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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 300

[Docket No. 040209049-4117-02; I.D. 012204B]

RIN 0648-AR83

#### Pacific Halibut Fisheries; Catch Sharing Plan

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

**ACTION:** Final rule; annual management measures and sport fishing regulations for Area 2A Pacific halibut fisheries, and final rule; changes to the Catch Sharing Plan.

**SUMMARY:** The Assistant Administrator for Fisheries, NOAA (AA), on behalf of the International Pacific Halibut Commission (IPHC), publishes annual management measures promulgated as regulations by the IPHC and accepted by the Secretary of State governing the Pacific halibut fishery. The AA also announces modifications to the Catch Sharing Plan (CSP) for Area 2A and implementing regulations for 2004. These actions are intended to enhance the conservation of Pacific halibut and further the goals and objectives of the Pacific Fishery Management Council (Pacific Council).

**DATES:** The rule is effective May 1 2004, except for amendments to § 300.63, which are effective June 3, 2004

**ADDRESSES:** Copies of the CSP and background documents for this action are available at NMFS Northwest Region, 7600 Sand Point Way NE, Seattle, WA 98115-0070. The CSP is also available on the Northwest Region home page at [www.nwr.noaa.gov/1sustfsh/halibut01.htm](http://www.nwr.noaa.gov/1sustfsh/halibut01.htm).

**FOR FURTHER INFORMATION CONTACT:** Jamie Goen or Yvonne deReynier, 206-526-6150.

#### SUPPLEMENTARY INFORMATION:

##### Electronic Access

This final rule also is accessible via the Internet at the Office of the Federal Register's website at [www.gpoaccess.gov/fr/index.html](http://www.gpoaccess.gov/fr/index.html).

##### Background

The IPHC manages Pacific halibut in waters off Alaska, British Columbia, and

the U.S. West Coast. On January 20-23, 2004, the IPHC held its annual meeting in Juneau, AK, and recommended its bilateral regulations for 2004. The Secretary of State of the United States has accepted the 2004 IPHC regulations under section 4 of the Northern Pacific Halibut Act (Halibut Act, 16 U.S.C. 773-773k). For U.S. waters, NMFS works with the North Pacific and Pacific Fishery Management Councils to set area-specific fishery management measures. IPHC refers to waters off the U.S. West Coast as "Area 2A."

On February 23, 2004, NMFS published a proposed rule to implement 2004 revisions to the Area 2A CSP for Pacific halibut (69 FR 8162). A complete description of the Pacific Council recommended changes to the CSP and management measures were published in the proposed rule for this action. NMFS requested comment on the proposed rule through March 9, 2004. On February 27, 2004, NMFS published a final rule (69 FR 9231) to implement the IPHC's recommendations, to announce IPHC's approval of the Area 2A CSP, and to announce fishery regulations for U.S. waters off Alaska and fishery regulations for treaty commercial and ceremonial and subsistence fisheries and some regulations for non-treaty commercial fisheries for U.S. waters off the West Coast. None of the Pacific Council's proposed 2004 revisions to the CSP addressed either the treaty fisheries or the non-treaty commercial fisheries.

This final rule implements the Area 2A Pacific halibut CSP for 2004 and the Area 2A management measures for 2004. These management measures are effective until superceded by the 2005 management measures that NMFS will publish in the **Federal Register**. The proposed rule for this action also included a minor revision to the Federal halibut regulations at 50 CFR 300.63, which authorizes vessels with IPHC licenses that are operating in the primary sablefish longline fishery north of Pt. Chehalis to land halibut taken incidentally in that fishery. With this final rule, Federal regulations will state that, in addition to the prohibition on possessing and landing halibut south of Pt. Chehalis, no halibut taken in this fishery may be purchased south of Pt. Chehalis.

##### Comments and Responses

During the comment period on the proposed rule for implementing the Area 2A CSP, NMFS received two letters and one e-mail of comment. The letters are addressed below in the section on the CSP for Area 2A.

The email generally objected to most of the proposals for changes to the CSP, referred to halibut as an overfished species under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), and suggested shortening fishing seasons, cutting fishing quotas and establishing marine sanctuaries. Pacific halibut is an abundant, healthy stock and is not overfished. The IPHC establishes overall catch limits for halibut. NMFS regulations are intended to give fisheries access to the Area 2A total allowable catch (TAC) and to the various subquotas for sport, commercial, and ceremonial and subsistence fisheries in Area 2A. Where halibut fishing activities may affect overfished groundfish stocks, halibut fishing is restricted to protect those stocks. For example, sport and commercial fisheries off the U.S. West Coast are prohibited within fishery-specific Groundfish Conservation Areas (GCAs) implemented by this action.

Marine sanctuaries are created under the National Marine Sanctuaries Act (16 U.S.C. 1431-1445). This action is taken under the authority of the Northern Pacific Halibut Act, which does not authorize the establishment of marine sanctuaries. This action does, however, establish closed areas requirements for the sport and commercial halibut fisheries to reduce harvest of overfished rockfish. Sport fishing for halibut off the Washington coast is prohibited within the Yelloweye Rockfish Conservation Area (YRCA), implemented herein at Section 24(4)(b)(ii)(C). Commercial fishing for halibut off the U.S. West Coast and sport fishing for halibut off the Oregon coast are prohibited within the non-trawl and recreational (sport) Rockfish Conservation Areas, respectively, implemented herein at Section 27.

##### Catch Sharing Plan for Area 2

The Pacific Council's Area 2A CSP allocates the halibut catch limit for Area 2A among treaty Indian, non-treaty commercial, and non-treaty sport fisheries in and off Washington, Oregon, and California. Those allocations were described in the proposed rule for this action (69 FR 8162, February 23, 2004). For 2004, the Pacific Council recommended changes to the CSP to modify the Pacific halibut fisheries in Area 2A in 2004 and beyond pursuant to recommendations from the Washington Department of Fish and Wildlife (WDFW) and the Oregon Department of Fish and Wildlife (ODFW). These changes to the CSP will: provide more flexibility for Washington inseason sport fishery management;

revise the public announcement process for the Puget Sound sport fishery (Washington's inside waters subarea); revise season dates for the Washington North Coast and South Coast sport fisheries; combine the Oregon North Central and South Central subareas; revise the "additional fishing days" season structure for Oregon's spring and summer sport fisheries; extend the season closing date for Oregon/California sport fisheries in the South of Humbug Mountain subarea; and change the depth restriction for Oregon's nearshore sport fishery. NMFS has approved the proposed changes to the CSP. Copies of the complete CSP for Area 2A as modified are available from the NMFS Northwest Regional Office (see ADDRESSES).

The ODFW held a public workshop (after the IPHC set the Area 2A quota) in Newport, OR, on January 28, 2004, to develop recommendations on the opening dates of Oregon sport fisheries. WDFW held a public workshop in Olympia, WA on January 30, 2004, to develop recommendations on the opening dates of Washington sport fisheries. The WDFW and ODFW sent letters to NMFS providing the following recommendations on the opening dates and season structure for managing the sport fisheries consistent with the CSP.

WDFW recommended a May 6 to July 24 season for eastern Puget Sound and a May 27 to August 14 season for western Puget Sound, 5 days per week (closed Tuesday and Wednesday). The recommended number of fishing days is based on an analysis of past harvest patterns in this fishery and meets the requirements of the CSP for the overall Puget Sound sport fishery subarea. For the Washington North Coast subarea, WDFW has recommended a season opening May 11 and continuing until the May sub-quota is taken, 5 days per week (closed Sunday and Monday), and a second season opening June 15 and continuing until the remaining quota is projected to be taken, 5 days per week (closed Sunday and Monday). For the Washington South Coast subarea, WDFW has recommended a season opening May 2 and continuing until the quota is taken, 5 days per week (closed Friday and Saturday) in the offshore area and 7 days per week in the nearshore area. WDFW recommendations for the Puget Sound, North Coast and South Coast Washington subareas meet the requirements of the CSP.

Both WDFW and ODFW have recommended opening the Columbia River subarea on May 1 and continuing the season until the quota has been reached, 7 days per week. This

recommended season meets the requirements of the CSP.

ODFW recommended starting the nearshore fishery in the Oregon Central Coast subarea, on May 1 and continuing the season until the sub-quota for that fishery is taken, 7 days per week. For the all-depth fishery in that subarea, ODFW recommended a 12 day spring season of May 13–15, 20–22, 27–29, and June 10–12, based on an analysis of past harvest rates. If the spring season does not take the entire spring sub-quota for this subarea, ODFW recommended these additional potential opening dates: June 25, 26, and July 9, 10, 23, and 24. ODFW further recommended re-opening the all-depth fishery on Friday, August 6 to take the summer sub-quota for this subarea and if sufficient quota remains. This summer fishery would remain open every other Friday and Saturday until the quota is taken, or October 31st, whichever occurs first. These recommendations meet the requirements of the CSP for this subarea.

For the southernmost subarea, south of Humbug Mountain, Oregon, ODFW recommended opening this subarea on May 1 and continuing the season until October 31, 7 days per week. This recommended season meets the requirements of the CSP.

NMFS is implementing sport fishing management measures in Area 2A based on recommendations from the states in accordance with the CSP.

#### NMFS Actions

For the reasons stated herein, NMFS concurs with Pacific Council's recommendations and hereby announces the following changes to the 2004 annual halibut management measures at 69 FR 9231 (February 27, 2004) to read as follows:

1. On page 9238, in the **Federal Register** document published on February 27, 2004, in Section 24, "Sport Fishing for Halibut," paragraphs (4) and (10) are revised to read as follows:

\* \* \* \* \*

(4) In all waters off California, Oregon, and Washington:

(a) The total allowable catch of halibut shall be limited to 272,942 lb (123.8 mt) in waters off Washington and 297,029 pounds (134.7 metric tons) in waters off California and Oregon;

(b) The sport fishing subareas, subquotas, fishing dates, and daily bag limits are as follows, except as modified under the inseason actions in Section 25. All sport fishing in Area 2A is managed on a "port of landing" basis, whereby any halibut landed into a port counts toward the quota for the area in which that port is located, and the

regulations governing the area of landing apply, regardless of the specific area of catch.

(i) In Puget Sound and the U.S. waters in the Strait of Juan de Fuca, east of a line extending from 48°17'30" N. lat., 124°23'70" W. long. north to 48°24'10" N. lat., 124°23'70" W. long., there is no quota. This area is managed by setting a season that is projected to result in a catch of 76,220 lb (34.6 mt).

(A) The fishing season in eastern Puget Sound (east of 123°49'30" W. long.) is May 6 through July 24 and the fishing season in western Puget Sound (west of 123°49'30" W. long.) is May 27 through August 14, 5 days a week (Thursday through Monday).

(B) The daily bag limit is one halibut of any size per day per person.

(ii) The quota for landings into ports in the area off the north Washington coast, west of the line described in paragraph (4)(b)(i) of this section and north of the Queets River (47°31'42" N. lat.), is 126,857 lb (57.5 mt).

(A) The fishing seasons are:

(1) Commencing May 11 and continuing 5 days a week (Tuesday through Saturday) until 91,337 lb (41.4 mt) are estimated to have been taken and the season is closed by the Commission.

(2) From June 15, and continuing thereafter for 5 days a week (Tuesday through Saturday) until the overall quota of 126,857 lb (57.5 mt) are estimated to have been taken and the area is closed by the Commission, or until September 30, whichever occurs first.

(B) The daily bag limit is one halibut of any size per day per person.

(C) A "C-shaped" yelloweye rockfish conservation area southwest of Cape Flattery is closed to sport fishing for halibut. This area is defined by the following coordinates in the order listed:

48°18' N. lat.; 125°18' W. long.;  
48°18' N. lat.; 124°59' W. long.;  
48°11' N. lat.; 124°59' W. long.;  
48°11' N. lat.; 125°11' W. long.;  
48°04' N. lat.; 125°11' W. long.;  
48°04' N. lat.; 124°59' W. long.;  
48°00' N. lat.; 124°59' W. long.;  
48°00' N. lat.; 125°18' W. long.;  
and connecting back to 48°18' N. lat.; 125°18' W. long.

(iii) The quota for landings into ports in the area between the Queets River, WA (47°31'42" N. lat.) and Leadbetter Point, WA (46°38'10" N. lat.), is 61,565 lb (28 mt).

(A) The fishing season commences on May 2 and continues 5 days a week (Sunday through Thursday) in all waters, except that in the area from Queets River south to 47°00'00" N. lat.

and east of 124°40'00" W. long, the fishing season commences on May 2 and continues 7 days a week. Beginning July 1, the halibut fishery between Queets River and Leadbetter Point will be open 7 days per week. The fishery will continue from May 2 until 61,565 lb (28 mt) are estimated to have been taken and the season is closed by the Commission, or until September 30, whichever occurs first.

(B) The daily bag limit is one halibut of any size per day per person.

(iv) The quota for landings into ports in the area between Leadbetter Point, WA (46°38'10" N. lat.) and Cape Falcon, OR (45°46'00" N. lat.), is 14,241 lb (6.5 mt).

(A) The fishing season commences on May 1, and continues every day through September 30, or until 14,241 lb (6.5 mt) are estimated to have been taken and the area is closed by the Commission, whichever occurs first.

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

(v) The quota for landings into ports in the area off Oregon between Cape Falcon (45°46'00" N. lat.) and Humbug Mountain (42°40'30" N. lat.), is 282,178 lb (128 mt).

(A) The fishing seasons are:

(1) The first season commences May 1 and continues every day through October 31, in the area inside of a boundary line approximating the 40-fathom (73-m) depth contour, or until the sub-quota for the central Oregon inside 40-fm fishery (22,574 lb 102.2 mt) or any inseason revised subquota is estimated to have been taken and the season is closed by the Commission, whichever is earlier. The boundary line approximating the 40-fathom (73-m) depth contour between 45°46'00" N. lat. and 42°40'30" N. lat. is defined by straight lines connecting all of the following points in the order stated:

- (1) 45°47.07'N. lat., 124°04.21'W. long.;
- (2) 45°44.34'N. lat., 124°05.09'W. long.;
- (3) 45°40.64'N. lat., 124°04.90'W. long.;
- (4) 45°33.00'N. lat., 124°04.46'W. long.;
- (5) 45°32.27'N. lat., 124°04.74'W. long.;
- (6) 45°29.26'N. lat., 124°04.22'W. long.;
- (7) 45°19.99'N. lat., 124°04.62'W. long.;
- (8) 45°17.50'N. lat., 124°04.91'W. long.;
- (9) 45°11.29'N. lat., 124°05.19'W. long.;
- (10) 45°05.79'N. lat., 124°05.40'W. long.;

- (11) 45°05.07'N. lat., 124°05.93'W. long.;
- (12) 45°01.70'N. lat., 124°06.53'W. long.;
- (13) 44°58.75'N. lat., 124°07.14'W. long.;
- (14) 44°51.28'N. lat., 124°10.21'W. long.;
- (15) 44°49.49'N. lat., 124°10.89'W. long.;
- (16) 44°44.96'N. lat., 124°14.39'W. long.;
- (17) 44°43.44'N. lat., 124°14.78'W. long.;
- (18) 44°42.27'N. lat., 124°13.81'W. long.;
- (19) 44°41.68'N. lat., 124°15.38'W. long.;
- (20) 44°34.87'N. lat., 124°15.80'W. long.;
- (21) 44°33.74'N. lat., 124°14.43'W. long.;
- (22) 44°27.66'N. lat., 124°16.99'W. long.;
- (23) 44°19.13'N. lat., 124°19.22'W. long.;
- (24) 44°15.35'N. lat., 124°17.37'W. long.;
- (25) 44°14.38'N. lat., 124°17.78'W. long.;
- (26) 44°12.80'N. lat., 124°17.18'W. long.;
- (27) 44°09.23'N. lat., 124°15.96'W. long.;
- (28) 44°08.38'N. lat., 124°16.80'W. long.;
- (29) 44°01.18'N. lat., 124°15.42'W. long.;
- (30) 43°51.60'N. lat., 124°14.68'W. long.;
- (31) 43°42.66'N. lat., 124°15.46'W. long.;
- (32) 43°40.49'N. lat., 124°15.74'W. long.;
- (33) 43°38.77'N. lat., 124°15.64'W. long.;
- (34) 43°34.52'N. lat., 124°16.73'W. long.;
- (35) 43°28.82'N. lat., 124°19.52'W. long.;
- (36) 43°23.91'N. lat., 124°24.28'W. long.;
- (37) 43°17.96'N. lat., 124°28.81'W. long.;
- (38) 43°16.75'N. lat., 124°28.42'W. long.;
- (39) 43°13.98'N. lat., 124°31.99'W. long.;
- (40) 43°13.71'N. lat., 124°33.25'W. long.;
- (41) 43°12.26'N. lat., 124°34.16'W. long.;
- (42) 43°10.96'N. lat., 124°32.34'W. long.;
- (43) 43°05.65'N. lat., 124°31.52'W. long.;
- (44) 42°59.66'N. lat., 124°32.58'W. long.;
- (45) 42°54.97'N. lat., 124°36.99'W. long.;

- (46) 42°53.81'N. lat., 124°38.58'W. long.;
- (47) 42°49.14'N. lat., 124°39.92'W. long.;
- (48) 42°46.47'N. lat., 124°38.65'W. long.;
- (49) 42°45.60'N. lat., 124°39.04'W. long.;
- (50) 42°44.79'N. lat., 124°37.96'W. long.;
- (51) 42°45.00'N. lat., 124°36.39'W. long.;
- (52) 42°44.14'N. lat., 124°35.16'W. long.;
- (53) 42°42.15'N. lat., 124°32.82'W. long.; and
- (54) 42°38.82'N. lat., 124°31.09'W. long.;

(2) The second season (spring season), which is for the "all-depth" fishery, is open on May 13, 14, 15, 20, 21, 22, 27, 28, 29, and June 10, 11, and 12. The projected catch for this season is 194,703 lb (88.3 mt). If sufficient unharvested catch remains for additional fishing days, the season will re-open. Dependent on the amount of unharvested catch available, the potential season re-opening dates will be: June 25, and 26, and July 9, 10, 23, and 24. If NMFS decides inseason to allow fishing on any of these re-opening dates, notice of the re-opening will be announced on the NMFS hotline (206) 526-6667 or (800) 662-9825. No halibut fishing will be allowed on the re-opening dates unless the date is announced on the NMFS hotline.

(3) If sufficient unharvested catch remains, the third season (summer season), which is for the "all-depth" fishery, will be open August 6, 7, 20, and 21, September 3, 4, 17, and 18, and October 1, 2, 15, 16, 29, and 30, or until the combined spring season and summer season quotas in the area between Cape Falcon and Humbug Mountain, OR, totaling 259,604 lb (117.8 mt), are estimated to have been taken and the area is closed by the Commission, whichever is earlier. NMFS will announce on the NMFS hotline in mid-July whether the fishery will re-open in August. No halibut fishing will be allowed in the summer season fishery unless the dates are announced on the NMFS hotline.

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

(vi) In the area south of Humbug Mountain, Oregon (42°40'30" N. lat.) and off the California coast, there is no quota. This area is managed on a season that is projected to result in a catch of less than 8,911 lb (4 mt).

(A) The fishing season will commence on May 1 and continue every day through October 31.

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

(c) The Commission shall determine and announce closing dates for any area in which the subquotas in this Section are estimated to have been taken.

(d) When the Commission has determined that a subquota under paragraph (4)(b) of this section is estimated to have been taken, and has announced a date on which the season will close, no person shall sport fish for halibut in that area after that date for the rest of the year, unless a reopening of that area for sport halibut fishing is scheduled in accordance with the Catch Sharing Plan for Area 2A, or announced by the Commission.

\* \* \* \* \*

(1) The possession limit for halibut on land in Area 2A is two daily bag limits.

\* \* \* \* \*

2. On page 9238, in the **Federal Register** document published on February 27, 2004, Section 25, "Flexible Inseason Management Provisions in Area 2A" is added to read as follows:

**25. Flexible Inseason Management Provisions in Area 2A**

(1) The Regional Administrator, NMFS Northwest Region, after consultation with the Chairman of the Pacific Fishery Management Council, the Commission Executive Director, and the Fisheries Director(s) of the affected state(s), or their designees, is authorized to modify regulations during the season after making the following determinations.

(a) The action is necessary to allow allocation objectives to be met.

(b) The action will not result in exceeding the catch limit for the area.

(c) If any of the sport fishery subareas north of Cape Falcon, OR, are not projected to utilize their respective quotas by September 30, NMFS may take inseason action to transfer any projected unused quota to another Washington sport subarea.

(d) If any of the sport fishery subareas south of Leadbetter Point, WA, are not projected to utilize their respective quotas by their season ending dates, NMFS may take inseason action to transfer any projected unused quota to another Oregon sport subarea.

(2) Flexible inseason management provisions include, but are not limited to, the following:

(a) Modification of sport fishing periods;

(b) Modification of sport fishing bag limits;

(c) Modification of sport fishing size limits;

(d) Modification of sport fishing days per calendar week; and

(e) Modification of subarea quotas north of Cape Falcon, OR.

(3) Notice procedures.

(a) Actions taken under this section will be published in the **Federal Register**.

(b) Actual notice of inseason management actions will be provided by a telephone hotline administered by the Northwest Region, NMFS, at 206-526-6667 or 800-662-9825 (May through October) and by U.S. Coast Guard broadcasts. These broadcasts are announced on Channel 16 VHF-FM and 2182 kHz at frequent intervals. The announcements designate the channel or frequency over which the notice to mariners will be immediately broadcast. Since provisions of these regulations may be altered by inseason actions, sport fishers should monitor either the telephone hotline or U.S. Coast Guard broadcasts for current information for the area in which they are fishing.

(4) Effective dates.

(a) Any action issued under this section is effective on the date specified in the publication or at the time that the action is filed for public inspection with the Office of the **Federal Register**, whichever is later.

(b) If time allows, pursuant to the requirements of the Administrative Procedure Act, NMFS will invite public comment prior to the effective date of any inseason action filed with the **Federal Register**. If the Regional Administrator determines, for good cause, that an inseason action must be filed without affording a prior opportunity for public comment, public comments will be received for a period of 15 days after publication of the action in the **Federal Register**.

(c) Any inseason action issued under this section will remain in effect until the stated expiration date or until rescinded, modified, or superseded. However, no inseason action has any effect beyond the end of the calendar year in which it is issued.

(5) Availability of data. The Regional Administrator will compile, in aggregate form, all data and other information relevant to the action being taken and will make them available for public review during normal office hours at the Northwest Regional Office, NMFS, Sustainable Fisheries Division, 7600 Sand Point Way NE, Seattle, WA.

3. On page 9238, in the **Federal Register** document published on February 27, 2004, Section 26, "Fishery Election in Area 2A" is added to read as follows:

**26. Fishery Election in Area 2A**

(1) A vessel that fishes in Area 2A may participate in only one of the following three fisheries in Area 2A:

(a) The sport fishery under Section 24;

(b) The commercial directed fishery for halibut during the fishing period(s) established in Section 8 and/or the incidental retention of halibut during the primary sablefish fishery described at 50 CFR 660.323(a)(2); or

(c) The incidental catch fishery during the salmon troll fishery as authorized in Section 8.

(2) No person shall fish for halibut in the sport fishery in Area 2A under Section 24 from a vessel that has been used during or that has been issued a permit for the same calendar year for commercial halibut fishing in Area 2A.

(3) No person shall fish for halibut in the directed commercial halibut fishery during the fishing periods established in Section 8 and/or retain halibut incidentally taken in the primary sablefish fishery in Area 2A from a vessel that has been used during the same calendar year for the incidental catch fishery during the salmon troll fishery as authorized in Section 8.

(4) No person shall fish for halibut in the directed commercial halibut fishery and/or retain halibut incidentally taken in the primary sablefish fishery in Area 2A from a vessel that, during the same calendar year, has been used in the sport halibut fishery in Area 2A or that is licensed for the sport charter halibut fishery in Area 2A.

(5) No person shall retain halibut in the salmon troll fishery in Area 2A as authorized under Section 8 taken on a vessel that, during the same calendar year, has been used in the sport halibut fishery in Area 2A, or that is licensed for the sport charter halibut fishery in Area 2A.

(6) No person shall retain halibut in the salmon troll fishery in Area 2A as authorized under Section 8 taken on a vessel that, during the same calendar year, has been used in the directed commercial halibut fishery during the fishing periods established in Section 8 and/or retained halibut incidentally taken in the primary sablefish fishery for Area 2A or that is licensed to participate in these commercial fisheries during the fishing periods established in Section 8 in Area 2A.

4. On page 9238, in the **Federal Register** document published on February 27, 2004, Section 27, "Area 2A Non-Treaty Commercial Fishery Closed Area" is added to read as follows:

27. Area 2A Non-treaty Commercial Fishery Closed Areas

Non-treaty commercial vessels operating in the directed commercial fishery for halibut in Area 2A must fish outside of a closed area, known as the Rockfish Conservation Area (RCA), that extends along the coast from the U.S./Canada border south to 40°10' N. lat. Coordinates for the closed area are as follows:

(1) Between the U.S./Canada border and 46°16' N. lat., the eastern boundary of the RCA is the shoreline.

(2) Between 46°16' N. lat. and 40°10' N. lat., the eastern, inshore boundary of the RCA approximates the 30 fm (55 m) depth contour. The boundary is defined by straight lines connecting all of the following points in the order stated:

- (1) 46°16.00' N. lat., 124°13.13' W. long.;
- (2) 46°16.00' N. lat., 124°13.05' W. long.;
- (3) 46°07.00' N. lat., 124°07.01' W. long.;
- (4) 45°55.95' N. lat., 124°02.23' W. long.;
- (5) 45°54.53' N. lat., 124°02.57' W. long.;
- (6) 45°50.65' N. lat., 124°01.62' W. long.;
- (7) 45°48.20' N. lat., 124°02.16' W. long.;
- (8) 45°43.47' N. lat., 124°01.28' W. long.;
- (9) 45°40.48' N. lat., 124°01.03' W. long.;
- (10) 45°39.04' N. lat., 124°01.68' W. long.;
- (11) 45°35.48' N. lat., 124°01.89' W. long.;
- (12) 45°29.81' N. lat., 124°02.45' W. long.;
- (13) 45°27.96' N. lat., 124°01.89' W. long.;
- (14) 45°27.22' N. lat., 124°02.67' W. long.;
- (15) 45°24.20' N. lat., 124°02.94' W. long.;
- (16) 45°20.60' N. lat., 124°01.74' W. long.;
- (17) 45°16.44' N. lat., 124°03.22' W. long.;
- (18) 45°13.63' N. lat., 124°02.70' W. long.;
- (19) 45°11.04' N. lat., 124°03.59' W. long.;
- (20) 45°08.55' N. lat., 124°03.47' W. long.;
- (21) 45°02.82' N. lat., 124°04.64' W. long.;
- (22) 44°58.06' N. lat., 124°05.03' W. long.;
- (23) 44°53.97' N. lat., 124°06.92' W. long.;
- (24) 44°48.89' N. lat., 124°07.04' W. long.;

- (25) 44°46.94' N. lat., 124°08.25' W. long.;
- (26) 44°42.72' N. lat., 124°08.98' W. long.;
- (27) 44°38.16' N. lat., 124°11.48' W. long.;
- (28) 44°33.38' N. lat., 124°11.54' W. long.;
- (29) 44°28.51' N. lat., 124°12.03' W. long.;
- (30) 44°27.65' N. lat., 124°12.56' W. long.;
- (31) 44°19.67' N. lat., 124°12.37' W. long.;
- (32) 44°10.79' N. lat., 124°12.22' W. long.;
- (33) 44°09.22' N. lat., 124°12.28' W. long.;
- (34) 44°00.22' N. lat., 124°12.80' W. long.;
- (35) 43°51.56' N. lat., 124°13.17' W. long.;
- (36) 43°44.26' N. lat., 124°14.50' W. long.;
- (37) 43°33.82' N. lat., 124°16.28' W. long.;
- (38) 43°28.66' N. lat., 124°18.72' W. long.;
- (39) 43°23.12' N. lat., 124°24.04' W. long.;
- (40) 43°20.49' N. lat., 124°25.90' W. long.;
- (41) 43°16.41' N. lat., 124°27.52' W. long.;
- (42) 43°14.23' N. lat., 124°29.28' W. long.;
- (43) 43°14.03' N. lat., 124°28.31' W. long.;
- (44) 43°11.92' N. lat., 124°28.26' W. long.;
- (45) 43°11.02' N. lat., 124°29.11' W. long.;
- (46) 43°10.13' N. lat., 124°29.15' W. long.;
- (47) 43°09.27' N. lat., 124°31.03' W. long.;
- (48) 43°07.73' N. lat., 124°30.92' W. long.;
- (49) 43°05.93' N. lat., 124°29.64' W. long.;
- (50) 43°01.59' N. lat., 124°30.64' W. long.;
- (51) 42°59.73' N. lat., 124°31.16' W. long.;
- (52) 42°53.75' N. lat., 124°36.09' W. long.;
- (53) 42°49.37' N. lat., 124°38.81' W. long.;
- (54) 42°46.42' N. lat., 124°37.69' W. long.;
- (55) 42°46.07' N. lat., 124°38.56' W. long.;
- (56) 42°45.29' N. lat., 124°37.95' W. long.;
- (57) 42°45.61' N. lat., 124°36.87' W. long.;
- (58) 42°44.28' N. lat., 124°33.64' W. long.;
- (59) 42°42.75' N. lat., 124°31.84' W. long.;

- (60) 42°40.04' N. lat., 124°29.19' W. long.;
- (61) 42°38.09' N. lat., 124°28.39' W. long.;
- (62) 42°36.72' N. lat., 124°27.54' W. long.;
- (63) 42°36.56' N. lat., 124°28.40' W. long.;
- (64) 42°35.76' N. lat., 124°28.79' W. long.;
- (65) 42°34.03' N. lat., 124°29.98' W. long.;
- (66) 42°34.19' N. lat., 124°30.58' W. long.;
- (67) 42°31.27' N. lat., 124°32.24' W. long.;
- (68) 42°27.07' N. lat., 124°32.53' W. long.;
- (69) 42°24.21' N. lat., 124°31.23' W. long.;
- (70) 42°20.47' N. lat., 124°28.87' W. long.;
- (71) 42°14.60' N. lat., 124°26.80' W. long.;
- (72) 42°10.90' N. lat., 124°24.57' W. long.;
- (73) 42°07.04' N. lat., 124°23.35' W. long.;
- (74) 42°02.16' N. lat., 124°22.59' W. long.;
- (75) 42°00.00' N. lat., 124°21.81' W. long.;
- (76) 41°59.95' N. lat., 124°21.56' W. long.;
- (77) 41°55.75' N. lat., 124°20.72' W. long.;
- (78) 41°50.93' N. lat., 124°23.76' W. long.;
- (79) 41°42.53' N. lat., 124°16.47' W. long.;
- (80) 41°37.02' N. lat., 124°17.05' W. long.;
- (81) 41°24.58' N. lat., 124°10.51' W. long.;
- (82) 41°20.73' N. lat., 124°11.73' W. long.;
- (83) 41°17.59' N. lat., 124°10.66' W. long.;
- (84) 41°04.54' N. lat., 124°14.47' W. long.;
- (85) 40°54.26' N. lat., 124°13.09' W. long.;
- (86) 40°40.31' N. lat., 124°26.24' W. long.;
- (87) 40°34.00' N. lat., 124°27.39' W. long.;
- (88) 40°28.89' N. lat., 124°32.43' W. long.;
- (89) 40°24.77' N. lat., 124°29.51' W. long.;
- (90) 40°22.47' N. lat., 124°24.12' W. long.;
- (91) 40°19.73' N. lat., 124°23.59' W. long.;
- (92) 40°18.64' N. lat., 124°21.89' W. long.;
- (93) 40°17.67' N. lat., 124°23.07' W. long.;
- (94) 40°15.58' N. lat., 124°23.61' W. long.;

(95) 40°13.42' N. lat., 124°22.94' W. long.; and  
(96) 40°10.00' N. lat., 124°16.65' W. long.;  
(3) Between the U.S./Canada border and 40°10' N. lat., the western, offshore boundary of the RCA approximates the 100-fm (183-m) depth contour. The boundary is defined by straight lines connecting all of the following points in the order stated:  
(1) 48°15.00' N. lat., 125°41.00' W. long.;  
(2) 48°14.00' N. lat., 125°36.00' W. long.;  
(3) 48°09.50' N. lat., 125°40.50' W. long.;  
(4) 48°08.00' N. lat., 125°38.00' W. long.;  
(5) 48°05.00' N. lat., 125°37.25' W. long.;  
(6) 48°02.60' N. lat., 125°34.70' W. long.;  
(7) 47°59.00' N. lat., 125°34.00' W. long.;  
(8) 47°57.26' N. lat., 125°29.82' W. long.;  
(9) 47°59.87' N. lat., 125°25.81' W. long.;  
(10) 48°01.80' N. lat., 125°24.53' W. long.;  
(11) 48°02.08' N. lat., 125°22.98' W. long.;  
(12) 48°02.97' N. lat., 125°22.89' W. long.;  
(13) 48°04.47' N. lat., 125°21.75' W. long.;  
(14) 48°06.11' N. lat., 125°19.33' W. long.;  
(15) 48°07.95' N. lat., 125°18.55' W. long.;  
(16) 48°09.00' N. lat., 125°18.00' W. long.;  
(17) 48°11.31' N. lat., 125°17.55' W. long.;  
(18) 48°14.60' N. lat., 125°13.46' W. long.;  
(19) 48°16.67' N. lat., 125°14.34' W. long.;  
(20) 48°18.73' N. lat., 125°14.41' W. long.;  
(21) 48°19.67' N. lat., 125°13.70' W. long.;  
(22) 48°19.70' N. lat., 125°11.13' W. long.;  
(23) 48°22.95' N. lat., 125°10.79' W. long.;  
(24) 48°21.61' N. lat., 125°02.54' W. long.;  
(25) 48°23.00' N. lat., 124°49.34' W. long.;  
(26) 48°17.00' N. lat., 124°56.50' W. long.;  
(27) 48°06.00' N. lat., 125°00.00' W. long.;  
(28) 48°04.62' N. lat., 125°01.73' W. long.;  
(29) 48°04.84' N. lat., 125°04.03' W. long.;

(30) 48°06.41' N. lat., 125°06.51' W. long.;  
(31) 48°06.00' N. lat., 125°08.00' W. long.;  
(32) 48°07.08' N. lat., 125°09.34' W. long.;  
(33) 48°07.28' N. lat., 125°11.14' W. long.;  
(34) 48°03.45' N. lat., 125°16.66' W. long.;  
(35) 47°59.50' N. lat., 125°18.88' W. long.;  
(36) 47°58.68' N. lat., 125°16.19' W. long.;  
(37) 47°56.62' N. lat., 125°13.50' W. long.;  
(38) 47°53.71' N. lat., 125°11.96' W. long.;  
(39) 47°51.70' N. lat., 125°09.38' W. long.;  
(40) 47°49.95' N. lat., 125°06.07' W. long.;  
(41) 47°49.00' N. lat., 125°03.00' W. long.;  
(42) 47°46.95' N. lat., 125°04.00' W. long.;  
(43) 47°46.58' N. lat., 125°03.15' W. long.;  
(44) 47°44.07' N. lat., 125°04.28' W. long.;  
(45) 47°43.32' N. lat., 125°04.41' W. long.;  
(46) 47°40.95' N. lat., 125°04.14' W. long.;  
(47) 47°39.58' N. lat., 125°04.97' W. long.;  
(48) 47°36.23' N. lat., 125°02.77' W. long.;  
(49) 47°34.28' N. lat., 124°58.66' W. long.;  
(50) 47°32.17' N. lat., 124°57.77' W. long.;  
(51) 47°30.27' N. lat., 124°56.16' W. long.;  
(52) 47°30.60' N. lat., 124°54.80' W. long.;  
(53) 47°29.26' N. lat., 124°52.21' W. long.;  
(54) 47°28.21' N. lat., 124°50.65' W. long.;  
(55) 47°27.38' N. lat., 124°49.34' W. long.;  
(56) 47°25.61' N. lat., 124°48.26' W. long.;  
(57) 47°23.54' N. lat., 124°46.42' W. long.;  
(58) 47°20.64' N. lat., 124°45.91' W. long.;  
(59) 47°17.99' N. lat., 124°45.59' W. long.;  
(60) 47°18.20' N. lat., 124°49.12' W. long.;  
(61) 47°15.01' N. lat., 124°51.09' W. long.;  
(62) 47°12.61' N. lat., 124°54.89' W. long.;  
(63) 47°08.22' N. lat., 124°56.53' W. long.;  
(64) 47°08.50' N. lat., 124°57.74' W. long.;

(65) 47°01.92' N. lat., 124°54.95' W. long.;  
(66) 47°01.14' N. lat., 124°59.35' W. long.;  
(67) 46°58.48' N. lat., 124°57.81' W. long.;  
(68) 46°56.79' N. lat., 124°56.03' W. long.;  
(69) 46°58.01' N. lat., 124°55.09' W. long.;  
(70) 46°55.07' N. lat., 124°54.14' W. long.;  
(71) 46°59.60' N. lat., 124°49.79' W. long.;  
(72) 46°58.72' N. lat., 124°48.78' W. long.;  
(73) 46°54.45' N. lat., 124°48.36' W. long.;  
(74) 46°53.99' N. lat., 124°49.95' W. long.;  
(75) 46°54.38' N. lat., 124°52.73' W. long.;  
(76) 46°52.38' N. lat., 124°52.02' W. long.;  
(77) 46°48.93' N. lat., 124°49.17' W. long.;  
(78) 46°41.50' N. lat., 124°43.00' W. long.;  
(79) 46°34.50' N. lat., 124°28.50' W. long.;  
(80) 46°29.00' N. lat., 124°30.00' W. long.;  
(81) 46°20.00' N. lat., 124°36.50' W. long.;  
(82) 46°18.00' N. lat., 124°38.00' W. long.;  
(83) 46°17.52' N. lat., 124°35.35' W. long.;  
(84) 46°17.00' N. lat., 124°22.50' W. long.;  
(85) 46°16.00' N. lat., 124°20.62' W. long.;  
(86) 46°13.52' N. lat., 124°25.49' W. long.;  
(87) 46°12.17' N. lat., 124°30.75' W. long.;  
(88) 46°10.63' N. lat., 124°37.95' W. long.;  
(89) 46°09.29' N. lat., 124°39.01' W. long.;  
(90) 46°02.40' N. lat., 124°40.37' W. long.;  
(91) 45°56.45' N. lat., 124°38.00' W. long.;  
(92) 45°51.92' N. lat., 124°38.49' W. long.;  
(93) 45°47.19' N. lat., 124°35.58' W. long.;  
(94) 45°46.41' N. lat., 124°32.36' W. long.;  
(95) 45°41.75' N. lat., 124°28.12' W. long.;  
(96) 45°36.96' N. lat., 124°24.48' W. long.;  
(97) 45°31.84' N. lat., 124°22.04' W. long.;  
(98) 45°27.10' N. lat., 124°21.74' W. long.;  
(99) 45°18.14' N. lat., 124°17.59' W. long.;

(100) 45°11.08' N. lat., 124°16.97' W. long.;

(101) 45°04.38' N. lat., 124°18.36' W. long.;

(102) 44°58.05' N. lat., 124°21.58' W. long.;

(103) 44°47.67' N. lat., 124°31.41' W. long.;

(104) 44°44.55' N. lat., 124°33.58' W. long.;

(105) 44°39.88' N. lat., 124°35.01' W. long.;

(106) 44°32.90' N. lat., 124°36.81' W. long.;

(107) 44°30.33' N. lat., 124°38.56' W. long.;

(108) 44°30.04' N. lat., 124°42.31' W. long.;

(109) 44°26.84' N. lat., 124°44.91' W. long.;

(110) 44°17.99' N. lat., 124°51.03' W. long.;

(111) 44°13.68' N. lat., 124°56.38' W. long.;

(112) 43°56.67' N. lat., 124°55.45' W. long.;

(113) 43°56.47' N. lat., 124°34.61' W. long.;

(114) 43°42.73' N. lat., 124°32.41' W. long.;

(115) 43°30.93' N. lat., 124°34.43' W. long.;

(116) 43°17.45' N. lat., 124°41.16' W. long.;

(117) 43°07.04' N. lat., 124°41.25' W. long.;

(118) 43°03.45' N. lat., 124°44.36' W. long.;

(119) 43°03.90' N. lat., 124°50.81' W. long.;

(120) 42°55.70' N. lat., 124°52.79' W. long.;

(121) 42°54.12' N. lat., 124°47.36' W. long.;

(122) 42°44.00' N. lat., 124°42.38' W. long.;

(123) 42°38.23' N. lat., 124°41.25' W. long.;

(124) 42°33.03' N. lat., 124°42.38' W. long.;

(125) 42°31.89' N. lat., 124°42.04' W. long.;

(126) 42°30.09' N. lat., 124°42.67' W. long.;

(127) 42°28.28' N. lat., 124°47.08' W. long.;

(128) 42°25.22' N. lat., 124°43.51' W. long.;

(129) 42°19.23' N. lat., 124°37.92' W. long.;

(130) 42°16.29' N. lat., 124°36.11' W. long.;

(131) 42°05.66' N. lat., 124°34.92' W. long.;

(132) 42°00.00' N. lat., 124°35.27' W. long.;

(133) 42°00.00' N. lat., 124°35.26' W. long.;

(134) 41°47.04' N. lat., 124°27.64' W. long.;

(135) 41°32.92' N. lat., 124°28.79' W. long.;

(136) 41°24.17' N. lat., 124°28.46' W. long.;

(137) 41°10.12' N. lat., 124°20.50' W. long.;

(138) 40°51.41' N. lat., 124°24.38' W. long.;

(139) 40°43.71' N. lat., 124°29.89' W. long.;

(140) 40°40.14' N. lat., 124°30.90' W. long.;

(141) 40°37.35' N. lat., 124°29.05' W. long.;

(142) 40°34.76' N. lat., 124°29.82' W. long.;

(143) 40°36.78' N. lat., 124°37.06' W. long.;

(144) 40°32.44' N. lat., 124°39.58' W. long.;

(145) 40°24.82' N. lat., 124°35.12' W. long.;

(146) 40°23.30' N. lat., 124°31.60' W. long.;

(147) 40°23.52' N. lat., 124°28.78' W. long.;

(148) 40°22.43' N. lat., 124°25.00' W. long.;

(149) 40°21.72' N. lat., 124°24.94' W. long.;

(150) 40°21.87' N. lat., 124°27.96' W. long.;

(151) 40°21.40' N. lat., 124°28.74' W. long.;

(152) 40°19.68' N. lat., 124°28.49' W. long.;

(153) 40°17.73' N. lat., 124°25.43' W. long.;

(154) 40°18.37' N. lat., 124°23.35' W. long.;

(155) 40°15.75' N. lat., 124°26.05' W. long.;

(156) 40°16.75' N. lat., 124°33.71' W. long.;

(157) 40°16.29' N. lat., 124°34.36' W. long.;

(158) 40°10.00' N. lat., 124°21.12' W. long.; and

(159) 40°10.00' N. lat., 124°21.50' W. long.

\* \* \* \* \*

#### Classification

This action has been determined to be not significant for purposes of Executive Order 12866.

Under the CSP, recreational fisheries for Pacific halibut off the U.S. West Coast begin in early May. The Federal regulations implemented for 2003 remain in place until they are replaced by these regulations. Therefore, if there is a 30-day delay in effectiveness for these regulations, the fishery would operate under last year's regulations for the first month. The start dates for most of the recreational fisheries off Washington and Oregon are slightly different in 2004 than they were in

2003. For example, in Puget Sound, the fishery started on May 8 in 2003, but is scheduled to start on May 6 in 2004. A delay in effectiveness of this rule would delay the season by two days, effectively missing the first weekend for which the fishery is scheduled. In the North Coast of Washington, the fishery is scheduled to start May 11, 2004, which is 10 days later than in 2003, so a delay in effectiveness would allow the fishery to start 10 days earlier than planned. In the area between the Queets River and Leadbetter Point, the fishery is scheduled for Sunday through Thursday. However, if last year's regulations are left in place, the dates in place will not cover Sunday through Thursday, rather they will cover Saturday through Wednesday. In areas off Oregon the May 1 season is scheduled to open inside of a line approximating 40 fms (73 m), whereas last year's season was within the 30 fm (55 m) curve. Finally the all-depth season in this area, which was carefully crafted to avoid adverse tidal conditions in 2004 would fall a week earlier than planned, possibly in challenging circumstances, and on Saturday, Sunday and Monday, rather than on Thursday, Friday and Saturday.

Recreational fisheries start dates primarily differ from year to year because the CSP has a long history of managing the different subareas so that fisheries occur on particular days of the week. Thus, a Sunday through Thursday fishery will always occur Sundays through Thursdays, but will have different calendar dates from year to year. The IPHC crafted its annual regulations and adopted TACs for all of its management areas, including Area 2A in late January 2004. Following the January IPHC meeting, NMFS worked with IPHC and state management staff to craft a proposed rule for this action, published on February 23, 2004 (69 FR 8162). Both Oregon and Washington states adopted state regulations for their halibut fisheries after the IPHC's TACs and 2004 regulations became effective on February 29, 2004. Although NMFS was able to provide a public comment period following the proposed rule, the agency did not have time to publish a final rule and allow a 30-day delay in effectiveness period prior to May 1. A delay in effectiveness of 30 days would cause the state and Federal regulations to be in conflict, would cause great confusion in the recreational fishing industry, and would result in fishing seasons that differ from the seasons carefully crafted by the states, the industry, and the Pacific Council. In addition, anglers visiting coastal areas

must plan ahead to arrange transportation to and lodging at the coast, therefore, many of the May charter opportunities are booked months in advance, based on the seasons recommended by the Pacific Council. Allowing last year's regulations to remain in place during May would upset these plans. For the reasons described above, pursuant to 5 U.S.C. 553(d)(3), the AA finds good cause to waive the requirement to provide a 30-day delay in effectiveness of this rule so that this final rule may become effective in time for the May 1, 2004 recreational halibut fishing seasons.

NMFS prepared a final regulatory flexibility analysis (FRFA) that describes the economic impact this final rule will have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained in the preamble. The FRFA is available from NMFS (see ADDRESSES) and a summary of the FRFA follows:

During the comment period for the proposed rule, NMFS received 2 letters and one e-mail letter of comment. None of these comments addressed the initial regulatory flexibility analysis or economic impacts of the rule on small businesses. There are no recordkeeping, reporting, or other compliance issues forthcoming from this final rule. This rule does not duplicate, overlap, or conflict with other Federal laws.

The Regulatory Flexibility Act (RFA), 5 U.S.C. 603 *et seq.*, requires government agencies to assess the effects that various regulatory alternatives would have on small entities, including small businesses, and to determine ways to minimize those effects. A fish-harvesting business is considered a "small" business by the Small Business Administration (SBA) if it has annual receipts not in excess of \$3.5 million. A fish-processing business is considered "small" if it employs 500 or fewer persons. For marinas and charter/party boats, a small business is one with annual receipts not in excess of \$6.0 million. All of the businesses that would be affected by this action are considered small businesses under SBA guidance.

Approximately 700 vessels were issued IPHC licenses to retain halibut in 2003. IPHC issues licenses for: the directed commercial fishery in Area 2A, including licenses issued to retain halibut caught incidentally in the primary sablefish fishery (260 licenses in 2003); incidental halibut caught in the salmon troll fishery (323 licenses in 2003); and the charterboat fleet (127 licenses in 2003). No vessel may participate in more than one of these

three fisheries per year. Individual recreational anglers and private boats are the only sectors that are not required to have an IPHC license to retain halibut.

Specific data on the economics of halibut charter operations are unavailable. However, the Pacific States Marine Fisheries Commission (Commission) is completing a report on the overall West Coast charterboat fleet. In surveying charterboat vessels concerning their operations in 2000, the Commission estimated that there were about 315 charterboat vessels in operation off Washington and Oregon. Compared with the 127 IPHC licenses in 2003, this estimate suggests that approximately 40 percent of the charterboat fleet participates in the halibut fishery. The Commission has developed preliminary estimates of the annual revenues earned by this fleet and they vary by size class of the vessels and home state. Small charterboat vessels range from 15 to 30 ft (4.572 to 9.144 m) and typically carry 5 to 6 passengers. Medium charterboat vessels range from 31 to 49 ft (9.4488 to 14.9352 m) in length and typically carry 19 to 20 passengers. (Neither state has large vessels of greater than 49 ft (14.9352 m) in their fleet.) Average annual revenues from all types of recreational fishing, whalewatching and other activities ranged from \$7,000 for small Oregon vessels to \$131,000 for medium Washington vessels. These data confirm that charterboat vessels qualify as small entities under the RFA.

The changes to the Area 2A Plan, which allocates the catch of Pacific halibut among users in Washington, Oregon and California, will: (1) provide more flexibility for Washington inseason sport fishery management; (2) revise the public announcement process for the Puget Sound sport fishery (Washington's inside waters subarea); (3) revise season dates for the Washington North Coast and South Coast sport fisheries; (4) combine the Oregon North Central and South Central subareas; (5) revise the "additional fishing days" season structure for Oregon's spring and summer sport fisheries; (6) extend the season closing date for Oregon/California sport fisheries south of Humbug Mountain subarea; and (7) change the depth restriction for Oregon's nearshore sport fishery. The 2004 Area 2A halibut management measures revise the eastern, inshore boundary of an area closed to non-treaty commercial halibut fishing. One minor change in the flexible inseason management provisions for Area 2A is that the NMFS telephone hotline will be maintained

from May through October rather than May through September to cover the duration of the commercial and sport halibut seasons in Area 2A.

The changes to the Plan and annual domestic Area 2A halibut management measures will affect charter fishing operations, anglers and commercial halibut fishermen who operate off Washington and Oregon. In 2003, IPHC issued 127 licenses to the charterboat fleet, 260 licenses to the commercial directed fishery which includes licenses for vessels retaining halibut caught incidentally to the primary sablefish fishery, and 323 licenses to salmon troll vessels to retain incidentally caught halibut. For 2004, the changes to the Plan and annual domestic Area 2A halibut management measures are non-substantive. These changes are within the Plan's management objective of allocating the TAC in Area 2A, while also allowing commercial, sport, and tribal fisheries to target halibut in the manner most appropriate for the user's needs within that fishery. These changes to the Plan and annual domestic Area 2A halibut management measures are authorized under the Halibut Act and implementing regulations at 50 CFR 300.60-65.

The changes to the Plan and annual domestic Area 2A halibut management measures are expected to result in either no impact at all, or a modest increase in fishing opportunity for commercial and sport halibut fishermen and operators. The sport management measures for 2004 implement the Plan by managing the sport fishery to meet the differing fishery needs of the various areas along the coast according to the Plan's objectives. The non-treaty commercial management measures for 2004 will allow the fishery access to the commercial portion of the Area 2A TAC while protecting overfished rockfish species that co-occur with halibut. The measures for 2004 will be very similar to last year's management measures.

Pursuant to Executive Order 13175, the Secretary of Commerce recognizes the sovereign status and co-manager role of Indian tribes over shared Federal and tribal fishery resources. At section 302(b)(5), the Magnuson-Stevens Act reserves a seat on the Pacific Council for a representative of an Indian tribe with federally recognized fishing rights from California, Oregon, Washington, or Idaho.

The U.S. Government formally recognizes that the 12 Washington Tribes have treaty rights to fish for Pacific halibut. In general terms, the quantification of those rights is 50 percent of the harvestable surplus of Pacific halibut available in the tribes'

usual and accustomed (U and A) fishing areas (described at 50 CFR 660.324). Each of the treaty tribes has the discretion to administer its fisheries and to establish its own policies to achieve program objectives. Accordingly, tribal allocations and regulations, including the changes to the Plan, have been developed in consultation with the affected tribe(s) and, insofar as possible, with tribal consensus.

Dated: April 28, 2004.

**Rebecca Lent,**

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

■ For the reasons set out in the preamble, 50 CFR part 300 is amended as follows:

**PART 300—INTERNATIONAL FISHERIES REGULATIONS**

**Subpart E—Pacific Halibut Fisheries**

■ 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 § 300.63, paragraph (b)(3)(ii) is revised to read as follows:

**§ 300.63 Catch sharing plans and domestic management measures in Area 2A.**

\* \* \* \* \*

(b) \* \* \*

(3) \* \* \*

(ii) It is unlawful for any person to possess, land or purchase halibut south of 46°53'18" N. lat. that were taken and retained as incidental catch authorized by this section in the directed longline sablefish fishery.

\* \* \* \* \*

[FR Doc. 04–10071 Filed 4–29–04; 4:27 pm]

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 622**

[Docket No. 031217320–4126–02; I.D. 112403D]

RIN 0648–AR66

**Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Extension of Marine Reserves**

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues final regulations to implement Amendment 21 to the Fishery Management Plan (FMP) for the Reef Fish Resources of the Gulf of Mexico (Amendment 21) prepared by the Gulf of Mexico Fishery Management Council (Council). These final regulations modify the fishing restrictions that apply within the Madison and Swanson sites and Steamboat Lumps marine reserves in the eastern Gulf of Mexico and extend the period of effectiveness of those restrictions through June 16, 2010. The intended effect of these final regulations is to protect the spawning aggregations of species within these areas, prevent overfishing, and aid in the evaluation of the effectiveness of marine reserves as a management tool.

**DATES:** This final rule is effective June 3, 2004.

**ADDRESSES:** Copies of the Final Regulatory Flexibility Analysis (FRFA) and Regulatory Impact Review (RIR) may be obtained from Phil Steele, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702; telephone: 727–570–5305, fax: 727–570–5583, e-mail: phil.steele@noaa.gov.

**FOR FURTHER INFORMATION CONTACT:** Phil Steele, telephone: 727–570–5305, fax: 727–570–5583, e-mail: phil.steele@noaa.gov.

**SUPPLEMENTARY INFORMATION:** The reef fish fishery in the exclusive economic zone (EEZ) of the Gulf of Mexico is managed under the FMP. The FMP was prepared by the Council and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

**Background**

The Madison and Swanson sites and Steamboat Lumps are located in the eastern Gulf of Mexico and encompass a total area of approximately 219 square nautical miles (751 km<sup>2</sup>). The boundaries of the two areas are:

**MADISON AND SWANSON SITES**

NW corner ...	29°17' N. lat., 85°50' W. long.
NE corner ...	29°17' N. lat., 85°38' W. long.
SW corner ...	29°06' N. lat., 85°50' W. long.
SE corner ...	29°06' N. lat., 85°38' W. long.

**STEAMBOAT LUMPS**

NW corner ...	28°14' N. lat., 84°48' W. long.
NE corner ...	28°14' N. lat., 84°37' W. long.
SW corner ...	28°03' N. lat., 84°48' W. long.
SE corner ...	28°03' N. lat., 84°37' W. long.

This final rule modifies the fishing restrictions that apply within the Madison and Swanson sites and Steamboat Lumps marine reserves and extends the period of effectiveness of those restrictions through June 16, 2010. Specifically, within these marine reserves, this final rule: (1) prohibits the possession of Gulf reef fish year-round, except for possession aboard a vessel in transit with fishing gear appropriately stowed; (2) during November through April, prohibits all fishing and possession of any fish species, with exceptions for highly migratory pelagic species (billfish, sharks, swordfish and tunas other than blackfin tuna) and for fish possessed aboard a vessel in transit with fishing gear appropriately stowed; and (3) during May through October, restricts fishing activity to surface trolling only. Additional discussion of these measures and the rationale for them is provided in Amendment 21 and in the preamble to the proposed rule and is not repeated here.

On December 10, 2003, NMFS announced the availability of Amendment 21 and requested comments on it (68 FR 68854). NMFS published the proposed rule to implement Amendment 21 and requested comments on the proposed rule through February 19, 2004 (69 FR 310, January 5, 2004). NMFS approved Amendment 21 on March 3, 2004.

**Comments and Responses**

NMFS received 14 comments on Amendment 21 supporting the continuation of the Madison-Swanson sites and Steamboat Lumps marine reserves. Additionally, three Council members jointly submitted a minority report objecting to various aspects of Amendment 21. Six comments were received on the proposed rule, including a minority report submitted by one Council member.

*Comment 1:* Several commenters expressed concerns regarding the enforceability of the measures in Amendment 21 and the proposed rule. The principal enforcement concerns included the following: (1) the proposed fishing restrictions within the marine reserves would require at-sea enforcement and are, therefore, unenforceable; (2) allowing any fishing activity, i.e., seasonal surface trolling or fishing for HMS, in the marine reserves would render the applicable fishing restrictions unenforceable; (3) the definition of “surface trolling” is itself unenforceable because it defines the activity by criteria that enforcement agents cannot adequately monitor and assess, e.g., boat speed, visible wake; (4) allowing reef fish aboard a vessel