

**FOR FURTHER INFORMATION CONTACT:**

Aleria Jensen, Fishery Biologist, Office of Protected Resources, NMFS, at (301) 713-2322; Pat Gerrior, Fishery Biologist, Northeast Regional Office, NMFS, at (508) 495-2264; or Barb Zoodsma, Fishery Biologist, Southeast Regional Office, NMFS, at (904) 321-2806.

**SUPPLEMENTARY INFORMATION:**

This document provides additional opportunity for public involvement in the development and implementation of a strategy to address the lack of recovery of the endangered North Atlantic right whale by reducing the likelihood and threat of ship strike mortalities to the species. The strategy is described in greater detail in the ANPR published June 1, 2004 (69 FR 30857). In summary, it is a multi-faceted plan that includes potential routing changes, speed reductions, and the use of dynamic management areas as proposed operational measures. In association with the comment period on the ANPR, NMFS is holding five public meetings to present the strategy and solicit information on the development and implementation of the proposed new operational measures. In addition, the agency intends to convene a series of smaller focal group meetings through its regional Right Whale Recovery Implementation Teams to discuss specific stakeholder questions and concerns. Comments received during the ANPR comment period and in associated meetings will assist the agency in subsequent rulemaking decisions about using this methodology to reduce the threat of ship collisions to right whales.

**Schedule of Public Scoping Meetings**

The dates, times, and locations of the meetings are scheduled as follows:

1. Tuesday, July 20, 2004, 3 to 6 p.m.  
Tip O'Neill Federal Building, Rm 335  
A & B, 10 Causeway Street, Boston, MA 02222.
2. Wednesday, July 21, 2004, 3 to 6 p.m.  
Jersey City-Newport Courtyard  
Marriot, 540 Washington Blvd, Jersey City, NJ 07310.
3. Monday, July 26, 2004, 3 to 6 p.m.  
Hilton Riverside Wilmington, 301 N. Water Street, Wilmington, NC 28401.
4. Tuesday, July 27, 2004, 3 to 6 p.m.  
Radisson Riverwalk Hotel, 1515 Prudential Drive, Jacksonville, FL 32207-8133.
5. Tuesday, August 3, 2004, 3 to 6 p.m.  
NOAA Headquarters Science Center, 1315 East West Highway, Silver Spring, MD 20910.

NMFS is also extending the comment period on the ANPR through September 15, 2004, to include public input at the public meetings and to give the public

time to comment after attending the meetings.

**Special Accommodations**

These meetings are physically accessible to people with disabilities. Request for sign language interpretation or other auxiliary aids should be directed to Aleria Jensen at 301-713-2322.

**Laurie K. Allen,**

*Director, Office of Protected Resources,  
National Marine Fisheries Service.*

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**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Parts 300 and 679**

[Docket No. 040607171-4171-01; I.D. 051804C]

**RIN 0648-AR88**

**Pacific Halibut Fisheries; Subsistence Fishing**

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

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

**SUMMARY:** NMFS proposes regulations to amend the subsistence fishery rules for Pacific halibut in waters off Alaska. These regulations are necessary to address subsistence halibut management concerns in densely populated areas. This action is intended to be consistent with the conservation and management provisions of the Northern Pacific Halibut Act of 1982 (Halibut Act) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

**DATES:** Comments must be received no later than August 9, 2004.

**ADDRESSES:** Send comments to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Lori Durall. Comments may be submitted by:

- Mail: P.O. Box 21668, Juneau, AK 99802.
- Hand Delivery to the Federal Building: 709 West 9th Street, Room 420A, Juneau, AK.
- FAX: 907-586-7557.
- E-mail: [SUBH-0648-AR88@noaa.gov](mailto:SUBH-0648-AR88@noaa.gov). Include in the subject line of the e-mail the following document identifier: Subsistence

Halibut RIN 0648-AR88. E-mail comments, with or without attachments, are limited to 5 megabytes.

• Webform at the Federal eRulemaking Portal: [www.regulations.gov](http://www.regulations.gov). Follow the instructions at that site for submitting comments.

Send comments on collection-of-information requirements to the same address and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503 (Attn: NOAA Desk Officer).

Copies of the categorical exclusion (CE) and regulatory impact review (RIR) prepared for this action and the environmental assessment (EA) prepared for the original subsistence halibut action (68 FR 18145, April 15, 2003) are available from NMFS at the above address or by calling the Sustainable Fisheries Division, Alaska Region, NMFS, at 907-586-7228.

**FOR FURTHER INFORMATION CONTACT:**

Bubba Cook, 907-586-7425 or [bubba.cook@noaa.gov](mailto:bubba.cook@noaa.gov).

**SUPPLEMENTARY INFORMATION:****Background and Need for Action**

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

Generally, the IPHC develops fishery management regulations governing the halibut fisheries and makes recommendations to the U.S. Secretary of State. When approved, NMFS publishes these regulations in the **Federal Register** as annual management measures. NMFS published the current annual management measures March 7, 2003 (68 FR 10989).

The Halibut Act also provides for the North Pacific Fishery Management Council (Council) to develop halibut fishery regulations, including limited access regulations, in its geographic area of concern that would apply to nationals or vessels of the U.S. (Halibut Act, section 773(c)). Such an action by the Council is limited only to those regulations that are in addition to and

not in conflict with IPHC regulations, and they must be approved and implemented by the U.S. Secretary of Commerce (Secretary). Any allocation of halibut fishing privileges must be fair and equitable and consistent with other applicable Federal law. The Council adopted a subsistence halibut policy in October 2000 to recommend to the Secretary under the authority of the Halibut Act.

The Council does not have a "fishery management plan" (FMP) for the halibut fishery. Hence, halibut fishery management regulations developed by the Council do not follow the FMP or FMP amendment procedures set out in the Magnuson-Stevens Act. Instead, the Council follows a process that requires submission of the Council recommendation to the Secretary as a draft proposed rule for publication in the **Federal Register** along with supporting analyses as required by other applicable law.

The Secretary approved the Council's recommended subsistence halibut policy and published implementing regulations on March 7, 2003, at 68 FR 18145, and codified in 50 CFR 300—Subpart E, authorizing a subsistence fishery for halibut in Convention waters off Alaska. Previously, in an October 2000 action, the Council had incorporated a request to the State of Alaska Board of Fisheries (Board) to review the Council action on subsistence halibut during the Board's normal 2000–2001 cycle and present recommendations to the Council in June 2001. The Board complied with this request, and at that Council meeting, recommended specific restrictions on subsistence gear and harvest limits designed to address localized depletion concerns regarding halibut, rockfish, and lingcod in densely populated and easily accessible areas. In April 2002, the Council unanimously adopted modifications to its original (i.e., October 2000) action to address concerns identified by the Board about the potential local effects of subsistence halibut fishing on halibut and rockfish populations.

Additionally in April 2002, the Council adopted a preferred alternative addressing several cultural and management concerns among the IPHC areas. In areas 4C, 4D, and 4E, the Council proposed the elimination of gear restrictions to correspond with the lack of harvest restrictions. In all other areas, the Council proposed limiting the number of hooks to 3 times the per person hook limit, which in most areas would be 90 hooks. In several subareas within areas 3A and 2C the Council proposed further gear restrictions to

address localized depletion and bycatch concerns, reducing the gear limits to as little as 10 hooks and harvest limits to as little as 5 halibut per day. The Council recommended that no proxy system be allowed in any area, but proposed the development of Community Harvest Permits as a mitigation measure. The Council also recommended the creation of Ceremonial and Educational Permits to address cultural concerns.

In October 2003, the Council revisited its previous decision and opted to postpone consideration of some increased restrictions until the completion of the Subsistence Halibut Survey in April 2004. The Council took final action in October 2003, however, on the remainder of the recommended provisions contained in its April 2002 action. Further information on alternatives considered and rejected can be found in the RIR for this action (see **ADDRESSES**).

#### **Specific Elements of the Halibut Subsistence Fishery**

##### *Authorized Areas for Subsistence Halibut Harvest*

Generally, eligible persons may harvest subsistence halibut in all Convention waters in and off Alaska except for areas designated as one of the four non-subsistence areas. These areas include the Ketchikan non-subsistence area, the Juneau non-subsistence area, the Anchorage/Matsu/Kenai non-subsistence area, and the Valdez non-subsistence area (see Figures 2–5 to Subpart E). In October 2003, the Council reaffirmed its April 2002 recommendation extending the southern boundary of the Anchorage/Matsu/Kenai non-subsistence area to a line extending across the entirety of Cook Inlet along latitude 59°30.40' N based on the Board's concerns. Consequently, subsistence harvest of halibut would be prohibited in all areas of Cook Inlet north of this boundary (see revised Figure 4 to Subpart E of this proposed rule). The proposed expansion of the Anchorage/Matsu/Kenai non-subsistence area would increase the prohibited area by approximately 1146 square nautical miles or 28.6 percent. The Council took this action to address localized depletion concerns. Increased fishing pressure is expected in this area due to its easy access on the road system.

##### *Legal Gear For Harvesting Subsistence Halibut*

The Council recommended eliminating gear restrictions in Areas 4C, 4D, and 4E. The elimination of gear

restrictions in these Bering Sea areas is proposed to correspond with the absence of harvest restrictions in those areas. The Council based its decision to relax gear and harvest restrictions on three reasons. First, the annual time period available for subsistence halibut fishing in Areas 4C, 4D, and 4E is reduced because of sea ice coverage. Second, once the sea ice has melted, the potential to fish for subsistence halibut is further reduced because of frequent rough seas and inclement weather. Third, existing regulations impose no daily harvest limit in Areas 4C, 4D, and 4E, so a gear limit without a harvest limit did not make sense.

In other areas the Council recommended increased restrictions. In Areas 3A, 3B, 4A, and 4B, the Council reduced the allowable gear to no more than 3 times the number of hooks on a single unit of gear per trip, provided that a sufficient number of subsistence users are on board the vessel. NMFS interprets the Council's recommendation as a per-person, per-vessel hook limit, which would reduce allowable gear to no more than 90 hooks per vessel on gear set or retrieved during subsistence halibut fishing, provided at least three individual registered subsistence fishers are on board the vessel. In other words, if one registered fisher is on board the vessel, the maximum number of hooks on the gear set or retrieved in the course of fishing would be 30. If two registered fishers are on board, the maximum number of hooks on gear set or retrieved in the course of fishing would be 60. If three or more registered fishers are on board, the maximum number of hooks on gear set or retrieved in the course of fishing would be 90. At no time may the gear used to fish for subsistence halibut exceed 30 hooks per person or 90 hooks per vessel.

The Council recommended the most stringent restrictions in Area 2C primarily to address the perception that halibut fishing effort has increased within the area. The Council proposed superseding the 30-hook-per-person restriction with a 30-hook-per-vessel restriction. The per-vessel restrictions would apply in all of Area 2C. Additional restrictions were suggested for the Low Island area within Sitka Sound in an effort to address gear conflicts among individual user groups. The Council recommended implementing a subsistence longline closure area south of Low Island in waters traditionally used by handline and rod-and-reel fishermen (see revised Figure 1 to Subpart E of this proposed rule).

In response to the concerns of Alaska Native and community groups regarding increased restrictions in Area 2C, the Council recommended a Community Harvest Permit (CHP) Program to mitigate those increased restrictions. The CHP Program allows a community or Alaska Native tribe to select individual harvesters who may possess particular expertise in halibut fishing to harvest halibut on behalf of the community or Alaska Native tribe. Using a CHP in Area 2C would allow the use of the gear restriction described above for Areas 3A, 3B, 4A, and 4B (30 hooks per person up to a maximum of 90 hooks per vessel). Also, a Ceremonial and Educational Permit Program was recommended in Areas 2C and 3A to recognize cultural uses of halibut. Ceremonial and Educational permits maintain the same gear limitations as those required when fishing under a subsistence halibut registration certificate in Areas 2C and 3A (i.e. 30 hooks per vessel in Area 2C and 30 hooks per person or up to 90 hooks per vessel in Area 3A).

#### *Daily Bag Limit*

In general, the daily harvest (bag) limit for subsistence halibut outside of Areas 4C, 4D, and 4E, is up to 20 halibut per eligible subsistence fisherman. Existing regulations at § 300.66(h) prohibit mixing halibut harvested from subsistence fishing with halibut harvested from commercial fishing or from sport fishing, except that undersized halibut (i.e. fish less than 32 inches (81.3 cm) in length) may be retained with CDQ halibut in Areas 4D or 4E (§ 300.66(h)). The Council recommended expanding this exception to allow retention of legal size (i.e. 32 inches (81.3 cm) or longer) subsistence halibut along with CDQ halibut. The proposed exception for legal sized halibut would apply only to registered fishers who land their total annual halibut harvest in Areas 4C, 4D, and 4E. The Council allowed this exception to the prohibition of mixing halibut for the same reasons that the existing rule does not impose bag limits in these areas, i.e., limited days at sea and safety concerns.

The Council recommended additional harvest restrictions in Area 2C to correspond with increased gear restrictions. In Area 2C, harvest restrictions would change to 20 halibut per vessel instead of the 20 halibut per person allowed under current regulations (§ 300.65(g)). To mitigate the effects of the increased restrictions in Area 2C, the Council proposed more liberal harvest limits for Alaska Native tribes and communities under the CHP program. Under a CHP, a community or

Alaska Native tribe in Area 2C as listed in § 300.65(f)(1) and (f)(2) would be able to appoint up to three individuals to harvest an unlimited number of halibut subject to more stringent application and reporting requirements. Ceremonial and Educational Permits would allow Alaska Native tribes in Areas 2C and 3A as listed in § 300.65(f)(2) to harvest up to 25 halibut per permit. Ceremonial and Educational Permits also require more stringent application and reporting requirements. The 25-fish limit mirrors the harvest restrictions for a similar permit for salmon administered by the U.S. Fish and Wildlife Service.

#### *Relationship to CDQ in Areas 4C, 4D, and 4E*

Pacific halibut that are retained and counted against a CDQ allocation are sold and enter commerce. Such halibut do not include those retained for subsistence uses. Currently, CDQ fishermen may retain sublegal halibut in Areas 4D and 4E for subsistence purposes. Prior to the implementation of the current subsistence halibut policy, NMFS allowed the retention of sublegal halibut in Areas 4D and 4E based on the customary and traditional use of sublegal halibut in those areas and because the sublegal halibut are easily distinguishable from legal sized CDQ halibut. Fishermen in Areas 4D and 4E will continue to be able to retain sublegal halibut for subsistence based on their customary and traditional use of those fish. In addition, under this proposed rule, CDQ fishermen would be allowed to retain legal sized subsistence halibut along with their CDQ halibut in Areas 4C, 4D, and 4E if they are in possession of a subsistence halibut registration certificate. As described in the two previous sections, a reduced number of days at sea and safety concerns provide a justification for allowing CDQ fishermen in Areas 4C, 4D, and 4E to retain legal sized halibut for subsistence purposes.

In either case—sublegal or legal sized subsistence halibut—no regulatory need exists to distinguish those fish from CDQ halibut under the proposed regulation. Under existing regulations, halibut does not count against a CDQ allocation until the fish is sold to a processor. At any time before delivering halibut to a processor, a CDQ fisherman who possesses a subsistence halibut registration certificate may decide to keep one or more halibut for his subsistence use out of those fish he intends to sell and count against his CDQ allocation. Typically, subsistence halibut would be withheld prior to transfer of the remaining fish to the processor and, thus, subsistence halibut

would not count against a CDQ allocation. As long as a fisherman is in possession of a subsistence halibut registration certificate he may withhold subsistence halibut in this manner. Therefore, no need exists for a regulation stating that subsistence halibut will not count against a CDQ allocation. However, subsistence fishermen would continue to be reminded to not count their CDQ halibut on their annual subsistence halibut survey.

Additionally, because no regulatory need exists to distinguish between subsistence halibut and CDQ halibut for allocation purposes, no need exists to mark fish in any manner while on board the vessel for enforcement purposes. This proposed regulation would impose no harvest or gear restriction for subsistence halibut in Areas 4C, 4D, and 4E, therefore fishermen may use any setline gear, consistent with IPHC regulations, for halibut and may retain as many subsistence halibut on board as they need for subsistence purposes. Moreover, under this proposed regulation, subsistence and CDQ halibut may be retained together in any form consistent with current halibut regulations. Because a fisherman may decide to keep any number of halibut for his subsistence use, marking the fish to distinguish legal size subsistence and CDQ halibut on board a vessel in Areas 4C, 4D, and 4E would constitute a regulatory burden with no corresponding enforcement value.

#### *Application and Reporting for Special Permits*

The proposed regulations do not change the existing registration and reporting process for the individual subsistence halibut registration certificate. However, eligible Alaska Native tribes and communities would have to adhere to additional application and reporting requirements under the specialized permits which include Community Harvest Permits (CHP), Ceremonial Permits, and Educational Permits. These specialized permits, issued to specific communities or tribes, are proposed to relieve certain gear and harvest restrictions on persons fishing under them for subsistence halibut. These specialized permits must be on board the vessel while fishing is being conducted. Persons fishing under a specialized permit would be required to also possess a subsistence halibut registration certificate, except that enrolled students fishing under a valid Educational Permit may fish for subsistence halibut without a subsistence halibut registration certificate. Furthermore, the specialized

permits would require additional reporting for halibut harvest. The applications for the proposed specialized permits and additional reporting requirements would be designed to minimize the information collection burden on subsistence halibut fishermen while retrieving essential information. The tribe or community, permit coordinator, and harvester would be held jointly and severally liable for any violations of the regulations governing special permits.

The Restricted Access Management (RAM) Program Office of the Alaska Region, NMFS, would manage the application process for specialized permits. The RAM Program manager would confirm the eligibility of applicants based on the information provided on an application form. If eligible, the applicant would receive the specialized permit for which he or she applied. Compliance with the application and reporting system for all specialized permits would be required because of the liberal harvest requirements under the specialized permits.

CHPs may be issued to Alaska Native tribes, or to eligible rural communities in the absence of a tribe, provided the tribe or community is listed in § 300.65(f)(1) or (f)(2). The information collected in an application for a CHP would include the identity of the community or Alaska Native tribe, the identity of a CHP Coordinator, contact information for the CHP Coordinator, and any previously issued CHP harvest log. To ensure consistent data quality and proper use of the permit, eligible communities and Alaska Native tribes would be limited to only one CHP Coordinator per community or tribe. To allow for the unique nature of each community or tribe, each community or Alaska Native tribe should establish independently the CHP Coordinator appointment process. The CHP would consist of a laminated permit card and a harvest log issued by RAM. An eligible community or Alaska Native tribe may possess only one CHP at any time and the CHP would expire 1 year from the date of issuance.

The CHP Coordinator would maintain possession of the harvest log at all times

and issue the CHP permit card to eligible subsistence fishermen when necessary. The eligible subsistence fishermen would return the CHP permit card and report their catch to the CHP Coordinator upon completion of subsistence fishing under the permit. The CHP Coordinator would collect information regarding the halibut harvest in a harvest log. The CHP Coordinator would be required to return the CHP permit card and harvest log together upon expiration. Like any other permit, but distinct from the subsistence halibut registration certificate, a CHP would be a harvest privilege subject to the same limitations as other halibut permits or cards under 50 CFR 679.4(a).

Ceremonial and Educational Permits would be available exclusively to Alaska Native tribes. Ceremonial and Educational Permits would consist of a laminated permit card and a harvest log issued by RAM. Either permit would expire 30 days from its date of issuance and must be returned within 15 days following its expiration regardless of whether halibut were harvested using the permit. However, eligible tribes may apply for additional permits as necessary and may possess multiple permits at any given time. Like the CHP, Ceremonial and Educational Permits are a harvest privilege subject to the same limitations as other halibut permits or cards under 50 CFR 679.4(a).

The information collected in an application for a Ceremonial Permit would be minimized to identify the Alaska Native tribe requesting the permit, a Ceremonial Permit Coordinator, the Ceremonial Permit Coordinator's contact information, the occasion of cultural significance, and any previously issued Ceremonial Permit harvest log. An Educational Permit application would require the name and address of the educational institution or organization, the demonstration of enrollment of qualified students, minimum attendance requirements, standards for successful completion of the educational program, the affiliated Alaska Native tribe, the instructor, the instructor's contact information, and any previously issued Educational Permit harvest log. Additional application criteria for the

Educational Permits would ensure that only legitimate educational programs receive the permits. To ensure consistent data quality and proper use of the permit, eligible Alaska Native tribes would be limited to only one Ceremonial Permit Coordinator per tribe and educational programs may appoint only one authorized instructor per program. Once again, to allow for the unique nature of each tribe, NMFS determined the Ceremonial Permit coordinator appointment process should be established independently by each Alaska native tribe.

### Appeals

NMFS proposes an appeals process to address denied applications for a CHP, Ceremonial Permit, Educational Permit, or subsistence halibut registration certificate. The suggested appeals process provides a distinct procedure for addressing grievances in an open administrative process. The RAM Program Office would be responsible for issuing an Initial Administrative Decision (IAD) providing the reason for the denial of a special permit or subsistence halibut registration that details deficiencies in the application or any additional provided information. An affected party may appeal an IAD denial to the NMFS Alaska Region Office of Administrative Appeals (OAA) in accordance with 50 CFR 679.43. The Council recommended that the CHP should be revoked if abused subject to appeal. However, the Halibut Act does not provide for permit sanctions and thus, regulations authorized under the Halibut Act cannot authorize permit sanctions. The proposed appeals process would be available to any subsistence halibut fisher seeking relief under 50 CFR part 300.

### Restructuring of Regulations

The regulations governing the subsistence halibut fishery and implemented under the Halibut Act authority discussed above are codified at 50 CFR 300 Subpart E. The Council's recommended changes to these regulations would require significant redesignations as indicated in the following table.

<i>Current section and paragraph</i>	<i>Proposed new location</i>	<i>Would there be a change in the text?</i>
Section 300.65(c) Catch sharing plan and domestic management measures in waters in and off Alaska.	Removed .....	Existing paragraph (i) (Guideline Harvest Level) would be redesignated as paragraph (c). The Guideline Harvest Level text remains unchanged.
Section 300.66(h) Prohibitions.	Exceptions provided in Section 300.66(h) would be split into paragraphs (h)(1) and (h)(2).	Yes, a new paragraph (h)(2) would be added to reflect an additional exception.
Section 300.66(k) Prohibitions.	Section 300.66(l) .....	No, but a new paragraph (k) would be added.

To avoid confusion in the amendatory language of each instruction, the full text of each paragraph that would be moved along with proposed revisions is repeated in this proposed rule. No substantive changes are proposed in existing § 300.60–300.62 and 300.64. The only substantive change related to the proposed subsistence halibut action would occur in existing § 300.63 and 300.65–300.66. Although the Guideline Harvest Level provisions of § 300.65 would be redesignated, the substance of those regulations would not change.

NMFS proposes to remove the text of the introductory paragraph preceding paragraph (a) in § 300.63. This removal represents only an editorial change to eliminate repetition in the regulatory text. Removal of the introductory paragraph in § 300.63 in no way changes the rights and obligations imposed by the regulations on regulated parties.

Additionally, NMFS proposes to remove all language addressing the terms, conditions, or other specific details suggested for harvest assessment under the individual subsistence halibut registration certificate. Future subsistence halibut surveys would continue to be voluntary and removing the survey language allows more flexibility in the information collection process. NMFS deemed the increased flexibility of information collection necessary for proper management of halibut stocks.

#### Classification

This proposed rule contains a collection-of-information requirement subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been submitted to OMB for approval. Public reporting burden for this collection of information is estimated to average 10 minutes per response for each permit application and 30 minutes per response for each harvest log, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Public comment is sought regarding: Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments

on these or any other aspects of the collection of information to NMFS, Alaska Region and to the Office of Information and Regulatory Affairs (see **ADDRESSES**).

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.

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

The Council prepared a Regulatory Impact Review (RIR) to assess all costs and benefits of available regulatory alternatives. The Council considered all quantitative and qualitative measures and chose a preferred alternative based on those measures that maximize net benefits to affected communities and Alaska Native tribes under the Subsistence Halibut program.

The Council also prepared an Initial Regulatory Flexibility Analysis (IRFA) for this action that assesses potential impacts on small entities for purposes of the Regulatory Flexibility Act (RFA). Special permits proposed in this rule would impact small entities in the form of small government jurisdictions with fewer than 50,000 residents. Affected small government jurisdictions include 29 rural communities and 19 Alaska Native tribes in Area 2C and 14 rural communities and 19 tribes in Area 3A. The special permits represent the only aspect of the proposed rule that affects small entities. The remainder of the proposed rule bears exclusively on the non-commercial activities of “individuals,” which are subsequently excluded from the RFA.

The Council analyzed two alternatives in the IRFA for each special permit under this proposed rule including a no action alternative and the selected preferred alternative. Under the no action alternative, the status quo would be maintained and no special permits would issue to Alaska Native tribes or rural communities under the Subsistence Halibut program. The Council determined that the no action alternative failed to meet the goals of the Subsistence Halibut program to provide for improved safety at sea, recognition and accommodation of traditional Native customs and practices, facilitation of efficient acquisition of subsistence food, reductions in waste and discards, and promotion of halibut conservation. Alternatively, the Council determined that the preferred alternative implementing special permits would provide a means to meet

these goals by establishing a system that provides for better harvest assessment and stock monitoring while recognizing the unique character of the Alaska Native tribes and rural communities. The Council analyzed several options within the preferred alternative, including permit methods from analogous applications in other agencies such as special use permits provided by the Bureau of Indian Affairs (BIA) and the National Park Service (NPS). The Council did not select the options provided by the BIA and NPS regulations because those systems provided for more generic resource permitting systems that did not necessarily address subsistence issues. Ultimately, the Council selected a permit system modeled after the U.S. Fish and Wildlife Service’s subsistence permit programs because that permit system represented a proven system that corresponded well with the similar subsistence goals of the Subsistence Halibut program.

Since the preferred alternative creates a system that only benefits the affected entities by meeting the goals described above, it likely imposes no “adverse” impacts that require consideration under the RFA. Nonetheless, the Council prepared an IFRA to fulfill the requirements of the RFA, despite the high probability that the proposed rule will not have a substantial adverse effect on a substantial number of small entities as defined by the RFA. Copies of the RIR/IRFA for this proposed rule are available from NMFS. (see **ADDRESSES**).

Detailed information and empirical data about the entities likely subject to regulation by this proposed rule are not presently available for analysis supporting the preparation of a “factual basis” upon which to “certify,” under the RFA. However, because the preferred alternative creates a system that only benefits the affected entities by meeting the goals described above, it likely imposes no “adverse” impacts that require consideration under the RFA. Nonetheless, the Council prepared an IFRA to fulfill the requirements of the RFA, despite the high probability that the proposed rule will not have a substantial adverse effect on a substantial number of small entities as defined by the RFA. Copies of the RIR/IRFA for this proposed rule are available from NMFS (see **ADDRESSES**). According to NOAA Administrative Order (NAO) 216–6, including the criteria used to determine significance, this rule would not have a significant effect, individually or cumulatively, on the human environment beyond those effects identified in previous NEPA analysis. An environmental assessment

(EA) (dated January 2003) was prepared for the final rule implementing the original subsistence halibut regulations (68 FR 18145, April 15, 2003). The scope of the EA includes the potential environmental impacts of this proposed rule because the EA analyzed the original subsistence halibut policy, which included analysis of gear and harvest restrictions and their impacts on tribes and rural communities. Based on the nature of the proposed rule and the previous environmental analysis, this proposed rule is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement, in accordance with Section 5.05b of NAO 216–6. Copies of the EA for the original subsistence halibut policy and the categorical exclusion for this action are available from NMFS (see **ADDRESSES**).

#### List of Subjects

##### 50 CFR Part 300

Fisheries, Pacific halibut.

##### 50 CFR Part 679

Alaska, Determinations and appeals, Fisheries, Recordkeeping and reporting requirements.

Dated: July 1, 2004.

**John Oliver,**

*Deputy Assistant Administrator for Operations, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR parts 300 and 679 are proposed to be 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.

#### § 300.63 [Amended]

2. In § 300.63, the introductory paragraph preceding paragraph (a) is removed.

3. In § 300.65, paragraph (c) is removed; paragraph (i) is redesignated as paragraph (c); paragraphs (d)(4) and (g) are revised; paragraph (h)(4) is removed; and new paragraphs (i) through (k) are added to read as follows:

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

\* \* \* \* \*

(c) Guideline harvest level (GHL). (1) The annual GHLs for regulatory areas 2C and 3A are determined as follows.

If the Annual Total Constant Exploitation Yield for Halibut in Area 2C is More Than:	Than the GHL for Area 2C will be:	If the Annual Total Constant Exploitation Yield for Halibut in Area 3A is More Than:	Than the GHL for Area 3A will be:
(i) 9,027,000 lbs. (4094.5 mt)	1,432,000 lbs. (649.5 mt)	21,581,000 lbs. (9,788.9 mt)	3,650,000 lbs. (1655.6 mt)
(ii) 7,965,000 lbs. (3612.9 mt)	1,217,000 lbs. (552.0 mt)	19,042,000 lbs. (8637.3 mt)	3,103,000 lbs. (1407.0 mt)
(iii) 6,903,000 lbs. (3,131.2 mt)	1,074,000 lbs. (496.7 mt)	16,504,000 lbs. (7,485.9 mt)	2,734,000 lbs. (1266.4 mt)
(iv) 5,841,000 lbs. (2,649.4 mt)	931,000 lbs. (447.2 mt)	13,964,000 lbs. (6334.0 mt)	2,373,000 lbs. (1,139.9 mt)
(v) 4,779,000 lbs. (2,167.7 mt)	788,000 lbs. (357.4 mt)	11,425,000 lbs. (5,182.3 mt)	2,008,000 lbs. (910.8 mt)

(2) NMFS will publish a notice in the **Federal Register** on an annual basis establishing the GHL for Area 2C and Area 3B for that calendar year within 30 days of receiving information from the Commission which establishes the constant exploitation yield for that year.

(3) If the GHL in either Area 2C or 3A is exceeded, NMFS will notify the Council in writing that the GHL has been exceeded within 30 days of receiving information that the GHL has been exceeded.

(d) \* \* \*

\* \* \* \* \*

(4) No charter vessel, as defined at 50 CFR 300.61, shall engage in sport fishing, as defined at 50 CFR 300.61, for halibut within Sitka Sound, as defined in paragraph (d)(1)(ii) of this section, from June 1 through August 31.

(i) No charter vessel shall retain halibut caught while engaged in sport fishing, as defined at 50 CFR 300.61, for other species, within Sitka Sound, as defined in paragraph (d)(1)(ii) of this section, from June 1 through August 31.

(ii) Notwithstanding paragraphs (d)(4) and (d)(4)(i) of this section, halibut harvested outside Sitka Sound, as defined in (d)(1)(ii) of this section, may

be retained onboard a charter vessel engaged in sport fishing, as defined in 50 CFR 300.61, for other species within Sitka Sound, as defined in paragraph (d)(1)(ii) of this section, from June 1 through August 31.

\* \* \* \* \*

(g) \* \* \*

(1) \* \* \*

(i) Subsistence fishing gear set or retrieved from a vessel must not have more than 30 hooks per person registered in accordance with paragraph (h) of this section and on board the vessel and shall never exceed 3 times the per-person hook limit except that:

(A) No hook limit applies in Areas 4C, 4D, and 4E.

(B) In Area 2C, subsistence fishing gear set or retrieved from a vessel must not have more than 30 hooks per vessel unless fishing under a CHP pursuant to paragraph (i) of this section.

(C) In Area 2C within the Sitka LAMP from June 1 to August 31, setline gear may not be used in a 4 nautical mile radius extending south from Low Island at 57°00'42" N. lat., and 135°36'34" W. long.

(ii) \* \* \*

(iii) \* \* \*

(2) The daily retention of subsistence halibut in rural areas is limited to no more than 20 fish per person on board the vessel that are eligible to conduct subsistence fishing for halibut under paragraph (g) of this section, except that:

(i) No daily retention limit applies in Areas 4C, 4D, and 4E.

(ii) No daily retention limit applies to persons fishing under a community harvest permit (CHP) pursuant to paragraph (i) of this section.

(iii) The total allowable harvest for persons fishing under a Ceremonial or Educational Permit pursuant to paragraph (j) of this section is 25 fish per permit.

(iv) In Area 2C the daily retention limit is 20 fish per vessel.

(3) \* \* \*

(i) \* \* \*

(ii) \* \* \*

(iii) The Anchorage-Matsu-Kenai non-subsistence marine waters area in Commission Regulatory Area 3A (see Figure 4 to subpart E) is defined as: (1) all waters of Cook Inlet north of 59°30.40' N. lat., except those waters within mean lower low tide from a point one mile south of the southern edge of the Chuitna River (61°05.00' N.

lat., 151°01.00' W. long.) south to the easternmost tip of Granite Point (61°01.00' N. lat., 151°23.00' W. long.) (Tyonek subdistrict); and (2) all waters of Alaska south of 59°30.40' N. lat. on the western shore of Cook Inlet to Cape Douglas (58°10' N. lat.) and in the east to Cape Fairfield (148°50.25' W. long.), except those waters of Alaska west of a line from the westernmost point of Jakolof Bay (151°31.09' W. long.) and following the shore to a line extending south from the easternmost point of Rocky Bay (151°18.41' W. long.);

\* \* \* \* \*

(i) Community Harvest Permit (CHP). An Area 2C community or Alaska Native tribe listed in paragraph (f)(1) or (f)(2) of this section may apply for a CHP, which allows a community or Alaska Native tribe to appoint one or more individuals from its respective community or Alaska Native tribe to harvest subsistence halibut from a single vessel under reduced gear and harvest restrictions. A CHP is a permit subject to regulation under 50 CFR 679.4(a).

(1) Qualifications. (i) NMFS may issue a CHP to any community or Alaska Native tribe that applies according to paragraph (i)(2) of this section and that is qualified to conduct subsistence fishing for halibut according to paragraph (f) of this section.

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

(A) The applying community is listed as eligible in Area 2C according to paragraph (f)(1) of this section.

(B) No Alaska Native tribe listed in paragraph (f)(2) exists in that community.

(iii) NMFS will issue a CHP to an Alaska Native tribe in Area 2C only if the applying tribe is listed as eligible in Area 2C according to paragraph (f)(2) of this section.

(iv) Eligible communities or Alaska Native tribes may appoint only one CHP Coordinator per community or tribe.

(2) Application. A community or Alaska Native tribe may apply for a CHP by submitting an application to the Alaska Region, NMFS. Applications must be mailed to: Restricted Access Management Program, NMFS, Alaska Region, PO Box 21668, Juneau, AK 99802-1668. A complete application must include:

(i) the name of the community or Alaska Native tribe requesting the CHP;

(ii) The full name of the person who is designated as the CHP Coordinator for each community or Alaska Native tribe, the designated CHP Coordinator's mailing address (number and street, city and state, zip code), community of residence (the rural community or

residence from 50 CFR 300.65(f)(1)) or the Alaska Native tribe if applicable (as indicated in 50 CFR 300.65(f)(2)), and the daytime telephone number; and

(iii) Any previously issued CHP harvest logs.

(3) Restrictions. Subsistence fishing for halibut under a CHP shall be valid only:

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

(A) Within the Sitka LAMP defined in paragraph (d) of this section (see Figure 1 to subpart E)

(B) Within the Juneau and Ketchikan non-rural areas defined in paragraph (g) of this section (see Figures 2 and 3 of subpart E)

(ii) To persons in possession of a valid subsistence halibut registration certificate issued in accordance with paragraph (h) for the same community or Alaska Native tribe listed on the CHP.

(iii) On a single vessel on which the CHP is present.

(4) Expiration of permit. Each CHP will be valid only for the period of time specified on the permit. A CHP will expire one year from the date of issuance to a community or Alaska Native tribe eligible to harvest halibut under paragraph (f) of this section. A community or Alaska Native tribe eligible to harvest subsistence halibut under paragraph (f) of this section may renew its CHP that is expired or will expire within three months by following the procedures described in paragraph (i)(2) of this section.

(5) Duties of the CHP coordinator. Each CHP Coordinator must:

(i) Identify on the Community Harvest Permit harvest log the designated harvesters who may fish under the CHP when the CHP is issued to the designated harvester.

(ii) Maintain possession of the CHP when not in use and issue the CHP to designated harvesters when necessary.

(iii) Perform all required record keeping and data reporting of subsistence harvests under the CHP.

(6) Each Community Harvest Permit harvest log must be submitted to NMFS on or before the date of expiration by facsimile or mail. Harvest logs must be mailed to RAM at the address given in paragraph (i)(2) of this section or faxed to 907-586-7354. The log must provide information on:

(i) The subsistence fisher's identity including his or her full name, subsistence halibut registration certificate number, date of birth, mailing address (number and street, city and state, zip code), community of residence, daytime phone number, and tribal identity (if appropriate);

(ii) The subsistence halibut harvest including whether the participant fished for subsistence halibut during the period specified on the permit, and if so, the date harvest occurred, the number and weight (in pounds) of halibut harvested, the type of gear and number of hooks used, the Commission regulatory area and local water body from which the halibut were harvested, and the number of lingcod and rockfish caught while subsistence fishing for halibut.

(j) Ceremonial Permit or Educational Permit. An Area 2C or Area 3A Alaska Native tribe that is listed in paragraph (f)(2) of this section may apply for a Ceremonial or Educational Permit, allowing the tribe to harvest up to 25 halibut per permit issued. Ceremonial and Educational Permits are permits subject to regulation under 50 CFR 679.4(a).

(1) Qualifications. (i) NMFS may issue a Ceremonial or Educational Permit to any Alaska Native tribe that completes an application according to paragraph (j)(2) of this section and that is qualified to conduct subsistence fishing for halibut according to paragraph (f)(2) of this section.

(ii) Eligible Alaska Native tribes may appoint only one Ceremonial Permit Coordinator per tribe.

(iii) Eligible educational programs may appoint only one authorized Instructor per Educational Permit.

(2) Application. An Alaska Native tribe may apply for a Ceremonial or Educational Permit by submitting an application to the Alaska Region, NMFS. Applications must be mailed to: Restricted Access Management Program, NMFS, Alaska Region, PO Box 21668, Juneau, AK 99802-1668.

(i) A complete application must include:

(A) The name of the Alaska Native tribe requesting the Ceremonial or Educational Permit.

(B) The name of the person designated as the Ceremonial Permit Coordinator for each Alaska Native tribe or the name of the person designated as the Instructor for an Educational Permit, the Ceremonial Permit Coordinator or Instructor's mailing address (number and street, city and state, zip code), and the daytime telephone number.

(C) Any previously issued Ceremonial Permit harvest logs from any expired Ceremonial Permit if applying for a Ceremonial Permit.

(D) Any previously issued Educational Permit harvest logs from any expired Educational Permit if applying for a Educational Permit.

(ii) NMFS will issue a Ceremonial Permit for the harvest of halibut



associated with traditional cultural events only if the application:

(A) Indicates the occasion of cultural or ceremonial significance.

(B) Identifies the person designated by the eligible Alaska Native tribe as the Ceremonial Permit Coordinator.

(iii) NMFS will issue an Educational Permit only if the application:

(A) Includes the name and address of the educational institution or organization.

(B) Includes the instructor's name.

(C) Demonstrates the enrollment of qualified students.

(D) Describes minimum attendance requirements of the educational program.

(E) Describes standards for the successful completion of the educational program.

(3) Restrictions. Subsistence fishing for halibut under Ceremonial or Educational Permits shall be valid only:

(i) In Area 3A, except in the Anchorage-Matsu-Kenai and Valdez non-rural areas defined in paragraph (g) of this section (see Figures 4 and 5 of subpart E)

(ii) In Area 2C, except in the Juneau and Ketchikan non-rural areas defined in paragraph (g) of this section (see Figures 2 and 3 of subpart E) and a Ceremonial Permit may not be used within the Sitka LAMP from June 1 through August 31.

(iii) On a single vessel on which the Ceremonial or Educational Permit is present.

(iv) On the vessel on which the instructor is present for Educational Permits.

(v) To persons in possession of a valid subsistence halibut registration certificate issued in accordance with paragraph (h) for the same Alaska Native tribe listed on the Ceremonial Permit, except that students enrolled in an educational program may fish under an Educational Permit without a subsistence halibut registration certificate.

(4) Expiration of permits. Each Ceremonial or Educational Permit will be valid only for the period of time specified on the permit. Ceremonial and Educational Permits will expire 30 days from the date of issuance to an Alaska Native tribe eligible to harvest halibut under paragraph (f)(2) of this section. A tribe eligible to harvest subsistence halibut under paragraph (f)(2) of this section may apply for additional Ceremonial or Educational Permits at any time.

(5) Duties of Ceremonial Permit Coordinators and Instructors. Each Ceremonial Permit Coordinator or Instructor must:

(i) Identify on the Ceremonial/Educational Permit harvest log the designated harvesters or students who may fish under the Ceremonial or Educational Permit when the permit is used.

(ii) Maintain possession of the Ceremonial Permit when not in use and issue the Ceremonial Permit to designated harvesters when necessary.

(iii) Perform all required recordkeeping and data reporting of subsistence harvests under the Ceremonial or Educational Permit.

(6) Submission of a Ceremonial or Educational Permit log shall be required upon the expiration of each permit and must be received by Restricted Access Management within 15 days of the expiration by facsimile or mail. Harvest logs must be mailed to RAM at the address given in paragraph (j)(2) of this section or faxed to 907-586-7354. The log must provide information on:

(i) The subsistence fisher's identity including his or her full name, subsistence halibut registration certificate number if applicable (students do not need a SHARC), date of birth, mailing address (number and street, city and state, zip code), community of residence, daytime phone number, and tribal identity.

(ii) The subsistence halibut harvest including whether the participant fished for subsistence halibut during the period indicated on the permit, and if so, the date when harvest occurred, the number and weight (in pounds) of halibut harvested, the type of gear and number of hooks used, the Commission regulatory area and local water body from which the halibut were harvested, and the number of lingcod and rockfish caught while subsistence fishing for halibut.

(k) *Appeals.* If Restricted Access Management (RAM) determines that an application is deficient, it will prepare and send an Initial Administrative Determination (IAD) to the applicant. The IAD will indicate the deficiencies in the application or any additional provided information. An applicant who receives an IAD may appeal RAM's findings pursuant to 50 CFR 679.43.

4. In § 300.66, paragraphs (e) and (h) are revised; paragraph (k) is redesignated as paragraph (l), and a new paragraph (k) is added to read as follows:

#### § 300.66 Prohibitions.

\* \* \* \* \*

(e) Fish for subsistence halibut in and off Alaska unless the person is qualified to do so under 50 CFR 300.65(f), possesses a valid subsistence halibut registration certificate pursuant to 50

CFR 300.65(h), and makes this certificate available for inspection by an authorized officer on request, except that students enrolled in a valid educational program and fishing under an Educational Permit issued pursuant to 50 CFR 300.65(j) do not need a subsistence halibut registration certificate.

\* \* \* \* \*

(h) Retain on board the harvesting vessel halibut harvested while subsistence fishing with halibut harvested while commercial fishing or from sport fishing, as defined at 50 CFR 300.61(b), except that persons authorized to conduct subsistence fishing under 50 CFR 300.65(f), and who land their total annual harvest of halibut:

(1) In Commission regulatory Areas 4D or 4E may retain, with harvests of Community Development Quota (CDQ) halibut, subsistence halibut harvested in Commission regulatory areas 4D or 4E that are smaller than the size limit specified in the annual management measures published pursuant to 50 CFR 300.62; or

(2) In Commission regulatory Areas 4C, 4D or 4E may retain, with harvests of CDQ halibut, subsistence halibut harvested in Commission regulatory areas 4C, 4D or 4E that are equal to or greater than the size limit specified in the annual management measures published pursuant to 50 CFR 300.62.

\* \* \* \* \*

(k) Retain subsistence halibut harvested under a CHP, Ceremonial Permit, or Educational Permit together in any combination or with halibut harvested under any other license or permit.

(l) Fillet, mutilate, or otherwise disfigure subsistence halibut in any manner that prevents the determination of the number of fish caught, possessed, or landed.

## PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for part 679 continues to read as follows:

**Authority:** 16 U.S.C. 773 *et seq.*; 1801 *et seq.*; and 3631 *et seq.*; Title II of Division C, Pub. L. 105-277; Sec. 3027, Pub. L. 106-31; 113 Stat. 57; 16 U.S.C. 1540(f); and Sec. 209 Pub. L. 106-554.

2. In § 679.4, paragraphs (a)(1) and (a)(2) are revised to read as follows:

#### § 679.4 Permits.

(a) \* \* \*

(1) *What permits are available?*

Various types of permits are issued for programs codified at 50 CFR parts 300



and 679. These permits are listed in the following table. The date of effectiveness for each permit is given along with certain reference paragraphs for further information.

<i>If program permit or card type is:</i>	<i>Permit is in effect from issue date through end of:</i>	<i>For more information, see...</i>
* * * * *		
(xi) Special Subsistence Permits		
(A) Community Harvest Permit	1 year	§ 300.65 of this Title
(B) Ceremonial or Educational Permit	30 days	§ 300.65 of this Title

(2) *Permit and logbook required by participant and fishery.* For the various types of permits issued, refer to § 679.5 for recordkeeping and reporting requirements. For subsistence permits, refer to § 300.65 of this chapter for recordkeeping and reporting requirements.

\* \* \* \* \*

3. In § 679.43, paragraph (a) is revised to read as follows:

**§ 679.43 Determinations and appeals.**

(a) *General.* This section describes the procedure for appealing initial administrative determinations made

under this part 679 and part 300, subpart E of this title.

\* \* \* \* \*

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