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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 180426419-8419-01]

RIN 0648-BH91

Pacific Halibut Fisheries; Revisions to Catch Sharing Plan and Domestic Management Measures in Alaska

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

ACTION: Proposed rule; request for comments.

SUMMARY: This proposed action would apply the daily bag limits, possession limits, size restrictions, and carcass retention requirements for guided fishing to all Pacific halibut on board a fishing vessel when Pacific halibut caught and retained by anglers that were guided and by anglers that were not guided are on the same fishing vessel. Currently, sport fishing activities for halibut in International Pacific Halibut Commission Regulatory Areas 2C (Southeast Alaska) and 3A (Southcentral Alaska) are subject to different regulations, depending on whether those activities are guided or unguided. This proposed action is intended to aid the enforcement and to ensure the proper accounting of halibut taken when sport fishing in Areas 2C and 3A.

DATES: Comments must be received no later than *[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]*.

ADDRESSES: You may submit comments, identified by FDMS Docket Number NOAA-NMFS-2018-0057, by either of the following methods:

- *Federal eRulemaking Portal.* Go to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2018-0057, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Mail comments to P.O. Box 21668, Juneau, AK 99802-1668.

Instructions: NMFS may not consider comments sent by any other method, to any other address or individual, or received after the end of the comment period. All comments received are a part of the public record and will generally be posted for public viewing on <http://www.regulations.gov> without change. All personal identifying information (e.g., name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter N/A in the required fields if you wish to remain anonymous).

Electronic copies of the Categorical Exclusion and the Regulatory Impact Review (RIR) prepared for this action are available from <http://www.regulations.gov> or from the NMFS Alaska Region website at <http://alaskafisheries.noaa.gov>.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this rule may be submitted to NMFS

at the above address, and by e-mail to *OIRA_Submission@omb.eop.gov* or fax to 202-395-7285.

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

SUPPLEMENTARY INFORMATION:

Authority for Action

The International Pacific Halibut Commission (IPHC) and NMFS manage fishing for Pacific halibut (*Hippoglossus stenolepis*) through regulations established under authority of the Northern Pacific Halibut Act of 1982 (Halibut Act). The IPHC adopts regulations governing the Pacific halibut fishery under the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the North Pacific Ocean and Bering Sea (Convention), signed in Ottawa, Ontario, on March 2, 1953, as amended by a Protocol Amending the Convention (signed in Washington, D.C., on March 29, 1979). For the United States, regulations developed by the IPHC are subject to acceptance by the Secretary of State with concurrence from the Secretary of Commerce. After acceptance by the Secretary of State and the Secretary of Commerce, NMFS publishes the IPHC regulations in the **Federal Register** as annual management measures pursuant to 50 CFR 300.62.

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

The Halibut Act, at section 773c(c), also provides the North Pacific Fishery Management Council (Council) with authority to develop regulations, including limited access regulations, that are in addition to, and not in conflict with, approved IPHC regulations. Regulations developed by the Council may be implemented by NMFS only after approval by the Secretary of Commerce. The Council has exercised this authority in the development of subsistence halibut fishery management measures, the limited access program for charter operators in the charter halibut fishery, and the catch sharing plan and domestic management measures in waters in and off Alaska, codified at 50 CFR 300.61, 300.65, 300.66, and 300.67. The Council also developed the Individual Fishing Quota (IFQ) Program for the commercial halibut and sablefish fisheries, codified at 50 CFR part 679, under the authority of section 5 of the Halibut Act (16 U.S.C. 773c(c)) and section 303(b) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*).

Management of the Halibut Fishery

Description of the Action Area

This proposed rule would change regulations for the management of the sport halibut fishery in IPHC Regulatory Areas 2C (Southeast Alaska) and 3A (Southcentral Alaska). These regulatory areas are referred to as “IFQ regulatory areas” throughout the IFQ Program regulations at 50 CFR part 679 and as “Commission regulatory areas” throughout the halibut management regulations at 50 CFR 300.61, 300.65, 300.66, and 300.67. These terms are synonymous with “IPHC regulatory areas.” This preamble uses the term “Area 2C” and “Area 3A” to refer to IPHC Regulatory Areas 2C and 3A, respectively.

Background on the Halibut Fishery

The harvest of halibut in Alaska occurs in three fisheries—the commercial, sport, and subsistence fisheries. The commercial halibut fishery is managed under the IFQ Program. The sport fishery includes guided and unguided anglers. Guided anglers are also referred to as “charter vessel anglers” herein; “charter vessel anglers” is also defined in § 300.61, and means persons, paying or non-paying, receiving sport fishing guide services for halibut. Throughout this preamble, the term “charter halibut fishery” is used to refer to the sport fishery prosecuted by charter operators who hold Charter Halibut Permits and offer sport fishing guide services for halibut. This preamble uses the terms “guided fishing” to refer to sport fishing by an angler who receives sport fishing guide services for halibut, and “guided angler” to an angler receiving those sport fishing guide services. This preamble uses the terms “unguided fishing” to refer to sport fishing by an angler who does not receive sport fishing guide services for halibut sport fishing, and “unguided angler” to an angler who does not receive those sport fishing guide services.

This proposed rule would not apply to the subsistence fishery, which provides an opportunity for rural residents and members of an Alaska Native tribe to retain halibut for personal use or customary trade.

The following sections of the preamble summarize charter halibut fishery management. Section 2.7 of the RIR prepared for this proposed action provides additional detail on charter halibut management programs that have been implemented in Areas 2C and 3A.

Charter Halibut Fishery

Sport fishing activities for Pacific halibut in Areas 2C and 3A are subject to different regulations, depending on whether those activities are guided or unguided. Guided sport fishing (charter fishing) for halibut is subject to charter restrictions under Federal regulations that are generally more restrictive than the regulations for unguided anglers. NMFS regulations at § 300.61 describe guided and unguided fishing. Guided fishing occurs if a charter vessel guide receives compensation to provide assistance or to physically direct a person who is sport fishing, and that person takes or attempts to take fish during any part of a charter vessel fishing trip. Unguided fishing occurs when anglers do not fish with the assistance of a guide. In some instances, halibut caught and retained by guided anglers are on the same vessel as halibut caught and retained by unguided anglers. This proposed action is limited to those instances.

Over the years, the Council and NMFS have developed specific management programs for the charter halibut fishery to achieve allocation and conservation objectives. These management programs maintain stability and economic viability in the charter fishery by 1) limiting the number of charter vessel operators, 2) allocating halibut to the charter fishery that vary with abundance, and 3) establishing a process for determining harvest restrictions for charter vessel anglers to keep the charter halibut fishery within its allocations.

The charter halibut fisheries in Areas 2C and 3A are currently managed under the Charter Halibut Limited Access Program (CHLAP) and the Catch Sharing Plan (CSP). The CHLAP limits the number of operators in the charter halibut fishery, while the CSP establishes annual allocations to the charter and commercial fisheries. The CSP also describes a process for determining annual management measures to limit charter harvest

to the allocations in each management area. The CHLAP and the CSP are summarized below.

Description of CHLAP

The CHLAP established Federal charter halibut permits (CHPs) for operators in the charter fisheries in Areas 2C and 3A. Since 2011, all vessel operators in Areas 2C and 3A with charter vessel anglers on board must have an original, valid permit on board during every charter vessel fishing trip on which Pacific halibut are caught and retained. CHPs are endorsed for the appropriate regulatory area and the number of anglers that may catch and retain charter halibut on a trip.

NMFS implemented this program, based on recommendations by the Council, to meet allocation objectives in the charter halibut fishery. This program provides stability in the fishery by limiting the number of charter vessels that may participate in Areas 2C and 3A. Vessel operators had to meet minimum participation requirements to receive an initial issuance of CHPs. Implementation of the CHLAP has resulted in consolidation in the charter halibut fishery as operators who did not meet the qualification criteria exited the fishery. Complete regulations for the CHLAP are published at 50 CFR 300.65, 300.66, and 300.67.

Description of CSP and Limits on Charter Vessel Anglers

The CSP in Areas 2C and 3A was adopted by the Council and implemented by NMFS in January 2014 (78 FR 75844, December 12, 2013). The CSP defines an annual process for allocating halibut between the charter and commercial halibut fisheries in Areas 2C and 3A. It establishes sector allocations that vary proportionally with changing levels of annual halibut abundance and that balance the differing needs of the charter and

commercial halibut fisheries over a wide range of halibut abundance in each area. The CSP describes a public process by which the Council develops recommendations to the IPHC for charter harvest restrictions that are intended to maintain harvest within the annual charter halibut fishery catch limit for each area.

The CSP also authorizes limited annual leases of commercial IFQ for use in the charter fishery as guided angler fish (GAF). Charter vessel anglers can use GAF to retain halibut up to the limits provided for unguided halibut anglers.

Catch Monitoring and Estimation in the Sport Halibut Fisheries

The Alaska Department of Fish and Game (ADF&G) Saltwater Charter Logbook (hereafter, logbook) is the primary reporting requirement for operators in the charter fisheries for all species harvested in saltwater in Areas 2C and 3A. ADF&G developed the logbook program in 1998 to provide information on participation and harvest by individual vessels and businesses in charter fisheries for halibut and for state-managed species, such as salmon and other bottomfish. Please consult State of Alaska regulations for the logbook requirements. These requirements are currently found at 5 AAC 75.076. Logbook data are compiled to show where fishing occurs, the extent of participation, and the species and the numbers of fish caught and retained by individual charter vessel anglers. This information is essential to estimate harvest for regulation and management of the charter fisheries in Areas 2C and 3A. ADF&G collects logbook information from charter vessel guides on halibut harvested by charter vessel anglers to accommodate the information requirements for implementing and enforcing Federal charter halibut fishing regulations, such as the current Area 2C one-halibut per day bag limit and the CHLAP.

ADF&G uses the Statewide Harvest Survey (SWHS) to estimate halibut harvests in the unguided sport halibut fishery. The SWHS is a mail survey of households containing at least one licensed angler. Survey respondents are asked to report the numbers of fish caught and kept by all members of the entire household, and the data are expanded to cover all households.

IPHC Annual Management Measures

Each year, through an open public process, the Council reviews and recommends annual management measures for implementation in the charter halibut fishery. Each fall, the Council reviews an analysis of potential charter management measures for the Area 2C and Area 3A charter fisheries for the upcoming fishing year. The Council considers stakeholder input and the most current information regarding the charter halibut fishery and its management. After reviewing the analysis and considering public testimony, the Council identifies the charter halibut management measures to recommend to the IPHC that will most likely constrain charter halibut harvest for each area to its catch limit, while considering impacts on charter operations.

The IPHC considers the Council's recommendations, along with the analysis upon which those recommendations were based, and input from its stakeholders and staff. The IPHC then adopts either the Council's recommendations or alternative charter halibut management measures designed to keep charter harvest in Area 2C and Area 3A to the allocations specified under the CSP. These measures are necessary to limit the combined commercial and charter harvest in Area 2C and 3A within each area's combined catch limit.

Once accepted by the Secretary of State with the concurrence of the Secretary of Commerce, NMFS publishes in the **Federal Register** the charter halibut management measures for each area as part of the IPHC annual management measures. NMFS published the 2018 IPHC annual management measures on March 9, 2018 (83 FR 10390). Subsequently, NMFS revised portions of the annual management measures with an interim final rule on March 20, 2018 (83 FR 12133).

Unguided anglers are currently managed under a two-fish of any size daily bag limit in Alaska. Since 2008, guided anglers in Area 2C have been managed under more restrictive limits than unguided anglers. In Area 3A, guided anglers have been managed under more restrictive limits since 2014. For example, in 2018, guided anglers in Area 2C are limited to a daily bag limit of one fish and size limits that prohibit retention of halibut greater than 38 inches and less than 80 inches. In 2018, guided anglers in Area 3A may retain two halibut per day; however, one fish must be 28 inches or less, and guided anglers are allowed to retain a maximum of four fish in a calendar year. Additionally, guided anglers in Area 3A in 2018 are prohibited from retaining halibut on any Wednesday, and on six Tuesdays from July 10 through August 14. To enforce the halibut size limit restrictions in Areas 2C and 3A, if the fish are filleted on board the charter vessel, guided anglers are required to retain the carcasses of fish until the vessel offloads at the end of the fishing trip.

The maximum number of halibut an angler may possess at any one time in Areas 2C and 3A is two daily bag limits. Those possession limits correspond to the respective daily bag limits for guided or unguided anglers. For example, the 2018 daily bag limit for unguided anglers in Area 2C is two halibut, so the possession limit for unguided

anglers is four halibut; however, for guided anglers in Area 2C in 2018, the daily bag limit is one halibut (within the size limit), so the possession limit for that sector is two halibut (within the size limit).

Mixing of Guided and Unguided Halibut

Some sport fishing businesses offer anglers the option to fish either guided or unguided. A charter vessel fishing trip is defined in § 300.61 and is the period of time between the first deployment of fishing gear by a charter vessel angler, to the point when one or more charter vessel anglers or any halibut from the vessel are offloaded.

Typically, if there is a mix of guided and unguided fishing, it occurs on larger charter vessels that transport clients on trips that span more than one day. The unguided portion of the fishing trip most commonly occurs on small vessels deployed away from the main vessel. Unguided fishing can also occur on the main vessel itself. In either case, anglers who do not receive sport fishing guide services are unguided anglers.

Sport fishing guide services are defined in NMFS regulations, and were recently clarified in a final rule published June 19, 2015 (80 FR 35195). The definition of sport fishing guide services in § 300.61 means assisting a sport fisherman by accompanying or physically directing the sport fisherman's fishing activities, and being compensated for doing so. "Compensation," as defined in § 300.61, is purposely broad and includes direct or indirect payment, remuneration, or other benefits received in return for services, regardless of the source.

Sport fishing businesses that have multi-day trips typically offer a suite of activities to their clients that includes marine fishing for halibut, salmon, and various species of groundfish; freshwater fishing for salmon, char, and trout; personal use

shellfish harvesting; sightseeing; bird and wildlife viewing; photography; and small boat and kayak excursions. This diversity of services allows businesses the flexibility to respond to different social, environmental, and regulatory conditions and to broaden their appeal to potential clients. Some unguided sport fishing may be a reaction to the more restrictive regulations imposed on guided halibut anglers. For example, in Area 3A, unguided fishing provides an opportunity for persons to keep halibut on days when catching and retaining halibut by guided anglers is closed. Public testimony to the Council suggests that pricing, convenience, and the personal preferences of the clients can also be reasons for sport fishing businesses to offer unguided fishing.

Section 2.7.5 of the RIR indicates there is a lack of systematic information or data sources that can precisely identify which sport fishing businesses offer unguided fishing, or the number of fishing trips where there is a mix of guided and unguided fishing. In an attempt to establish an upper-bound estimate of the current number of businesses potentially affected by this action, Section 2.7.5 of the RIR cites an informal survey performed by the NOAA Office of Law Enforcement (OLE). OLE determined there are approximately 30 fishing vessel businesses currently operating in Area 2C and 14 similar businesses in Area 3A that offer multi-day fishing trips for their clients. However, among these businesses, the specific number of vessels where halibut are comingled from both guided and unguided fishing is unknown. Note that businesses that offer exclusively guided fishing or exclusively unguided fishing would not be affected by this proposed action.

Although the intention of this proposed action is specific to fishing vessels that simultaneously have halibut caught and retained by guided and unguided anglers, the

Council recognizes that some shoreside sport fishing businesses or stationary floating facilities also offer saltwater fishing. In some cases, unguided anglers leave the facility in boats provided by the operator to fish for salmon, halibut, or other species without receiving sport fishing guide services. Other operations offer a mix of both guided and unguided fishing, which allows anglers to alternate between fishing with and without a charter vessel guide. The Council received public comments that indicated mixed guided and unguided fishing occurs when anglers based out of shoreside businesses or stationary floating facilities spend part of their time with a guide and part of their time unguided. Typically, at the end of the day, the anglers return to the facility to offload their catch. The fundamental difference between shoreside or stationary floating facilities and the businesses that are the subject of this proposed rule is that in most cases, at shoreside or stationary floating facilities, an angler's catch is offloaded and is no longer on a fishing vessel as defined by the Halibut Act. The Council determined that these proposed regulations should apply to fishing vessels on Convention waters.

Need for Action

This proposed rule would address a concern initially raised at the Council's Enforcement Committee meeting in June 2016. When halibut are caught and retained by both guided and unguided anglers and those halibut are on the same fishing vessel, it presents enforcement challenges due to the different regulations for guided versus unguided anglers. The greatest challenge is for accountability under the bag and possession limits and halibut size restrictions. Under the current regulations, when halibut are caught and retained by guided and unguided anglers and those halibut are on the same fishing vessel, enforcement officers have no positive means to verify which

angler harvested a particular fish, or whether that angler harvested the fish while fishing unguided or while being guided. It is important to note these enforcement challenges occur when the halibut from guided and unguided anglers is on board a fishing vessel on Convention waters. Therefore, this proposed rule would not apply to Pacific halibut that is not on a fishing vessel. Section 2.3 of the RIR provides additional information on the history of this proposed action.

This Proposed Rule

To address the purpose and need for this action, the Council and NMFS considered three alternatives, which are described in Sections 2.4 and 2.8 of the RIR. Under the preferred alternative (Alternative 3), anglers would have the option to fish guided or to fish unguided. However, if Pacific halibut caught and retained by one or more unguided anglers is on board a fishing vessel in the Convention waters with Pacific halibut caught and retained by one or more guided anglers, then all Pacific halibut on board and the anglers that caught and retained that Pacific halibut would be subject to the daily bag limits, possession limits, size limits, and carcass retention requirements for guided anglers for that IPHC area. For example, if halibut caught and retained by an unguided angler is on board a fishing vessel with halibut caught and retained by a guided angler in Area 2C, then all halibut on board would be subject to the guided angler daily bag limit and possession limit for Area 2C. To enforce size limits, if applicable, the fish must be retained whole, or if the halibut are filleted on the vessel, the carcasses must be retained in one piece and a patch of skin must be left on each fillet until the fish are offloaded. Similarly, in Area 3A, if halibut caught and retained from guided and unguided anglers are on the same vessel at the same time, then all halibut on board would

be subject to the Area 3A guided angler daily limit and possession limit. As in 2C, if any halibut are filleted before the end of the fishing trip, a patch of skin must be left on each fillet and the carcasses of a size-restricted halibut must be retained on board the vessel until the fish are offloaded.

The Council and NMFS considered an alternative (Alternative 2), that would prohibit the possession of halibut caught and retained by a guided angler and by an unguided angler on the same fishing vessel simultaneously. This alternative would likely maximize regulatory compliance. However, the Council also expressed concern that an outright prohibition on having Pacific halibut caught and retained by a guided angler and Pacific halibut caught and retained by an unguided angler on the same fishing vessel could be overly restrictive, especially to sport fishing businesses that currently offer guided and unguided fishing options for anglers.

Under this proposed rule, sport fishing businesses that currently offer a mix of guided and unguided fishing opportunities could continue to do so, but unguided anglers would be subject to the daily bag limits, possession limits, size limits, and carcass retention requirements for guided anglers for that IPHC regulatory area if halibut caught and retained by the unguided angler is onboard a fishing vessel with halibut caught and retained by a guided angler. This proposed rule would provide uniform halibut retention regulations, provide clearer regulatory standards for the public, reduce the amount of time needed by enforcement officers when boarding fishing vessels, and improve overall compliance with daily bag limits, possession limits, size limits, and carcass retention requirements.

Other regulations for guided and unguided anglers would remain unchanged under this proposed rule. This proposed rule would not require halibut harvested by an unguided angler to be accounted for in charter logbooks. This proposed rule would not apply halibut harvested by an unguided angler to the charter halibut allocation in the CSP. Section 2.8.3 of the RIR provides additional information on reporting harvests in logbooks.

This proposed rule would not impose day-of-the-week closures on unguided anglers, but guided anglers would continue to fish under those restrictions. The Council and NMFS recognize that uniform day-of-the-week closures for all anglers who come in for halibut from guided and unguided fishing on a vessel could potentially enhance the enforcement of their preferred alternative; however, this proposed rule balances the enforcement objective with rules that could present an unnecessary burden on businesses offering guided and unguided fishing opportunities.

Under this proposed rule, halibut harvested by unguided anglers would not be included in the annual harvest limit assigned to persons when they fish with a guide. Currently, guided anglers in Area 3A can harvest no more than four fish per year, and are required to record each retained fish on the back of their Alaska sport fishing license or on an ADF&G Sport Fishing Harvest Record Card. This proposed rule would not require maintaining harvest records of halibut harvested while anglers are unguided. Section 2.8.3 of the RIR discusses annual harvest limits and recordkeeping in additional detail.

This proposed action would apply to fishing vessels, as they are defined in the Halibut Act. The term “fishing vessel” in the Halibut Act means: “(1) any vessel engaged in catching fish in Convention waters or in processing or transporting fish loaded in

Convention waters; (2) any vessel outfitted to engage in any activity described in paragraph (1); or (3) any vessel in normal support of any vessel described in paragraph (1) or (2).” 16 U.S.C. 773(f).

In general, § 300.65(d)(3) restricts a charter vessel guide, charter vessel operator, or crew member from catching and retaining halibut on charter vessel fishing trips in Areas 2C and 3A. However, that regulation does not prohibit crew members and other charter vessel support persons from participating as unguided anglers and retaining halibut if there are no sport fishing guide services being rendered. For example, on a multi-day charter vessel trip, crew members may use their free time to fish unguided. Under this proposed rule, if that halibut is on board a fishing vessel with halibut caught and retained by a guided angler, then the daily bag limit, the possession limit, size restrictions, and carcass retention requirements for guided anglers for that IPHC Area applies to all halibut on board that fishing vessel and applies to all anglers that caught and retained halibut on board that fishing vessel.

This proposed rule would not modify regulations related to the management of GAF. Regulations for GAF are principally found in § 300.65(c)(5). The regulations allow transfers of commercial halibut IFQ to a charter operator, where the IFQ is translated to fish that individual anglers can use to increase their harvests up to the limits of unguided anglers, which is currently two fish of any size per day, with no annual limit. Under this proposed rule, guided anglers will be able to continue to use GAF on charter vessel fishing trips. Regulations applicable to GAF permitting, transfer, use, and reporting requirements in § 300.65 would still apply.

Proposed Revisions to the CSP Regulations in § 300.65

This proposed rule would add a new paragraph at § 300.65(d)(6). The new paragraph at § 300.65(d)(6) would require that all Pacific halibut on board a fishing vessel be subject to the daily bag limit, the possession limit, size restrictions, and carcass retention requirements for guided anglers for that IPHC Area if any halibut caught and retained by a guided angler is on board that vessel. This paragraph applies to Pacific halibut caught and retained by guided and unguided anglers when those halibut are on the same fishing vessel. If sport fishing guide services are performed at any point during a charter fishing trip, then all anglers on board, for the full extent of the fishing trip, would be subject to the daily bag limits, possession limits, size restrictions, and carcass retention requirements for guided charter vessel anglers, as specified for the applicable IPHC regulatory area, and determined by the annual management measures recommended by the IPHC and NMFS and published by NMFS in the *Federal Register*.

Attention to both the IPHC and NMFS regulations is critical because there may be differences between the IPHC management measures and NMFS regulations. For example, in 2018, the IPHC adopted management measures for halibut size restrictions in Area 2C that were initially accepted by the Secretary of State and published by NMFS (83 FR 10390, March 9, 2018), but those regulations were eventually superseded by a subsequent action implemented by NMFS in an interim final rule (83 FR 12133, March 20, 2018).

Classification

Regulations governing the U.S. fisheries for Pacific halibut are developed by the IPHC, the Pacific Fishery Management Council, the North Pacific Fishery Management Council, and the Secretary of Commerce. Section 5 of the Halibut Act (16 U.S.C. 773c)

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

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

Regulatory Impact Review

An RIR was prepared to assess all costs and benefits of available regulatory alternatives. A copy of this analysis is available from NMFS (see **ADDRESSES**). The Council recommended this proposed action based on those measures that maximized net benefits to the Nation. Specific aspects of the economic analysis are discussed below in the Initial Regulatory Flexibility Analysis section.

Initial Regulatory Flexibility Analysis (IRFA)

This IRFA was prepared for this proposed rule, as required by section 603 of the Regulatory Flexibility Act (RFA), to describe the economic impact this proposed rule, if adopted, would have on small entities. An IRFA describes why this action is being

proposed; the objectives and legal basis for the proposed rule; the number of small entities to which the proposed rule would apply; any projected reporting, recordkeeping, or other compliance requirements of the proposed rule; any overlapping, duplicative, or conflicting Federal rules; and any significant alternatives to the proposed rule that would accomplish the stated objectives, consistent with applicable statutes, and that would minimize any significant adverse economic impacts of the proposed rule on small entities. Descriptions of this proposed rule, its purpose, and the legal basis are contained earlier in this preamble and are not repeated here.

Number and Description of Small Entities Regulated by this Proposed Rule

This proposed rule would directly regulate 1) sport fishing businesses that currently offer, or would offer, both guided and unguided halibut fishing opportunities, and the sport fishing guides that work for those businesses; and 2) unguided anglers whose halibut are on board vessels where halibut caught and retained by guided anglers are on board at the same time.

NMFS does not collect information on the number of entities that offer mixed guided and unguided halibut fishing, and there appears to be no systematic means to determine an accurate number of those entities. An informal survey by enforcement officers, combined with testimony and comments from the public, indicates the practice of mixing guided and unguided fishing primarily occurs on larger charter vessels that provide multi-day fishing trips. Section 2.7.5 in the RIR provides the best available estimate based on informal surveys by NOAA Office of Law Enforcement.

Approximately 30 fishing vessel businesses in Area 2C and 14 similar businesses in Area 3A currently offer multi-day fishing trips for their clients. This should be considered an

upper-bound estimate of the number of businesses directly affected by this action at this time because the number of those operations that offer mixed guided and unguided fishing is unknown. Public comment also indicates that on relatively rare occasions, anglers will mix guided and unguided fishing when they are based out of a shoreside lodge or facility that provides rental boats.

In these cases, as with multi-day charter vessels, comingling of retained halibut from guided and unguided fishing on the same vessel presents enforcement and accountability issues when those vessels are boarded by enforcement officers on Convention waters.

For RFA purposes only, the Small Business Administration has established a small business size standard for businesses, including their affiliates, whose primary industry is scenic and sightseeing transportation on water, or all other amusement and recreation (NAICS codes 487210, and 713990, respectively). A business primarily engaged in these activities is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$7.5 million for all its affiliated operations worldwide.

It is unlikely that the largest of the affected charter vessel operations would be considered large entities under Small Business Administration (SBA) standards; however, that cannot be confirmed because NMFS does not have or collect economic data on lodges or charter vessels necessary to definitively determine total annual receipts. Thus, all charter vessel operations are considered small entities, based on SBA criteria,

because NMFS cannot confirm if any entities have annual gross revenues greater than \$7.5 million.

Community quota entities may apply for and receive community CHPs and some of those charter operations could potentially offer mixed guided and unguided halibut fishing; therefore, this proposed rule may directly regulate entities representing small, remote communities in Areas 2C and 3A. There are 20 communities in Area 2C and 14 in Area 3A eligible to receive community CHPs. Of these 34 communities, 20 hold community CHPs. Again, the number of these CHP holders who offer, or would offer, mixed guided and unguided fishing is unknown; however, this proposed action is not expected to adversely impact communities that hold CHPs.

This proposed rule would apply more restrictive halibut bag and possession limits on clients that take multi-day charters with mixed guided and unguided halibut fishing activity. These individuals are not considered directly regulated small entities under the RFA. However, the proposed action will also apply these more restrictive catch and possession limits on vessel crew and guides who choose to fish for halibut in any time off they may have during a guided trip. It is possible that these crew and guides may operate as subcontractors to the primary vessel and, as such, may be defined as small entities. However, the applicability of the more restrictive limits to any of these potential small entities is as an indirect consequence of their being aboard the vessel on a mixed guided and unguided trip. Thus, they are not considered to be directly regulated small entities for RFA purposes.

Based on this analysis, NMFS preliminarily determines that there are a substantial number of directly regulated small entities affected by this action. However, no small

entities would be subject to significant adverse effects by this proposed rule. Due to the assumptions necessary to come to this conclusion and the lack of information available to conduct this analysis, NMFS has prepared this IRFA in order to provide potentially affected entities an opportunity to provide comments on this IRFA. NMFS will evaluate any comments received on the IRFA and may consider certifying that this action will not have a significant economic impact on a substantial number of small entities prior to publication of the final rule.

Recordkeeping, Reporting, and Other Compliance Requirements

Under this proposed rule, the current recording and reporting requirements for guided and unguided halibut anglers will not change. Therefore, on charter vessels where mixed guided and unguided fishing occurs, aligning the bag limits, possession limits, size limits, and carcass retention requirements so they are the same for both guided and unguided anglers will not change recordkeeping and reporting costs for fishery participants or impose any additional or new costs on participants.

Duplicate, Overlapping, or Conflicting Federal Rules

No duplication, overlap, or conflict between this proposed rule and existing Federal rules has been identified.

Description of Significant Alternatives That Minimize Adverse Impacts on Small Entities

An IRFA is required to describe significant alternatives to the proposed rule that accomplish the stated objectives of the Halibut Act and other applicable statutes and that would minimize any significant economic impact of the proposed rule on small entities.

The Council recognizes, and NMFS agrees that unguided fishing by charter operations is largely used as an option to attract clients who have diverse desires and

needs. Charter vessels, especially those that offer multi-day trips, offer a broad range of services. In addition to transportation, food, and lodging on the boat, a typical trip might include marine fishing for salmon, halibut, and various species of groundfish, freshwater fishing for trout, salmon, and char, wildlife and bird viewing, small boat and shore excursions, photography, and personal-use shellfish fishing. The flexibility for competent anglers to fish unguided is attractive to some clients; unguided fishing often includes reduced fees relative to guided fishing, and for halibut anglers, unguided fishing offers less restrictive bag and size limits and no day of the week closures.

Alternative 1, the status quo, would continue to maintain different daily bag limits, possession limits, size restrictions, and carcass retention requirements for guided anglers and unguided anglers even if halibut caught and retained by both guided and unguided anglers are on the same fishing vessel simultaneously. The benefit of status quo is the flexibility and business advantages for operators seeking to accommodate the desires of a broad range of clients, and their anglers can choose guided fishing, unguided fishing, or alternating between guided and unguided fishing at different times.

The concerns about status quo are expressed in the Council's purpose and need statement and in the discussion of alternatives in Section 2.8 of the RIR. In Areas 2C or 3A, guided anglers are frequently subject to greater harvest restrictions than unguided anglers. When halibut from guided and unguided fishing are commingled on a vessel in these management areas, it is difficult for enforcement officers to determine whether the halibut were caught by guided or unguided anglers. When vessels are boarded by enforcement officers, establishing each person's catch and whether that person was

guided or unguided can become a lengthy and complicated process for both officers and charter operators.

Alternative 2 would prevent the commingling of halibut catches from guided and unguided anglers on fishing vessels by prohibiting the possession of halibut retained by guided anglers with halibut retained by unguided anglers on the same fishing vessel simultaneously. The primary advantage of this alternative is that it would maximize compliance of the regulations and likely reduce the duration of at-sea boardings by enforcement officers.

The RIR describes the disadvantages of Alternative 2, which is primarily the reduced flexibility and potential lost revenue for multi-day fishing vessels that currently provide, or would seek to provide, the option of mixed guided and unguided fishing. If charter operations wanted to switch from guided to unguided fishing, the vessels would need to assume the time and cost of returning to port, offloading the fish, and then beginning a new trip to prevent comingling of halibut.

Alternative 3, the preferred alternative, is intended to balance the enforcement concerns that result from commingling of halibut from guided and unguided fishing with an allowance for charter operations to maintain the flexibility of offering a mix of guided and unguided fishing, as they do now. Moreover, Alternative 3 allows other operations to assume the practice of offering both guided and unguided fishing in the future. The Council's enforcement concerns are addressed by establishing uniform bag limits, possession limits, size restrictions, and carcass retention requirements for all halibut retained by anglers on a fishing vessel, irrespective of whether the angler was guided or unguided. These harvest restrictions would align with the rules specified for guided

anglers in the respective regulatory areas, as determined by annual IPHC and NMFS management measures and specified in NMFS regulations in 50 CFR part 300, subparts A and E.

Under Alternative 3, some of the requirements for guided anglers would not be imposed on unguided anglers, largely because the proposed alignment of bag and possession limits, size restrictions, and carcass retention requirements effectively serve to mitigate the compliance risks associated with the commingling of halibut on a fishing vessel that were caught and retained by both guided and unguided anglers. For example, halibut caught by unguided anglers would not be entered into the charter operator's logbook and would not be recorded on the ADF&G charter harvest database. Section 2.3.3 of the RIR indicates that revising logbooks and logbook databases to accommodate entries of halibut caught and retained by unguided anglers would not only add an unnecessary burden, it would add difficult complications and significant cost to the managing agencies. This proposed rule would not require unguided anglers to individually record their daily catch and accrue it toward guided angler annual limits, which is currently a maximum of four fish in Area 3A. Additionally, day of the week closures for guided anglers, which is a restriction to catching and retaining Pacific halibut on specific days and is currently used in Area 3A, would not apply to unguided anglers.

The RIR examines the potential negative effects of this proposed action, which largely relate to reduced harvest limits for unguided anglers who have their halibut on the same fishing vessel as guided anglers. One of the advantages of fishing unguided is that anglers are allowed to keep two fish of any size per day and keep a possession limit of four fish. Relative to the status quo, it is possible that this proposed action, which would

reduce the number and size of halibut that can be retained by unguided anglers in some situations, could also reduce the incentive to purchase charter halibut trips.

As noted above, the entities directly regulated under this proposed action are assumed to be small, by the SBA definition, and substantial in number. Overall, this action is likely to have a limited effect on net benefits to the Nation. The majority of Area 2C and 3A halibut charter operations, which includes business owners, guides and crew members, would not be subject to significant negative economic impacts by this proposed rule. Thus, NMFS is not aware of any alternatives, in addition to the alternatives considered, that would more effectively meet the RFA criteria with the objectives of the Halibut Act and other applicable statutes at a lower economic cost to directly regulated small entities.

Collection-of-Information Requirements

This proposed rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA) and which have been approved by the Office of Management and Budget (OMB) under OMB control number 0648-0575 (Alaska Pacific Halibut Fisheries: Charter Recordkeeping). Public reporting burden per response is estimated to average 4 minutes for the ADF&G Saltwater Sport Fishing Charter Trip Logbook, 5 minutes for the GAF Landing Report, and 2 minutes for the GAF Permit Log. The response time includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information

The ADF&G Saltwater Sport Fishing Charter Trip Logbook, GAF Electronic Landing Report, and GAF Permit Log are mentioned in this proposed rule. These

requirements apply only to the harvest accounting of charter vessel anglers by charter vessel guides. Under this proposed rule, the harvests of unguided charter vessel anglers would not be subject to these requirements; therefore, this rulemaking imposes no additional burden or cost on the regulated community.

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 email to *OIRA_Submission@omb.eop.gov*, or fax to (202) 395-5806.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number. All currently approved NOAA collections of information may be viewed at:

http://www.cio.noaa.gov/services_programs/prasubs.html.

List of Subjects in 50 CFR Part 300

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

Dated: February 6, 2019.

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

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. Amend § 300.65 by adding paragraph (d)(6) to read as follows:

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

* * * * *

(d) * * *

(6) If a charter vessel angler catches and retains halibut, and that halibut is on board a fishing vessel with halibut caught and retained by persons who are not charter vessel anglers, then the daily bag limit, possession limit, size limit, and carcass retention regulations applicable to charter vessel anglers shall apply to all halibut on board the fishing vessel.

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