, NMFS prohibited mutilating or otherwise disfiguring a halibut carcass such that the head-on length could not be determined. This requirement to retain carcasses would no longer be necessary with a one-fish daily bag limit and would be removed from regulations at § 300.66(m). The IPHC adopted new standards in 2008 that were published in the annual management measures on March 7, 2008 (73 FR 12280). The new IPHC requirement for Alaska is: "no person shall possess onboard a fishing vessel, including charter vessels and pleasure craft, halibut that have been filleted, mutilated, or otherwise disfigured in any manner except that each halibut may be cut into no more than two ventral and two dorsal pieces, and two cheeks, all with skin on." This change allows enforcement officers to count the

number of fish in possession by an angler, and is not addressed as a provision of this proposed rule.

**Other proposed changes.** NMFS proposes changes to § 300.65(c)(2) and (3) to clarify its authority to limit charter angler harvest to the GHL. Recent litigation highlighted that these regulations must be changed to clarify that NMFS has the authority to take action at any time to limit the charter angler catch to the GHL. A new prohibition (p) would be added to § 300.66 to ensure that charter vessel operators, guides, anglers, and crew members provide necessary documentation upon the request of an authorized officer. This documentation may include valid identification, U.S. Coast Guard operator's license, permit, ADF&G sport fishing license, or ADF&G Saltwater Sport Fishing Charter Trip Logbook.

One definition is proposed to be revised (guideline harvest level) and seven definitions are proposed to be added (Area 3A, charter vessel angler, charter vessel fishing trip, charter vessel guide, charter vessel operator, crew member, and sport fishing guide services) to define guided sport fishing activities and are intended to clarify who may and may not catch and retain halibut and who is responsible for recordkeeping and reporting requirements in § 300.65(d).

#### **Recordkeeping and Reporting**

Charter vessel operators would use the ADF&G Saltwater Sport Fishing Charter Trip Logbook to record the information needed to enforce the proposed one-fish daily bag limit. Logbook data sheets would be required to be submitted to the appropriate ADF&G office according to the time schedule described in the instructions at the beginning of the logbook.

The following recordkeeping and recording information would be required to enforce this proposed rule: charter vessel business owner license number, charter vessel guide license number, date, regulatory area fished, angler sport fishing license number and printed name, number of halibut retained, charter vessel guide signature, and charter vessel angler signature. Additionally, for charter vessels fishing for halibut in both Areas 2C and 3A in a single trip, separate logbook data sheets would be required for each area if halibut are caught and retained.

Charter vessel guides would continue to be required to complete the Alaska Department of Fish and Game Saltwater Sport Fishing Charter Trip Logbook and charter vessel anglers would sign the logbook at the end of a fishing trip to

acknowledge that the angler-specific information recorded is correct. These collection-of-information requirements were reviewed under the Paperwork Reduction Act (PRA) and were approved by the Office of Management and Budget under Control Number 0648-0575.

#### Potential Future Management Actions

This proposed action is intended to reduce charter vessel harvests of halibut to close to the GHL until a longer-term solution can be reached. Since the Council made its recommendation in June 2007, it subsequently adopted two additional management programs for the charter fishery in Areas 2C and 3A. The first program would implement a limited entry program for charter vessel businesses and associated vessels. The second program, the CSP, would implement new target harvest objectives for the charter fishery and associated management measures. It is important to note that management under the Council-approved CSP, if approved by NMFS, would require a one-fish bag limit under current halibut abundance levels. NMFS has not yet published a proposed rule for public review and comment for either of these proposed programs.

#### Classification

##### *Regulatory Flexibility Act*

An Initial Regulatory Flexibility Analysis (IRFA) was prepared, as required by section 603 of the Regulatory Flexibility Act. The IRFA describes the economic impact that this proposed rule, if adopted, would have on directly regulated small entities. A copy of this analysis is available from NMFS (see **ADDRESSES**). A description of this action, why it is being considered, and the legal basis for this action are discussed in the preamble above. The proposed action would implement a one-fish daily bag limit for the charter vessel halibut fishery in Area 2C. A summary of the analysis follows.

In 2007, 403 businesses operated 724 active charter vessels in Area 2C. All of these operations are assumed to be small entities, with annual gross revenues of less than the limit of \$7.0 million used to differentiate between large and small charter operations. The largest companies involved in the fishery, lodges or resorts that offer accommodations as well as an assortment of visitor activities, may be large entities under the Small Business Administration size standard, but it is also possible that all the entities involved in the charter vessel halibut harvest have grossed less than this

amount. The number of small entities may be overestimated because of the limited information on vessel ownership and operator revenues and operational affiliations. However, it is likely that nearly all entities qualify as small businesses and for purposes of this analysis, all entities were assumed to be small entities.

This analysis examined two alternatives, the status quo and the preferred alternative. The objective of this action is to reduce the guided sport harvest to approximately the GHL. The status quo alternative was introduced in 2007 with the intent of reducing halibut harvest in the charter vessel sector while minimizing negative impacts on the charter vessel sector, its sport fishing clients, and the coastal communities that serve as home ports for the charter vessel sector. The status quo would retain the two-fish bag limit with one of the two fish less than or equal to 32 inches (83.1 cm) in length, without changes. Under the status quo, both the number of charter customers and the volume of fish harvested rose to their highest recorded levels. In 2007, the GHL was 1.432 Mlb. Since that time reductions in the Total CEY in Area 2C have led to a reduction in the GHL to 0.931 Mlb. The 2007 harvest was more than double this GHL and is not expected to decline if the bag limit remains the same. Thus, the status quo would not achieve the objective of this action.

Seven management measures, combined into 11 specific options, were considered for this analysis, but were ultimately rejected without being subjected to detailed analysis. These measures were analyzed for the final rule published by the Secretary on May 28, 2008 (73 FR 30504), but prevented from taking effect in 2008 by the Federal Court's injunction. These alternatives were thoroughly analyzed at that time, and were rejected by the Council and Secretary for a number of reasons; primarily because none of these alternatives would reduce the guided charter halibut harvest to approximately the GHL. Additional reasons for rejecting these alternatives included 1) the economic effect of an option falling on too few businesses; 2) the option being easily diluted by changes in angler behavior; and 3) the difficulty in measuring large fish before bringing them onboard vessels.

The preferred alternative would implement a one-fish daily bag limit for charter vessel anglers, a prohibition on harvest by charter vessel guides, operators, and crew, and a maximum six-line limit. A range of harvest results are possible under the preferred

alternative. At current demand levels it is estimated to reduce the harvest in the guided sport fishery to between 129 percent and 161 percent of the 0.931 Mlb GHL, and, under certain assumptions outlined in the analysis about changes in demand, it may reduce the harvest to the GHL. Thus, this alternative is capable of achieving the objective of this action. Although the status quo would have a smaller impact on directly regulated small entities, it would not achieve the objectives of this action. The preferred alternative would minimize the impacts on small entities and best meet the management objective of restricting the charter vessel harvest of halibut to as close to the GHL as management measures will allow. NMFS earlier considered additional alternatives to achieve the objectives of this action in 2007 and 2008. These alternatives were analyzed in the April 2008 Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis for a Regulatory Amendment to Implement Guideline Harvest Level Measures in the Halibut Charter Fisheries in International Pacific Halibut Commission Regulatory Area 2C (see **ADDRESSES** for availability). This earlier analysis found that only the preferred alternative, the one-halibut bag limit, was capable of achieving the objectives of this action. The current analysis reached a similar conclusion.

##### *Collection of Information*

The proposed action imposes new recordkeeping and reporting requirements on the directly regulated small entities. The Council, NMFS, and ADF&G stressed the importance of minimizing reporting burden on the charter vessel industry and developed a proposed information collection program that would allow for the recording of necessary information in the existing ADF&G Saltwater Sport Fishing Charter Trip Logbook (logbook).

The new logbook information that would be required to be provided for this proposed action includes the regulatory area in which halibut were caught and kept during the fishing trip, the printed name of the charter vessel angler, including youth anglers under 16 years of age, and the signature of the angler on the back of the logbook sheet to verify that the number of halibut caught and recorded is accurate.

As currently required by the State, the charter vessel guide also would be required under the proposed regulations to provide 1) the business license number issued by ADF&G, 2) the charter vessel guide license number issued by ADF&G, 3) the date the charter vessel

fishing trip was taken, 4) the Alaska Sport Fishing License number of each charter vessel angler, and 5) the number of halibut retained. At the end of each fishing trip, each charter vessel guide would be required to acknowledge that the information recorded in the logbook is correct by signing the logbook data sheet.

This collection of information requirement is subject to the Paperwork Reduction Act (PRA) and has been approved by OMB under Control Number 0648-0575. The public reporting burden for charter vessel guide respondents to fill out and submit logbook data sheets is estimated to average four minutes per response. The public reporting burden for charter vessel anglers to sign the logbook is estimated to be one minute per response. These estimates include the time required for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The total public reporting burden for this collection is estimated at 3,134 hours. The professional skill that is necessary for each charter vessel guide to record the required logbook information vessel is the ability to read and write in English.

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](mailto: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 a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

#### *Executive Order 12866*

This proposed rule has been determined to be not significant for the purposes of Executive Order (E.O.) 12866.

#### *Halibut Act*

NMFS, through delegated authority from the Secretary of Commerce, is proposing this action under 16 U.S.C. 773c(a) and (b). This statutory provision provides NMFS with the general responsibility to carry out the Convention between the United States of America and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and the Bering Sea, signed at Ottawa, Canada on March 2, 1953, as amended by the

Protocol Amending the Convention, signed at Washington March 29, 1979 (Convention), and the Northern Pacific Halibut Act of 1982 (Halibut Act), and the authority to adopt such regulations as may be necessary to carry out the purposes and goals of the Convention and the Halibut Act.

According to the legislative history of the Halibut Act (Public Law 97-176, 1982 U.S. Code Cong. and Adm. News, p. 108), the purpose of the Halibut Act “is to amend U.S. law so that it will conform with the agreements made by the United States with Canada concerning the halibut fishery of the Northern Pacific Ocean and Bering Sea.”

The agreements made by the United States with Canada are integrated into the Convention. The Convention provides that:

Nationals and fishing vessels of, and fishing vessels licensed by, Canada or the United States may fish for halibut in Convention waters only in accordance with this Convention, including its Annex, and as provided by the International Pacific Halibut Commission in regulations promulgated pursuant to Article III of the Convention and designed to develop stocks of halibut in Convention waters to those levels which permit the optimum yield from the fishery and to maintain the stocks at those levels. However, it is understood that nothing contained in this convention shall prohibit either party from establishing additional regulations, applicable to its own nationals and fishing vessels, and to fishing licensed by that party, governing the taking of halibut which are more restrictive than those adopted by the International Pacific Halibut Commission.

Convention waters are defined as:

[T]he waters off the west coasts of Canada and the United States, including the southern as well as the western coasts of Alaska, within the respective maritime areas in which either Party exercises exclusive fisheries jurisdiction. For purposes of this Convention, the “maritime area” in which a Party exercises exclusive fisheries jurisdiction includes without distinction areas within and seaward of the territorial sea or internal waters of the Party.

As outlined above, one of the Convention’s primary purposes and goals is “to develop stocks of halibut in Convention waters to those levels which permit the optimum yield from the fishery and to maintain the stocks at those levels.” This overarching purpose and goal is the primary concern of NMFS for this fishery. Optimum yield for a fishery is designed to provide the greatest overall benefit to the Nation, particularly with respect to food production and recreational

opportunities, and is proscribed as such on the basis of the maximum sustainable yield from that fishery, as reduced by any relevant economic, social, or ecological factors.

At its annual meeting in January 2007, the IPHC adopted a motion to recommend reducing the daily bag limit for charter vessel anglers in Area 2C from two halibut to one halibut during certain time periods (June 15 – July 30) because it believed its management goals were at risk by the magnitude of charter halibut harvest in excess of the GHL. At that time, the IPHC had information that the GHL had been exceeded in 2004 and 2005, and most likely had been exceeded in 2006. The IPHC took this action reluctantly, indicating that its preference would be for domestic agencies to resolve allocation issues. The IPHC delayed the effective date of the reduced bag limit to afford NMFS time to resolve the issue under U.S. domestic law with regulations that would achieve “comparable reductions” in halibut harvest by charter vessel anglers in Area 2C.

In order to have an effective action in 2007, NMFS took action under section 773c(a) and (b), independent of the Council process. Rather than imposing a one halibut limit for certain portions of the season, as proposed by the IPHC, NMFS employed other management measures (daily bag limit of one halibut of any size and one halibut 32 inches or less) it determined would reduce sport fishing mortality of halibut to a level comparable to the level that would have been achieved by the proposed IPHC regulations. Note that this was not the same as reducing the catch to the GHL, which would have required more restrictive measures. Regulations implementing the above management measures were published on June 4, 2007 (72 FR 30714).

During the first half of 2007, the Council also was considering management alternatives for the charter vessel halibut fishery in Area 2C. Unlike the IPHC and NMFS actions, however, the Council’s action was designed specifically to maintain the charter vessel fishery to its GHL.

Section 773c(c) of the Halibut Act provides that “[t]he Regional Fishery Management Council having authority for the geographical area concerned [in this case the North Pacific Fishery Management Council] may develop regulations governing the United States portion of Convention waters, including limited access regulations, applicable to nationals or vessels of the United States, or both, which are in addition to, and not in conflict with regulations adopted

by the [International Pacific Halibut] Commission.”

The Council, through its authority under section 773c(c), developed regulations in June 2007 to limit the harvest of charter vessel anglers to the Area 2C GHL specified at 50 CFR 300.65(c). At that time, the Area 2C GHL was at 1.432 Mlb (649.5 mt); however, the Council was provided information that halibut biomass reductions might reduce the Area 2C GHL in 2008. Given the information that the GHL might be reduced, the Council proposed two options, one option if the Area 2C GHL remained at 1.432 Mlb (649.5 mt), and one option if the Area 2C GHL was reduced. NMFS published a proposed rule with those two options on December 31, 2007.

At the time the Council took action in June 2007, it was aware that charter anglers had exceeded the Area 2C GHL in 2004 (22 percent) and 2005 (36 percent), and preliminary estimates indicated that the 2006 Area 2C GHL also would be exceeded. Information provided to the Council in October 2007 indicated that the 2006 Area 2C GHL was exceeded by 26.5 percent.

In January 2008, the IPHC established a constant exploitation yield (CEY) that reduced the GHL to 0.931 Mlb (422.3 mt). This information led NMFS to publish a final rule on May 28, 2008 (73 FR 30504), with Option B, the option that was recommended by the Council and proposed by NMFS if the GHL was reduced. The final rule implemented a one halibut daily bag limit along with several other measures, including no harvest of halibut by skippers and crew on a charter vessel and line limits. Given the 2008 GHL, no other management measures analyzed by the Council would have reduced the projected charter anglers overall catch to the GHL.

As indicated earlier in this preamble, the May 28, 2008, final rule was enjoined by the U.S. District Court for the District of Columbia on June 10, 2008. The full basis for the lawsuit (*Van Valin, et al. v. Gutierrez*, Civil Action No. 1:08-cv-941) and the injunctive relief provided by the U.S. District Court is a matter of public record and will not be repeated here. However, one important aspect of the lawsuit is clarified by this proposed rule.

In *Van Valin*, the Plaintiffs argued that NMFS did not have the authority to impose certain management measures because it did not follow a procedure as outlined in the preamble to the 2003 GHL rule. According to the Plaintiffs, NMFS could not impose management measures to manage the charter sector to the GHL until that GHL was exceeded.

This would be true even if previous GHLs had been exceeded, and the GHL in place at the time of action was less than the previous exceeded GHLs (as was the case in 2008). Although the result the Plaintiffs advocated could be read into the rulemaking discussion found in the preamble to the 2003 GHL rule, NMFS believes that such a result would be counter to its responsibility to manage the halibut resource based on the best present, as well as past, information. As such, NMFS specifically repudiates that policy and proposes changes to the regulations to clarify NMFS' authority to take actions that are necessary to carry out the purposes and objectives of the Convention and the Halibut Act.

NMFS withdrew the May 28, 2008, rule on September 11, 2008 (73 FR 52795), to ensure that any confusion that may have occurred because of the May 28, 2008, rule's perceived connection to the statements made in the preamble to the 2003 GHL rule is eliminated and to establish a new record and rationale for action under this proposed rule. An analysis was prepared for this action that analyzes the necessity of taking this action, the purposes of this action, and the alternatives evaluated to achieve those purposes. NMFS considered this analysis, as well as the Council's continued support for its June 2007 recommendation, as evidenced by its actions and intent at its October 2008 meeting, the impacts of potential future actions, such as the Catch Sharing Plan for Areas 2C and 3A and moratorium on halibut charter businesses recommended by the Council, and statements provided by staff of the Commission concerning halibut stock management, in proposing this rule.

#### *Executive Order 12962*

This proposed action is consistent with E.O. 12962 which directs Federal agencies to improve the quantity, function, sustainable productivity, and distribution of aquatic resources for increased recreational fishing opportunities (to the extent permitted by law and where practicable). (This E.O. does not diminish NMFS' responsibility to address allocation issues, nor does it require NMFS or the Council to limit their ability to manage recreational fisheries. E.O. 12962 provides guidance to NMFS to improve the potential productivity of aquatic resources for recreational fisheries. This proposed rule does not diminish that productivity or countermand the intent of E.O. 12962.

This analysis did not reveal any Federal rules that duplicate, overlap, or conflict with the proposed action.

#### **List of Subjects in 50 CFR Part 300**

Fisheries, Fishing, Treaties.

Dated: December 16, 2008.

#### **Samuel D. Rauch III**

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

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

#### **PART 300—INTERNATIONAL FISHERIES REGULATIONS**

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

**Authority:** 16 U.S.C. 773–773k.

2. In § 300.61, add definitions in alphabetical order for “Area 3A”, “Charter vessel angler”, “Charter vessel fishing trip”, “Charter vessel guide”, “Charter vessel operator”, “Crew member”, and “Sport fishing guide services”, and revise the definition for “Guideline harvest level (GHL)” to read as follows:

#### **§ 300.61 Definitions.**

\* \* \* \* \*

*Area 3A* means all waters between Area 2C and a line extending from the most northerly point on Cape Akleik (57°41'15" N. latitude, 155°35'00" W. longitude) to Cape Ikolik (57°17'17" N. latitude, 154°47'18" W. longitude), then along the Kodiak Island coastline to Cape Trinity (56°44'50" N. latitude, 154°08'44" W. longitude), then 140° true.

\* \* \* \* \*

*Charter vessel angler*, for purposes of § 300.65(d), means a person, paying or nonpaying, using the services of a charter vessel guide.

*Charter vessel fishing trip*, for purposes of § 300.65(d), means the time period between the first deployment of fishing gear into the water from a vessel after any charter vessel angler is onboard and the offloading of one or more charter vessel anglers or any halibut from that vessel.

*Charter vessel guide*, for purposes of § 300.65(d), means a person who is required to have an annual sport guide license issued by the Alaska Department of Fish and Game, or a person who provides sport fishing guide services.

*Charter vessel operator*, for purposes of § 300.65(d), means the person in control of the vessel during a charter vessel fishing trip.

\* \* \* \* \*

*Crew member*, for purposes of § 300.65(d), means an assistant, deckhand, or similar person who works directly under the supervision of and on the same vessel as a charter vessel guide.

\* \* \* \* \*

*Guideline harvest level (GHL)* means the level of allowable halibut harvest by the charter vessel fishery.

\* \* \* \* \*

*Sport fishing guide services*, for purposes of § 300.65(d), means assistance, for compensation, to a person who is sport fishing, to take or attempt to take fish by being onboard a vessel with such person during any part of a charter vessel fishing trip. Sport fishing guide services do not include services provided by a crew member.

\* \* \* \* \*

3. In § 300.65, revise paragraphs (c)(2) and (3) and paragraph (d) to read as follows:

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

\* \* \* \* \*

(c) \* \* \*

(2) NMFS will publish a notice in the **Federal Register** on an annual basis announcing the GHL based on the table in paragraph (c)(1) of this section for Area 2C and Area 3A for that calendar year after the Commission establishes the constant exploitation yield for that year.

(3) The announced GHLs for Area 2C and 3A are intended to be the benchmarks for charter halibut harvest in those areas for the year in which it is announced pursuant to paragraph (c)(2) of this section. NMFS may take action at any time to limit the charter halibut harvest to as close to the GHL as practicable.

(d) *Charter vessels in Area 2C and Area 3A*—(1) *General requirements*—(i) *Logbook submission*. Alaska Department of Fish and Game Saltwater Sport Fishing Charter Trip Logbook data sheets must be submitted to the Alaska Department of Fish and Game, Division of Sport Fish, 333 Raspberry Road, Anchorage, AK 99518–1599, and postmarked no more than seven calendar days after the end of a charter vessel fishing trip.

(ii) The charter vessel guide is responsible for complying with the reporting requirements of this paragraph (d). The employer of the charter vessel guide is responsible for ensuring that the charter vessel guide complies with the reporting requirements of this paragraph (d).

(2) *Charter vessels in Area 2C*—(i) *Daily bag limit*. The number of halibut

caught and retained by each charter vessel angler in Area 2C is limited to no more than one halibut per calendar day.

(ii) *Charter vessel guide and crew restriction*. A charter vessel guide, a charter vessel operator, and any crew member of a charter vessel must not catch and retain halibut during a charter fishing trip.

(iii) *Line limit*. The number of lines used to fish for halibut onboard a vessel must not exceed six or the number of charter vessel anglers, whichever is less.

(iv) *Recordkeeping and reporting requirements in Area 2C*. Each charter vessel angler and charter vessel guide onboard a vessel in Area 2C must comply with the following recordkeeping and reporting requirements (see paragraphs (d)(2)(iv)(A) and (B) of this section):

(A) *Charter vessel angler signature requirement*. At the end of a charter vessel fishing trip, each charter vessel angler who retains halibut caught in Area 2C must acknowledge that his or her information and the number of halibut retained (kept) are recorded correctly by signing the back of the Alaska Department of Fish and Game Saltwater Sport Fishing Charter Trip Logbook data sheet on the line number that corresponds to the angler's information on the front of the logbook data sheet.

(B) *Charter vessel guide requirements*. For each charter vessel fishing trip in Area 2C, the charter vessel guide must record the following information (see paragraphs (d)(2)(iv)(B)(1) through (8) of this section) in the Alaska Department of Fish and Game Saltwater Sport Fishing Charter Trip Logbook:

(1) *Business owner license number*. The sport fishing operator business license number issued by the Alaska Department of Fish and Game to the charter vessel guide or the charter vessel guide's employer.

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

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

(4) *Regulatory area fished*. Circle the regulatory area (Area 2C or Area 3A) where halibut were caught and retained during each charter vessel fishing trip. If halibut were caught and retained in Area 2C and Area 3A during the same

charter vessel fishing trip, then a separate logbook data sheet must be used to record halibut caught and retained for each regulatory area.

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

(6) *Number of halibut retained*. For each charter vessel angler, record the number of halibut caught and retained during the charter vessel fishing trip.

(7) *Signature*. At the end of a charter vessel fishing trip, acknowledge that the recorded information is correct by signing the logbook data sheet.

(8) *Angler signature*. The charter vessel guide is responsible for ensuring that charter vessel anglers comply with the signature requirements at paragraph (d)(2)(iv)(A) of this section.

(3) *Charter vessels in Area 3A*. For each charter vessel fishing trip in Area 3A, the charter vessel guide must record the regulatory area (Area 2C or Area 3A) where halibut were caught and retained by circling the appropriate area in the Alaska Department of Fish and Game Saltwater Sport Fishing Charter Trip Logbook. If halibut were caught and retained in Area 2C and Area 3A during the same charter vessel fishing trip, then a separate logbook data sheet must be used to record halibut caught and retained for each regulatory area.

\* \* \* \* \*

4. In § 300.66, revise paragraph (m) and add paragraphs (o), (p), and (q) to read as follows:

**§ 300.66 Prohibitions.**

\* \* \* \* \*

(m) Exceed any of the harvest or gear limitations specified at § 300.65(d).

\* \* \* \* \*

(o) Fail to comply with the requirements at § 300.65(d).

(p) Fail to submit or submit inaccurate information on any report, license, catch card, application or statement required under § 300.65.

(q) Refuse to present valid identification, U.S. Coast Guard operator's license, permit, license, or Alaska Department of Fish and Game Saltwater Sport Fishing Charter Trip logbook upon the request of an authorized officer.

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