

**List of Subjects in 40 CFR Part 300**

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: September 22, 1999.

**John P. DeVillars,**

*Regional Administrator, U.S. EPA Region I—New England.*

For the reasons set out in the preamble, 40 CFR Part 300 is amended as follows:

**PART 300—[AMENDED]**

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

**Authority:** 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777; 56 FR 54757; 3 CFR, 1991 Comp., p.351; E.O. 12580; 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

**Appendix B—[Amended]**

2. Table 1 of Appendix B to Part 300 is amended by removing the site “Saco Tannery Waste Pits, Saco, Maine”.

[FR Doc. 99–25158 Filed 9–28–99; 8:45 am]

BILLING CODE 6560–50–P

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 300**

[FRL–6447–2]

**National Oil and Hazardous Substance Pollution Contingency Plan; National Priorities List**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of Deletion of the Tansitor Electronics, Inc. Site from the National Priorities List.

**SUMMARY:** The Environmental Protection Agency (EPA) Region I announces the deletion of the Tansitor Electronics, Inc. Site from the National Priorities List (NPL). The NPL constitutes Appendix B (40 CFR Part 300), to the National Oil and Hazardous Substance Pollution Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act, (CERCLA) as amended by the Superfund Amendments and Reauthorization Act. After consultation with the State of Vermont, EPA has determined that the responsible parties have implemented all appropriate response actions required.

**EFFECTIVE DATE:** September 29, 1999.

**FOR FURTHER INFORMATION CONTACT:** Terrence Connelly, Remedial Project Manager, U.S. EPA Region I, 1 Congress St., Suite 1100 (HBT), Boston, MA 02114–2023, (617) 918–1373.

**SUPPLEMENTARY INFORMATION:** The site to be deleted from the NPL is: Tansitor Electronics Site, Inc. Bennington, Vermont.

A Notice of Intent to Delete for this site was published on August 16, 1999, 64 FR 44456. The closing date for comments on the Notice of Intent to Delete was September 15, 1999. EPA received two comments about the amount of waste disposed at the Site and sampling of nearby residential wells.

EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of these sites. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund Response Trust Fund (Fund). Pursuant to § 300.425(e)(3) of the NCP, any site deleted from the NPL remains eligible for Fund-financed remedial actions if conditions at the site warrant such action. Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts.

**List of Subjects in 40 CFR Part 300**

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: September 23, 1999.

**Mindy Lubber,**

*Acting Regional Administrator, U.S. EPA Region I—New England.*

For the reasons set out in the preamble, 40 CFR part 300 is amended as follows:

**PART 300—[AMENDED]**

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

**Authority:** 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p.351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

**Appendix B [Amended]**

2. Table 1 of Appendix B to Part 300 is amended by removing the site “Tansitor Electronics, Inc., Bennington, Vermont”.

[FR Doc. 99–25308 Filed 9–28–99; 8:45 am]

BILLING CODE 6560–50–P

**FEDERAL COMMUNICATIONS COMMISSION****47 CFR Chapter I**

[CC Docket No. 96–152; FCC 99–241]

**Telemessaging, Electronic Publishing, and Alarm Monitoring Services**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document declines to reconsider the Commission’s *Telemessaging and Electronic Publishing Order*, declines to adopt rules pursuant to the *Further Notice*, and clarifies several points concerning telemessaging and electronic publishing. The intended effect is to promote the pro-competitive and deregulatory objectives of the Telecommunications Act of 1996.

**DATES:** Effective October 29, 1999.

**FOR FURTHER INFORMATION CONTACT:** Michelle Carey, Deputy Chief, Policy and Program Planning Division, Common Carrier Bureau, (202) 418–1580 or via the Internet at [mccarey@fcc.gov](mailto:mccarey@fcc.gov). Further information may also be obtained by calling the Common Carrier Bureau’s TTY number: 202–418–0484.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission’s Order adopted September 8, 1999, and released September 13, 1999. The full text of this Order is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, S.W., Room CY–A257, Washington, D.C. The complete text also may be obtained through the World Wide Web, at <http://www.fcc.gov/Bureaus/Common Carrier/Orders/fcc99241.wp>, or may be purchased from the Commission’s copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th St., N.W., Washington, D.C. 20036.

**Synopsis of Order on Reconsideration and Third Report and Order****I. Introduction**

1. On February 8, 1996 the “Telecommunications Act of 1996” (1996 Act) became law. On February 7, 1997 the Commission released the *Telemessaging and Electronic Publishing Order*, 62 FR 7690, February 20, 1997, which implemented the telemessaging and electronic publishing provisions of the 1996 Act, sections 260 and 274, respectively. On March 24, 1997 AT&T Corp. (AT&T) and the Pacific Telesis Group (Pacific) filed separate petitions to reconsider various

aspects of the Telemessaging and Electronic Publishing Order. On the same day the Commission released the *Telemessaging and Electronic Publishing Order*, the Commission issued a *Further Notice*, 62 FR 7744, February 20, 1997, that sought comment on the meaning of "control," "financial interest" and "transaction" in section 274. For the reasons set forth below, we grant AT&T's petition in part and deny in part, and grant Pacific's petition. We also decline to adopt rules in response to the *Further Notice*.

## II. Background

2. Section 274 allows a Bell Operating Company (BOC) to provide electronic publishing service disseminated by means of its basic telephone service only through a "separated affiliate" or an "electronic publishing joint venture" that meets the separation, joint marketing, and nondiscrimination requirements in that section. In the *Telemessaging and Electronic Publishing Order*, the Commission concluded that the requirement in section 274(b) that a separated affiliate or electronic publishing joint venture be "operated independently" is not a separate, substantive requirement that imposes obligations in addition to those enumerated in this section, but rather that this requirement is satisfied if a BOC and its separated affiliate or electronic publishing joint venture comply with the separation requirements set forth in subsections 274(b)(1)–(9).

3. In this proceeding, AT&T asks the Commission to reconsider its decision and conclude that the "operated independently" requirement imposes additional, substantive requirements beyond those listed in subsections 272(b)(1)–(9). AT&T also asks the Commission to clarify that section 274(b)(3)(B) requires that any agreement between a BOC and a separated affiliate or joint venture for inbound telemarketing or referral services be pursuant to a written contract or a tariff that is filed with the Commission and made publicly available. Pacific asks the Commission to clarify that the restrictions on joint promotion, marketing, sales or advertising set forth in section 274(c)(1)(A) and (B) do not apply to activities between a BOC and an entity owned or controlled by a BOC if the services are disseminated through an unaffiliated carrier's basic telephone service, and no separated affiliate or other BOC affiliate is involved."

4. In this Order on Reconsideration:

—We decline AT&T's request to reconsider the Commission's conclusion that the "operated

independently" provision in section 274(b) is not a separate, substantive requirement;

- We clarify, as requested by AT&T, that section 274(b)(3)(B) requires any agreement between a BOC and a separated affiliate or electronic publishing joint venture for inbound telemarketing or referral services be pursuant to a written contract or a tariff that is filed with the Commission and made publicly available; and
- We clarify, as requested by Pacific, that the restrictions on joint promotion, marketing, sales, or advertising set forth in sections 274(c)(1)(A) and (B) do not apply to activities between a BOC and an entity owned or controlled by a BOC if the electronic publishing services are disseminated through an unaffiliated carrier's basic telephone service, and no separated affiliate or other BOC affiliate is involved in such promotion, marketing, sales, and advertising.

## III. Order on Reconsideration

A. The "Operated Independently" Requirement of Section 274(b)

### a. Background

5. Section 274(b) of the 1996 Act provides that "[a] separated affiliate or electronic publishing joint venture shall be operated independently from the [BOC]." In the *Telemessaging and Electronic Publishing Order*, the Commission concluded that the "operated independently" requirement of section 274(b) obligates a separated affiliate to comply with the requirements of subsections 274(b)(1)–(9), and an electronic publishing joint venture to comply with subsections 274(b)(1)–(4), (6), (8)–(9). Moreover, the Commission found that the phrase "operated independently" is not a separate substantive restriction, but rather that section 274(b) is satisfied if a BOC and its separated affiliate or electronic publishing joint venture comply with the applicable restrictions of subsections 274(b)(1)–(9).

6. The Commission also found that its interpretation of the "operated independently" requirement of section 274(b) is consistent with its interpretation of the "operate independently" provision in section 272(b). In the *Non-Accounting Safeguards Order*, 62 FR 2927, January 2, 1997, the Commission determined that the "operate independently" provision of section 272(b) imposes requirements beyond those set forth in subsections 272(b)(2)–(5). The Commission explained that section

272(b) imposes five structural and transactional requirements governing the relationship between a BOC and a section 272 affiliate, only one of which is that the affiliate "shall operate independently from the [BOC]." In the *Telemessaging and Electronic Publishing Order*, in contrast, the Commission found that the "operated independently" requirement in section 274(b) is followed by nine substantive restrictions, which it read as the criteria that must be satisfied to ensure operational independence under this section.

### b. Discussion

7. We decline, at this time, to reinterpret the phrase "operated independently" to impose additional, separate substantive requirements, absent any indication that the requirements listed in section 274(b)(1)–(9) are inadequate to assure that a BOC and its separated affiliate or electronic publishing joint venture operate independently. Subsections (1)–(9) impose specific requirements to assure operational independence, including, among other things, a requirement to maintain separate books and accounts, a limitation on debt assumption, a requirement to carry out transactions independently, and a restriction on common ownership of property.

8. Section 272(b) sets forth the structural and transactional requirements for the separate affiliates BOCs must establish to provide, among other things, interLATA telecommunications and information services pursuant to section 272(a). Although section 274(b) contains similar language to section 272(b)(1), section 274(b) mandates that a separated affiliate or electronic publishing joint venture must be "operated independently" and then lists nine specific requirements governing the relationship between a BOC and a separated affiliate or joint venture. In contrast, section 272(b) imposes five statutory requirements governing the relationship between a BOC and a section 272 affiliate, only one of which is that the affiliate shall "operate independently" from the BOC. Between the *Non-Accounting Safeguards Order* and the *Telemessaging and Electronic Publishing Order*, the Commission provided sufficient explanation for its conclusion that the "operated independently" requirement of section 274(b) imposes different requirements than the "operate independently" provision of section 272(b).

9. As the Commission has previously concluded, sections 272(b) and 274(b) are organized and structured differently

and address different subject matters. Accordingly, we find that the terms "operate independently" in section 272(b)(1) and "operated independently" in section 274(b) do not have to be interpreted to impose the same obligations on the BOCs.

10. Although it is correct that the Commission, on its own authority, previously imposed requirements of operational independence in the context of *Computer II* and the cellular separation rules, in the *Telemessaging and Electronic Publishing Order* the Commission was interpreting a new statute, with new requirements, enacted by Congress. It was not adopting, on its own authority, a new standard for operational independence that contradicted earlier decisions. Accordingly, there is no need to distinguish the Commission's prior precedents or to impose the same requirements adopted prior to enactment of the 1996 Act.

#### B. Inbound Telemarketing or Referral Services

##### a. Background

11. In the *Telemessaging and Electronic Publishing Order*, the Commission held that "[a] BOC may choose to provide inbound telemarketing or referral services either pursuant to a contractual arrangement or during the normal course of its inbound telemarketing operations." The Commission stated that to the extent "a BOC chooses either or both of these approaches" in providing inbound telemarketing or referral services, the nondiscrimination provisions of section 274(c)(2)(A) require that such services be made available to unaffiliated electronic publishers using the same approach, *i.e.*, pursuant to a contractual arrangement or during the normal course of its inbound telemarketing operations.

12. AT&T asks the Commission to clarify that section 274(b)(3)(B) requires any agreement between a BOC and its section 274 affiliate or joint venture partner for inbound telemarketing or referral services to be pursuant to a written contract or a tariff that is filed with the Commission and made publicly available. Section 274(b)(3)(B) provides that a separated affiliate or joint venture and the BOC with which it is affiliated shall "carry out transactions \* \* \* (B) pursuant to written contracts or tariffs that are filed with the Commission and made publicly available."

##### b. Discussion

13. We agree with AT&T that we should clarify the Commission's discussion in paragraph 150 of the *Telemessaging and Electronic Publishing Order*. In that paragraph, the Commission noted that a BOC may "choose to provide inbound telemarketing or referral services either pursuant to a contractual arrangement or during the normal course of its inbound telemarketing operations." We clarify in this Order that any such agreement between a BOC and its section 274 affiliate or joint venture partner relating to an inbound telemarketing or referral service, whether it be pursuant to contract or through the "normal course" of business, constitutes a "transaction" for purposes of section 274(b)(3)(B). Accordingly, we conclude that any agreement whereby a BOC agrees to provide inbound telemarketing or referral services must be pursuant to a written contract or tariff that is filed with the Commission and made publicly available. We find that the requirements of section 274(b)(3)(B), by requiring all "transactions" to be publicly disclosed and auditable in accordance with generally accepted auditing standards, will help ensure that BOCs are complying with the nondiscrimination and accounting safeguards of the 1996 Act.

#### C. Dissemination by Means of an Unaffiliated Carrier's Basic Telephone Service

##### a. Background

14. In the *Telemessaging and Electronic Publishing Order*, the Commission held that, pursuant to the terms of section 274, in order for a BOC to be engaged in the provision of electronic publishing and subject to section 274, electronic publishing must be disseminated by means of the BOC's basic telephone service, and the BOC must have control of, or a financial interest in, the content of the information being provided. In reading section 274(a) together with the definition of "basic telephone service" in section 274(i)(2), the Commission concluded that, if a BOC or BOC affiliate disseminates electronic publishing services through the basic telephone service of a competing wireline local exchange carrier or commercial mobile radio service provider, a separated affiliate or electronic publishing joint venture is not required.

15. The Commission also noted that sections 274(c)(1)(A) and (B) generally prohibit a BOC from carrying out any promotion, marketing, sales, or

advertising activities with a separated affiliate or an affiliate if, in the latter case, such activities "relate to" the provision of electronic publishing. Thus, the Commission held that a BOC affiliate that does not provide electronic publishing services itself, but rather provides services that "relate to" the provision of electronic publishing, is precluded from carrying out marketing and sales-related activities for or in conjunction with the BOC.

##### b. Discussion

16. Pacific asks the Commission to clarify that the restrictions on joint promotion, marketing, sales, or advertising set forth in sections 274(c)(1)(A) and (B) do not apply if the electronic publishing services are disseminated through an unaffiliated carrier's basic telephone service and no separated affiliate or other BOC affiliate is involved in the dissemination. We agree that such clarification is appropriate.

17. Section 274(i)(10) defines a BOC to include an entity or corporation owned or controlled by the BOC (other than an electronic publishing joint venture owned by such an entity or corporation). Consistent with the Commission's finding in the *Telemessaging and Electronic Publishing Order*, we find that an entity or corporation owned or controlled by a BOC pursuant to section 274(i)(10) may promote, market, sell, or advertise electronic publishing services, and engage in promotion, marketing, sales, and advertising related to electronic publishing, if: (1) The electronic publishing service is disseminated by means of the basic telephone service of a competing wireline local exchange carrier or commercial mobile radio service (CMRS) provider; and (2) no separated affiliate or other BOC affiliate is involved in such promotion, marketing, sales, and advertising.

18. As noted in the *Telemessaging and Electronic Publishing Order*, the dissemination of electronic publishing services through the basic telephone service of competing, unaffiliated providers significantly reduces the ability of a BOC (including an entity or corporation owned or controlled by the BOC) to engage in anticompetitive behavior. Accordingly, as the Commission held in the underlying order, to the extent a BOC (including an entity or corporation owned or controlled by the BOC) disseminates electronic publishing services through the facilities of a competing wireline local exchange carrier or CMRS provider, and thus not via its own basic telephone services, it is not required to

provide such services through a separated affiliate or electronic publishing joint venture. We clarify that, in this situation, the joint marketing restriction in section 274(c)(1)(A), which prohibits a BOC from carrying out "promotion, marketing, sales, or advertising for or in a conjunction with a separated affiliate," would not apply. Similarly, we conclude that, in such a situation, the joint marketing restriction in section 274(c)(1)(B) would not apply unless the BOC is carrying out "promotion, marketing, sales, or advertising for or in conjunction with an affiliate that is related to the provision of electronic publishing."

#### IV. Third Report and Order

19. On the same day the Commission issued the *Electronic Publishing Order*, the Commission released a *Further Notice of Proposed Rulemaking (Further Notice)* that sought comment on the meaning of "control" and "financial interest" for the purpose of determining what constitutes BOC provision of electronic publishing services under section 274. The *Further Notice* also sought comment on how the Commission should resolve certain ambiguities in section 274(b)(3)(B), which requires that BOCs and their separated affiliates or electronic publishing joint ventures "carry out transactions pursuant to written contracts or tariffs that are filed with the Commission and made publicly available."

##### A. Definition of "Control" and "Financial Interest"

###### a. Background

20. We concluded in the *Telemessaging and Electronic Publishing Order* that a BOC engaged in the provision of electronic publishing is subject to section 274 only to the extent that it controls, or has a financial interest in, the content of the information being disseminated over its basic telephone services. We sought further comment in the *Further Notice* on the meaning of "control" and "financial interest" in the context of section 274.

21. In the *Further Notice*, we tentatively concluded that section 274(i)(4)'s definition of control, *i.e.*, the "possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise," is inappropriate for determining the meaning of "control" in the present context, *i.e.*, when a BOC

has "control of the content of information transmitted via its basic telephone service." In addition, the Commission also tentatively concluded that a BOC has a "financial interest" in the content of the information when the BOC owns the information or has a direct or indirect equity interest in the information being disseminated via its basic telephone services. The Commission sought comment on other forms of BOC participation that should be considered indicia of "financial interest."

###### b. Discussion

22. We decline to adopt rules further defining "control" or "financial interest" for purposes of section 274 for two reasons. First, the Commission has not, to date, received any complaints alleging a violation of section 274. Thus, there has been no showing that the Commission's current rules are inadequate to ensure that the objectives of section 274 are being fulfilled. Second, any rules we implemented would expire on February 8, 2000 when the requirements of section 274 automatically sunset. In the event any disputes arise before the sunset date regarding whether a BOC is actually engaged in the provision of electronic publishing, they may be resolved on a case-by-case basis through a section 208 complaint process. Given the availability of this complaint process and the limited duration any rules would have, therefore we find that the public interest would not be served by adopting further rules to implement this section.

##### B. Meaning of "Transaction" in Section 274(b)(3)

###### a. Background

23. In the *Further Notice*, the Commission sought comment on what constitutes a "transaction" for purposes of section 274(b)(3). The Commission noted that, in the *Accounting Safeguards Order*, 62 FR 2918, January 21, 1997, the Commission concluded that for purposes of a similar public disclosure requirement in section 272(b)(5), the BOC and its affiliate must have agreed upon the terms and conditions for telephone exchange and exchange access for the agreement to constitute a "transaction."

24. The commenters agreed that the definition of "transaction" should parallel the Commission's definition for "transaction" adopted in connection with section 272(b)(5). As noted above, AT&T asked the Commission to clarify that section 274(b)(3)(B) requires any agreement between a BOC and its

section 274 affiliate or joint venture partner for inbound telemarketing or referral services to be pursuant to a written contract or tariff that is filed with the Commission and made publicly available.

###### b. Discussion

25. We decline to adopt further rules implementing section 274(b)(3)(B) for the same two reasons stated above. Moreover, we note that our conclusion in the Order on Reconsideration clarifies that section 274(b)(3)(B) requires any agreement whereby a BOC agrees to provide inbound telemarketing or referral services must be pursuant to a written contact or tariff that is filed with the Commission and made publicly available. Accordingly, any such agreement either through a written contract or "normal course of business" constitutes a "transaction" for purposes of section 274(b)(3)(B).

#### V. Final Regulatory Flexibility Certification

26. *Supplemental Final Regulatory Flexibility Certification.* In the *Telemessaging and Electronic Publishing Order*, the Commission concluded that the rules adopted in that Order pertain to only BOCs which do not qualify as small entities under the Regulatory Flexibility Act (RFA), as amended by the Contract With America Advancement Act of 1996, Public Law 104-121, 110 Stat. 847 (1996). The Commission therefore certified that the rules adopted in that order would not have a significant impact on a substantial number of small entities, as required by the RFA. The clarifications we adopt in the *Order on Reconsideration and Third Report & Order* do not affect our certification in the *Telemessaging and Electronic Publishing Order*.

27. The Commission's Office of Public Affairs shall send a copy of this *Order on Reconsideration*, including this certification, in a report to Congress pursuant to the SBREFA, 5 U.S.C. 801(a)(1)(A). A copy of this certification will also be provided to the Chief Counsel for Advocacy of the Small Business Administration, and will be published in the **Federal Register**.

#### VI. Final Paperwork Reduction Analysis

28. As required by the Paperwork Reduction Act of 1995, Public Law 104-13, the *Further Notice of Proposed Rulemaking* invited the general public and the OMB to comment on proposed changes to the Commission's information collection requirements contained in the *Further Notice of Proposed Rulemaking*. The collections

of information were approved by OMB under OMB control number 3060-0762. No comments were submitted in response to the Commission's request for comment on the information collections contained in the *Further Notice of Proposed Rulemaking*. In this *Third Report and Order*, we have decided to adopt all of the information collection requirements proposed in the *Further Notice of Proposed Rulemaking*.

#### VII. Ordering Clauses

29. Accordingly, it is ordered that, pursuant to Sections 1, 2, 4, 201-202, 274, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154, 201-202, 274, and 303(r), the Order on Reconsideration and Third Report and Order in CC Docket No. 96-152 is adopted.

30. It is further ordered that the Petition for Reconsideration filed by AT&T Corporation is granted to the extent described herein and is denied in all other respects and the Petition for Reconsideration filed by Pacific Telesis Group is granted to the extent described herein.

31. It is further ordered that the policies, rules, and requirements set forth in this Order on Reconsideration and Third Report and Order are effective thirty days after publication in the **Federal Register**.

32. It is further ordered that the Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of this Order on Reconsideration and Third Report and Order, including the Supplemental Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission

**Magalie Roman Salas,**

*Secretary.*

[FR Doc. 99-25026 Filed 9-28-99; 8:45 am]

BILLING CODE 6712-01-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 300

[Docket No. 990416100-9256-02; I.D. 031999C]

RIN 0648-AL18

#### Pacific Halibut Fisheries; Local Area Management Plan for the Halibut Fishery in Sitka Sound

AGENCY: National Marine Fisheries Service (NMFS); National Oceanic and

Atmospheric Administration (NOAA); Commerce.

**ACTION:** Final rule; response to comments.

**SUMMARY:** NMFS issues a final rule to implement a Local Area Management Plan (LAMP) for the halibut fishery in Sitka Sound in the Gulf of Alaska. This rule prohibits a person using a vessel greater than 35 ft (10.7 meters(m)) in overall length from fishing for halibut with setline gear within Sitka Sound. The rule also prohibits a person using a vessel less than or equal to 35 ft (10.7 m) in overall length from fishing for halibut with setline gear within Sitka Sound from June 1 through August 31. Finally, the rule prohibits all charter vessels from fishing for halibut within Sitka Sound from June 1 through August 31 and from retaining halibut caught within Sitka Sound while engaging in sport fishing for other species from June 1 through August 31. This action is necessary to address the decreased availability of halibut in Sitka Sound and is intended to promote the goals and objectives of the North Pacific Fishery Management Council (Council) with respect to management of halibut in and off Alaska.

**DATES:** Effective October 29, 1999.

**ADDRESSES:** Copies of the Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis (EA/RIR/FRFA) prepared for this action may be obtained from National Marine Fisheries Service, Sustainable Fisheries Division, Alaska Region, P.O. Box 21668, Juneau, AK 99802, Attn: Lori J. Gravel, or by calling the Alaska Region, NMFS, at 907-586-7228.

**FOR FURTHER INFORMATION CONTACT:** Gretchen Harrington, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** The Convention between the United States and Canada for the Preservation of the Halibut Fishery of the North Pacific Ocean and the Bering Sea (Convention), signed at Ottawa, Ontario, Canada, on March 2, 1953, and amended by a Protocol Amending the Convention, signed at Washington, D.C., United States of America, on March 29, 1979, authorizes the International Pacific Halibut Commission (Commission) to promulgate regulations for the conservation and management of the Pacific halibut fishery. The Northern Pacific Halibut Act (Halibut Act) implements the Convention (16 U.S.C. 773-773k).

The Halibut Act, in section 5, gives the Secretary of Commerce (Secretary) the general responsibility to carry out the Convention and requires the

Secretary to adopt such regulations as may be necessary to carry out the purposes and objectives of the Convention and the Halibut Act. The Secretary has delegated this authority to the Assistant Administrator for Fisheries, NOAA. Section 5 of the Halibut Act also provides that the regional fishery management council having authority for the geographical area concerned may recommend management measures governing Pacific halibut catch in U.S. Convention waters that are in addition to, but not in conflict with, regulations of the Commission.

The Sitka Sound Halibut Task Force (Task Force) determined that too many harvesters were targeting halibut in Sitka Sound. The Commission has no data that support or refute localized depletion. However, information on halibut commercial landings from the Commission and Alaska Department of Fish & Game creel survey data indicate a decline in non-charter and subsistence halibut harvests for 1992-1996. Local or anecdotal information indicates the opportunity for an individual fisherman to catch a halibut has greatly decreased due to increased competition. This increased competition among users is partially due to an increase in the number of guided charter vessels and the Individual Fishing Quota (IFQ) fishery that allows commercial fishing vessels to operate throughout the summer.

The Task Force then proposed an LAMP for Sitka Sound and submitted it to the Council. The Council approved the Task Force's proposal as the preferred alternative in February 1998, and on April 28, 1999, NMFS published a proposed rule to implement the LAMP (64 FR 22826). The proposed rule provides a detailed description of the regulatory amendments and the reasons for their implementation. This final rule makes no changes to the proposed rule.

#### Response to Comments

NMFS received five letters commenting on the proposed rule during the 30-day comment period ending May 28, 1999. Three letters supported approving the rule as proposed, and two letters supported approving the proposed rule with changes.

*Comment 1.* Three comments supported approving the rule as proposed.

*Response.* NMFS agrees.

*Comment 2.* NMFS should approve proposed rule, with the following change: Remove the provision that allows charter vessels to retain halibut caught outside the Sound while fishing