

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

[Docket No. 0808061071–9666–02]

RIN 0648–AX17

Pacific Halibut Fisheries; Guided Sport Charter Vessel Fishery for Halibut

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

ACTION: Final rule.

SUMMARY: NMFS implements regulations to limit the harvest of Pacific halibut by guided sport charter vessel anglers in International Pacific Halibut Commission (IPHC) Regulatory Area 2C (Area 2C) of Southeast Alaska to one halibut per day. This action is necessary to reduce the halibut harvest in the guided sport charter vessel (guided) sector. The intended effect of this action is to manage the harvest of halibut in Area 2C consistent with an allocation strategy recommended by the North Pacific Fishery Management Council for the guided fishery and the commercial fishery. This final rule implements three restrictions for the guided fishery for halibut in Area 2C: a one-fish daily bag limit, no harvest by the charter vessel guide and crew, and a line limit equal to the number of charter vessel anglers onboard, not to exceed six lines.

DATES: Effective June 5, 2009.

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

Written comments regarding the burden-hour estimates or other aspects of the collection of information requirements contained in this rule may be submitted to NMFS at the above address, and by e-mail to David.Rostker@omb.eop.gov or by fax to 202–395–7285.

FOR FURTHER INFORMATION CONTACT: Sue Salvesson or Jay Ginter, 907–586–7228.

SUPPLEMENTARY INFORMATION: The IPHC and NMFS manage fishing for Pacific halibut (*Hippoglossus stenolepis*) through regulations established under the authority of the Northern Pacific Halibut Act of 1982 (Halibut Act). The

IPHC promulgates regulations governing the halibut fishery under the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea (Convention). The IPHC's regulations are subject to acceptance by the Secretary of State with concurrence by the Secretary of Commerce (Secretary). After acceptance by the Secretaries of State and Commerce, the IPHC regulations are published in the **Federal Register** as annual management measures pursuant to 50 CFR 300.62. The annual management measures for 2009 were published on March 19, 2009 (74 FR 11681).

The Halibut Act also provides the North Pacific Fishery Management Council (Council) with authority to recommend regulations to the Secretary to allocate harvesting privileges among U.S. fishermen. The Council, under 16 U.S.C. 773c(c), may develop regulations applicable to U.S. nationals or vessels, which are in addition to, and not in conflict with, regulations adopted by the IPHC. Regulations developed by the Council shall be implemented only with the approval of the Secretary, and must meet criteria outlined in section 773c(c).

The Secretary, under 16 U.S.C. 773c(a) and (b) has general responsibility to carry out the Convention and Halibut Act. According to section 773c(b),

In fulfilling this responsibility, the Secretary shall, in consultation with the Secretary of the department in which the Coast Guard is operating, adopt such regulations as may be necessary to carry out the purposes and objectives of the Convention and [the Halibut Act].

The Secretary's authority to take action under the Halibut Act has been delegated to NMFS. NMFS takes this action under section 773c(b) to adopt such regulations as may be necessary to carry out the purposes and objectives of the Convention and the Halibut Act. This action implements, among other measures, a one-halibut daily bag limit on charter vessel anglers in IPHC Area 2C. This bag limit originally was recommended by the Council in June 2007 and implemented by NMFS by final rule on May 28, 2008, with an effective date of June 1, 2008 (73 FR 30504). The June 1, 2008 rule was withdrawn following a legal challenge as described in the preamble to the proposed rule for this action published on December 22, 2008 (73 FR 78276).

Background and Need for Action

The respective roles of the IPHC and the Council in managing the commercial, sport and subsistence

fisheries for halibut are described in the preamble to the proposed rule for this action (73 FR 78276, December 22, 2008).

Each year, the IPHC establishes an annual total Constant Exploitation Yield (Total CEY) for Pacific halibut based on the most recent estimates of the overall halibut biomass. The IPHC then subtracts estimates of all noncommercial removals (sport, subsistence, bycatch, and wastage) from the Total CEY. The remainder, after the noncommercial removals are subtracted, is the Fishery CEY for an area's directed commercial fishery. Any increases in non-commercial removals of halibut will necessarily decrease the portion of the Total CEY available as Fishery CEY for use by the commercial sector. The IPHC annually sets a catch limit for the commercial longline fishery in each regulatory area in and off Alaska that is based on the Fishery CEY but not necessarily limited to the Fishery CEY.

In 2003, NMFS approved and established (at 50 CFR 300.65(c)(1)) the Council's recommended guideline harvest level (GHL) policy to serve as a benchmark for monitoring the charter vessel fishery's harvests of Pacific halibut. The GHL does not limit harvests by charter vessel anglers, however. Subsequent regulatory action, such as this action, is necessary to control the charter vessel fishery's harvests to the GHL. Harvests by charter vessel anglers exceeded the GHL in Area 2C each year from 2004 to 2007, and the best available estimates indicate that the 2008 GHL also was exceeded (Table 1 and Figure 1 of this preamble). Harvests of halibut by the charter sector above its GHL reduce the Fishery CEY. By reducing the amount of fish available to the commercial sector, the charter harvests create an allocation concern. Charter removals should be close to the GHL or the methodology used by the IPHC to determine the Fishery CEY is undermined and results in a *de facto* reallocation from the commercial sector in subsequent years.

Charter vessel harvests in excess of the GHL also create a conservation concern by compromising the overall harvest strategy developed by the IPHC to conserve the halibut resource. The Total CEY and the Fishery CEY have decreased each year since 2004 reflecting declines in the estimated halibut biomass. As the Total CEY decreases, harvests of halibut should decrease to help conserve the resource. Hence, the GHL is linked to the Total CEY so that the GHL decreases in a stepwise fashion as the Total CEY decreases. Despite a decrease in Total CEY and the GHL in recent years,

charter vessel harvests have remained high and in excess of the GHL. As conservation of the halibut resource is the overarching goal of the IPHC, the magnitude of charter vessel harvests over the GHL in Area 2C has raised concern that such overharvesting by the charter sector poses a conservation risk, with the potential to undermine the IPHC's conservation and management goals for the overall halibut stock. Therefore, restraining charter sector harvests to approximately the GHL would contribute to the conservation of the halibut resource.

Objective of This Action

As indicated in the proposed rule for this action (73 FR 78276, December 22, 2008), NMFS is implementing a one-halibut daily bag limit in Area 2C to give effect to the Council's intent to keep the harvest of charter vessel anglers to approximately the GHL. In the years 2003 through 2007, the GHL was 1,432,000 lbs (649.5 mt). In 2008, the GHL was reduced to 931,000 lbs (422.3 mt), and in 2009, the GHL was

further reduced to 788,000 lbs (357.4 mt). Harvests by charter vessel anglers were below the GHL in 2003 and above the GHL in 2004 through 2008. Table 1 provides the GHL for each year, the specific amounts of charter vessel angler harvest, and the percentages of those amounts compared to the GHL. Figure 1 provides a graphical representation of the GHL and the specific amounts harvested. Table 7 in the analysis (see **ADDRESSES**) shows that implementation of a one-halibut daily bag limit would reduce charter vessel angler catch to a range of 1,495,000 lbs (678.1 mt) to 602,000 lbs (310.7 mt), depending on various average weight scenarios and assumptions about reductions in demand. NMFS determined that the one-halibut daily bag limit was the best alternative to bring charter vessel angler harvest close to the 931,000 lb (422.3 mt) level, after comparing it with other options and reviewing the range of potential harvests under the one-halibut daily bag limit based on various weight scenarios and demand reduction assumptions. Taking this action is

consistent with the action proposed at 73 FR 78276. Also, it will bring the harvest of halibut by charter vessel anglers in Area 2C closer to the 788,000 lb (357.4 mt) level than will the *status quo*, consistent with the Council's intent.

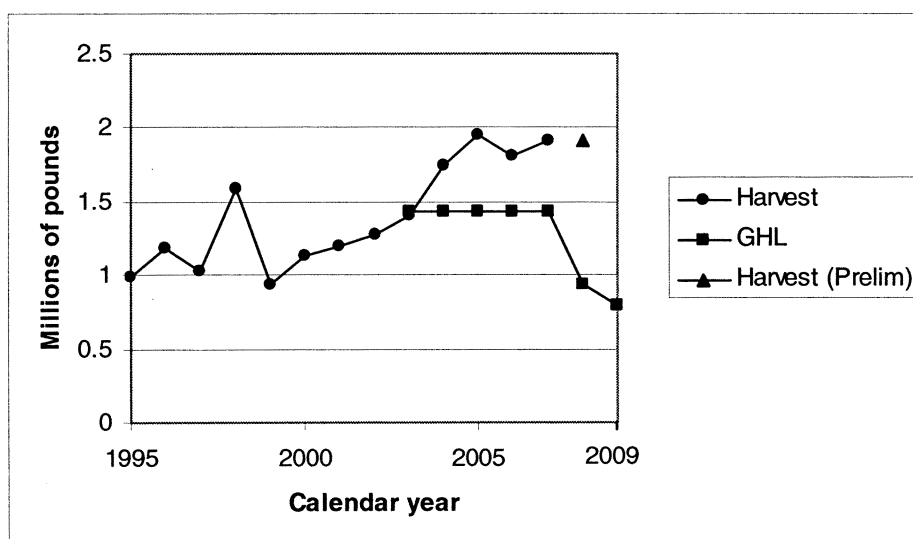
From 2003 to 2007, the GHL for Area 2C was 1,432,000 lbs (649.6 mt). In 2008, the IPHC reduced the Total CEY to 6,500,000 lbs (2,948.4 mt) from the 2007 Total CEY of 10,800,000 lbs (4,899.0 mt). This was a reduction of 4,300,000 lbs (1,950.5 mt) from the 2007 Total CEY. The reduction in the Total CEY triggered a reduction of the GHL for Area 2C from 1,432,000 lbs (649.6 mt) to 931,000 lbs (422.3 mt) for 2008. In 2009, the IPHC again reduced the Total CEY to 5,570,000 lbs (2,526.5 mt), which again triggered a reduction of the Area 2C GHL from 931,000 lbs (422.3 mt) to 788,000 lbs (357.4 mt) for 2009. As shown in Table 1 and Figure 1, the average charter vessel angler harvest in Area 2C for the four years 2004 through 2007 was 1,856,000 lbs (841.9 mt).

TABLE 1—GUIDED AND UNGUIDED SPORT HARVEST BY YEAR IN AREA 2C

Year	GHL (million pounds)	Unguided sport harvest (million pounds)	Charter har- vest (million pounds)	Total sport harvest (mil- lion pounds)	Charter harvest as percentage of GHL	Charter harvest as percentage of total sport harvest
2002	n/a	0.814	1.275	2.089	n/a	61.0
2003	1.432	0.846	1.412	2.258	98.6	62.5
2004	1.432	1.187	1.750	2.937	122.2	59.6
2005	1.432	0.845	1.952	2.797	136.3	69.8
2006	1.432	0.723	1.804	2.527	126.0	71.4
2007	1.432	1.131	1.918	3.049	133.9	62.9
2008	0.931	n/a	* 1.914	n/a	* 205.6	n/a
2009	0.788	n/a	n/a	n/a	n/a	n/a

n/a = not available.

* Harvest estimates are the best available.

Figure 1. Area 2C Charter vessel angler harvest and the GHL from 1995 to 2009

NMFS proposed this action on December 22, 2008 (73 FR 78276). Public comments were invited on the proposed rule for a period of 30 days ending on January 21, 2009. NMFS received 179 public submissions containing 141 unique comments. These comments are grouped into topical areas, summarized, and responded to below.

Comments and Responses

Conservation Concerns

Comment 1: The proposed rule is an allocation measure and does not have a conservation objective.

Response: This action addresses conservation of the halibut resource by constraining overall harvest to meet yield. In the presence of multiple user groups, conservation and allocation cannot be separated. Instead conservation objectives are advanced by conservation-sensitive allocation procedures. By reducing harvest in the Area 2C charter vessel fishery more than it would be without this rule, the fleet can contribute to achievement of the overall target exploitation rate for halibut in Area 2C and bring the charter vessel fishery closer to its GHL in this area.

In recent years, the Total CEY for Area 2C halibut has been declining. In response, it is important that the harvests of the principal user groups also decline to control the yield from the fisheries for conservation purposes. In the evaluation of these fisheries, different mechanisms have been created to limit the harvests of different user groups. Some user groups, such as subsistence and unguided sport users,

are not currently subject to measures designed to control aggregate harvests. A major user group, the commercial setline fishery, has a strictly managed annual catch limit, however. This catch limit is set by the IPHC based on the Fishery CEY and distributed to the commercial harvesters through the individual fishing quota (IFQ) system. The commercial catch limit has been cut by just over 50 percent between 2005 and 2009.

Harvest controls also have been created for the guided component of the sport fishery. This operates through the Council and Secretarial GHL system and regulatory measures implemented to limit guided harvests to the GHL. The guided sport fishery has exceeded its GHL since 2004 and the best available harvest estimates in 2008 indicate that the fishery exceeded its GHL 100 percent. A size limit on one of the two halibut in the bag limit in 2007 did not substantially constrain the charter vessel angler harvest in 2007. To control harvest to approximately the GHL in 2009, NMFS is implementing a one-halibut daily bag limit.

Comment 2: IPHC statements demonstrate there is no conservation concern. In 2008, the IPHC said the halibut stocks in Area 2C are "well above a level of concern" and there is no cause for "undue alarm." The IPHC has projected increases in the available harvestable biomass over the next 10 years. The IPHC has stated the proposed alternatives are not expected to have a significant impact on the halibut stocks or affect the overall harvest determined by the IPHC.

Response: The statements attributed to the IPHC in the first sentence are not

presented in context. The comment concerning "well above a level of concern" was made on page 83 of the IPHC 2008 Annual Meeting Bluebook and referred to the "coastwide" biomass of halibut, not the biomass of halibut in Area 2C. The complete statement was: "The coastwide assessment indicates a declining spawning biomass but one that is still well above a level of concern or anything close to a historic minimum."

The second statement concerning no cause for "undue alarm" is also taken out of context. The complete statement is on page 84 of the IPHC 2008 Annual Meeting Bluebook and states, "Taken together, the decline in exploitable biomass in Area 2 is understandable and is not cause for undue alarm. However, under a constant exploitation harvest strategy, removals by the fishery must come down as the biomass declines. Our present view of Area 2 is that harvest rates have been much higher than the target harvest rate of 0.20 over the past decade."

The coastwide biomass of halibut is projected to increase, as the comment notes, but only if harvests are restrained within the target harvest rates of 0.20 for Areas 2 and 3, and 0.15 for Area 4. Such projections do not incorporate the much higher harvests taken in Area 2 over the past decade.

The statement that the proposed alternatives are not expected to have a significant impact on the halibut stocks or affect the overall harvest determined by the IPHC was not made by the IPHC. That comment appears to be based on language in the executive summary of the analysis (see ADDRESSES) supporting the proposed rule. The commenter's

statement about a lack of significant impact on halibut stocks correctly characterizes the conclusions of the analysis. However, the statement about not affecting the overall harvest does not. The analysis indicated that harvest rates might be exceeded in the short run, but that the IPHC had the ability to offset these by reduced catch limits in the longer term. See response to Comment 7 for further discussion of this issue. The executive summary of the analysis has been revised to more accurately reflect the conclusions of the analysis.

Comment 3: The IPHC's action in basing the 2008 and 2009 commercial catch limits on the GHL, rather than on a scientific projection of guided harvests in the coming year is evidence that there is no conservation concern. In 2008 and 2009, the IPHC deviated from its past approach to estimating guided sport harvests for the coming year, and based its estimates on the GHL. Because the GHL is likely to be smaller than actual harvests, this tends to increase the IPHC's Fishery Constant Exploitation Yield (Fishery CEY), on which the longline fishery's catch limit is based. The IPHC essentially gave Area 2C longline IFQ holders millions of additional pounds of halibut through its manipulation of the Fishery CEY formula by using the much lower charter halibut GHL number rather than the best available estimate of charter catch.

Response: Through 2007, the IPHC made its allocation decisions using a formula that deducted estimated non-commercial user harvests for the year, including the guided sport sector harvests, from an overall Total CEY. The residual (the Fishery CEY) then formed

the basis for determining the amount of halibut to allocate to the commercial longline fishermen as a catch limit. The catch limit could be greater than or less than the residual, depending on whether the stock was increasing or decreasing and on the speed with which the IPHC proposed to adjust the catch limit to this residual. In 2008, the IPHC used the GHL to project charter vessel angler harvests, following a commitment by NMFS to implement a one-fish bag limit for the 2008 Area 2C charter fishery. NMFS issued a final rule implementing the one-fish bag limit, but that rule was enjoined by a court order and was subsequently withdrawn. In 2009, the IPHC, assuming that NMFS would implement management measures to limit harvest to approximately the GHL, again used the GHL to project the guided sport harvest.

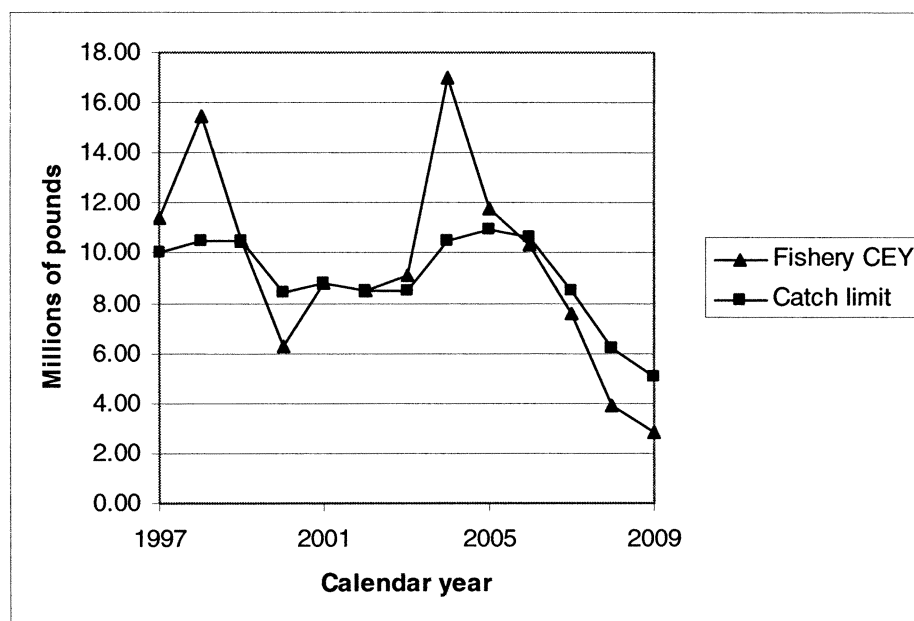
At its 2009 Annual Meeting, the IPHC stated “* * * national parties are cautioned that any departure from these assumed levels of removal by the recreational sector will compromise achievement of IPHC harvest targets for 2009” (IPHC 2009 Annual Meeting Bluebook page 138). The IPHC use of the GHL as the assumed level of removal for the guided fishery reflects the Council's and NMFS' intent to limit the guided sport fishery harvest of halibut to a level consistent with GHL trends.

The concept that using the GHL rather than actual halibut harvests increases the amount of fish available to commercial fishermen is misleading. The correct context of this result is that when charter vessel harvests are close to the GHL, the commercial fishery is not penalized through a reduction caused by charter vessel harvests in excess of

the GHL. This issue is further discussed in the response to Comment 9.

Comment 4: The IPHC's use of its “Slow Up/Fast Down” (SUFD) policy is evidence that there is no conservation concern. One commenter notes that in the last four years through its SUFD policy the IPHC has intentionally exceeded the Fishery CEY to the direct benefit of the longline fleet by 300,000 lbs in 2006, 900,000 lbs in 2007, and 2,300,000 lbs in 2008; and has approved another 2,210,000 lbs in 2009. The total excess over the Fishery CEY over this period exceeds 5,680,000 lbs. How can the IPHC and NMFS express a conservation concern with a charter vessel catch exceeding a non-binding GHL by 500,000 lbs, while at the same time promote harvest by the longline fleet in excess of its Fishery CEY by more than 2,000,000 lbs? If this level of overage is not considered a conservation issue, how can the 1,400,000 lbs allocated to the recreational fishery be considered a conservation issue?

Response: The SUFD policy is an integral part of the IPHC's management regime. If the Fishery CEY is bigger than the previous year's catch limit, then the IPHC staff's recommended catch limit increases by only 33 percent of the difference. If the Fishery CEY is less than the previous year's catch limit, the recommended catch limit reduction is limited to 50 percent of the difference, as illustrated in Figure 2. The commercial catch limit increases and decreases with changes in biomass, even with a static GHL, whereas changes to the charter sector's GHL occur in a stepwise manner only when specific Fishery CEY levels are established by the IPHC (see 50 CFR 300.65(c)(1)).

Figure 2. Area 2C Fishery CEY and Catch Limit from 1997 to 2009

The SUFD component of the IPHC's management regime was not designed to advantage the commercial sector. It is designed to ameliorate the impacts of large changes in biomass.

The IPHC's management decisions on annual catch limits are based on the underlying stock assessment and the application of its harvest management policies to the identified biomass levels in that assessment. Accordingly, the Fishery CEY levels of the assessment are only one component of the process to determine catch limits and conservation targets. The Fishery CEY levels are further modified by harvest policy considerations (e.g., the SUFD harvest control rule) in deciding on final catch limits. For regulatory areas with Catch Sharing Plans, all directed fisheries are affected by these additional policy considerations, but this is not the case for GHL-governed fisheries in the absence of a Catch Sharing Plan. Notably, the Council's proposed Catch Sharing Plan for Areas 2C and 3A charter vessel fisheries could bring the charter fisheries under such policy adjustments. Also see responses to Comments 10 and 111.

The Fishery CEY is only one component of the IPHC's harvest strategy. The overall harvest rate and the harvest control rules, such as SUFD, also are part of the harvest strategy. The IPHC establishes its annual conservation targets by considering the underlying stock assessment, the harvest rate, and the harvest control rules. The IPHC staff has evaluated the impacts of the harvest

control rules and the application of these rules to establish annual conservation limits to ensure that the stock is not compromised by their application. This approach has been endorsed by the IPHC. The important part of this approach is that it is based on the achievement of the identified conservation targets. If these targets are exceeded, the length of time that the stock is projected to be below threshold reference points increases. This creates a conservation concern and requires reductions in the harvest rate. In the case of regulatory areas with Catch Sharing Plans, such concerns have not existed because the conservation targets for those directed fisheries have not been exceeded.

The IPHC's mandate under the Convention requires that it enact measures to conserve halibut stocks. The IPHC therefore has taken strong actions to decrease the catch limits for Area 2C in order to lower the realized harvest rate on the exploitable biomass. Catch limits adopted by the IPHC for Area 2C over the 2005 to 2009 period have decreased by 54 percent. Despite the establishment of the GHL for Area 2C guided sport fishery, the benefits of protecting the stock biomass have not been realized by the lack of sufficient restrictions on the guided sport fishery.

The 2009 commercial catch limit exceeds the Fishery CEY by about 2,300,000 lbs, while the best available harvest information indicates the charter vessel fishery exceeded the 2008 GHL by almost one million pounds.

Overages of this magnitude raise conservation concerns. The IPHC, the Council, and NMFS, have been attempting to address each fishery within the regulatory structure created for it. The Fishery CEY and the GHL are different concepts, and different mechanisms are available for setting them and for reducing catches to them. The IPHC reduced the catch limit by 54 percent between 2005 and 2009. If the Fishery CEY remains low, the catch limit would continue to decrease in coming years until it became equal to the Fishery CEY. The Council and NMFS tried, with the 32-inch size limit in 2007, and with a one-fish daily bag limit in 2008, to reduce charter vessel harvests to approximately the GHL. The present action imposing a one-fish daily bag limit is one part of the effort to reduce overall harvests.

NMFS notes that the measured response to changing stock conditions incorporated in the SUFD policy is similar to the way the charter vessel fishery has been managed in practice. The GHL allows for moderate reductions in Total CEY without triggering harvest reductions for the charter vessel fishery.

Comment 5: The IPHC Commissioners increased the allocation to the commercial sector beyond the amount recommended by IPHC staff by reducing the recommended commercial allocations for other regulatory areas to increase the allocations for all of Area 2, including Area 2C. This is evidence that there is no conservation concern.

Response: Biological issues in different management areas are related since there is a single coastwide stock of halibut. However, IPHC determinations about Area 2C commercial catch limits were made independently of determinations about commercial catch limits in other areas.

The IPHC staff recommended commercial catch limit for Area 2C for 2009 was 4,540,000 lbs (2,059.3 mt) and the IPHC adopted a catch limit of 5,020,000 lbs (2,277.0 mt) a difference of 480,000 lbs (217.7 mt). The staff recommendation was based on the assessment and application of harvest control rules as described in the response to Comment 4. The IPHC's adoption of the 5,020,000 lbs (2,277.0 mt) commercial catch limit was a reduction of 1,190,000 lbs (539.8 mt or 19 percent) from the 2008 commercial catch limit for Area 2C. By adopting a catch limit that is higher than its staff's recommendation but lower than last year's catch limit, the IPHC was choosing a more gradual reduction than that proposed by the staff.

Comment 6: The IPHC decision to shift from a closed area assessment model to the coastwide model is responsible for a decrease in the amount of halibut available for harvest in Area 2C. This decision moved 12 percent of traditional harvest from coastal areas to western Alaska where it will be harvested primarily by boats from Seattle. The shift in models did not fare well in peer review and is contrary to 76 years of halibut management experience. It causes hardship to fishing operations in Southeast Alaska, while benefitting large vessel owners based far from the resource. Do not adopt a one-fish bag limit at this time, and request the IPHC to reinstate the closed area assessment model. Doing so would allow continuation of the two-fish daily bag limit, and the proposed limited entry and current economic reality would reduce charter vessel effort to bring down guided sport halibut harvest numbers.

Response: IPHC shifted from a closed-area to a coastwide approach for area-specific biomass determination beginning with the assessment for 2007. This has resulted in lower estimates of biomass for Area 2C. Growing concerns about net migration from the western to the eastern Gulf of Alaska led the IPHC to doubt the accuracy of the closed-area biomass assessments that had been done for many years. In 2006, the IPHC staff changed the orientation of its stock assessment because new scientific information conflicted with previous model assumptions about migration between regulatory areas. The new

assessment approach considered tagging data and mortality rates that suggested that a larger fraction of halibut beyond eight years of age continue to migrate eastward than previously assumed. The IPHC staff submitted its revised stock assessment to independent scientific peer review and the IPHC Commissioners were satisfied with the results of the peer review.

Comment 7: The analysis (see **ADDRESSES**) for this action says that there is no conservation concern. One commenter quoted from sections of the analysis at pages xiv, 29, 56, and 57, that state the action will not have significant impacts, that the objective of the action is distributive, and that no adverse impacts are expected because the IPHC takes account all significant resource removals.

Response: The analysis finds that the action would not have significant environmental impacts. The purpose of an analysis is to determine whether an action of the federal government will have a significant impact on the human environment, and whether an environmental impact statement is necessary. The draft analysis for this action evaluated the environmental impacts of the action and found that it would not have a significant environmental impact. This conclusion is not the same as a statement that an action does not have a management or conservation purpose.

As noted in the response to Comment 1, when multiple user groups must operate within a shared overall harvest, distribution and conservation questions are inseparable. Any conservation mandated increase or decrease in the shared overall harvest must be shared among the different user groups. If one group exceeds its allocation, either the conservation limit will be exceeded, or another user group must find its share of the harvest reduced.

No adverse impacts are expected because the IPHC takes account of resource removals, but as the analysis goes on to state, there is a potential for exploitation rates to be exceeded in the short run under the status quo, and that the IPHC can address this in the longer run with offsetting policy measures. This consideration reflects the issues raised when multiple user groups fish against a common overall harvest objective that were discussed in the second paragraph of this response.

Finally, NMFS has new information at this time that was not available at the time the analysis was completed. This new information includes the best available logbook-based information on the 2008 guided angler harvest from ADF&G in November 2008, the Area 2C

Total CEY, Fishery CEY, and catch limit determinations made by the IPHC in January 2009, and the new GHL published February 24, 2009 (74 FR 8232). The best available 2008 harvest information indicating that the GHL was exceeded again in 2008 and that the 32-inch maximum size limit on one fish was not effective in 2008, and the continued declines of the Total CEY, Fishery CEY, and GHL in 2009, heighten management and conservation concerns.

Comment 8: The proposed rule does not identify a conservation objective.

Response: The preamble to the proposed rule clearly identified the following conservation objective:

This action addresses conservation of the resource, by restricting catch to approximately the GHL, so that the IPHC's projected harvest of halibut by guided anglers, which is assumed by the IPHC to equal the GHL, adequately reflects actual catches for purposes of managing sustainable removals of the halibut resource. This action also addresses an allocation of halibut fishing privileges among various U.S. fishermen, by giving effect to a Council recommendation on how to assign such privileges consistent with the criteria found in section 773(c) of the Halibut Act.

These criteria include expectations for harvest limits that are reasonably calculated to promote conservation.

Comment 9: The rule would not leave any more fish in the water as a result of the one-fish limit. Any charter vessel reduction simply increases the longline harvest.

Response: The objective of this action is explained above under the heading "objective of this action." This action should reduce the overall harvest rate from all fisheries in Area 2C to a level closer to the 20 percent harvest rate target set by the IPHC for conservation of the resource. If successful, a reduction in the charter vessel harvest should leave more halibut in the water to the benefit of all fisheries now and in future years, as well as benefit the health and reproductive potential of the resource.

Comment 10: If this is a conservation issue, why is it going to be all right for the charter business to buy guided angler fish from the longline sector for that second fish?

Response: The term "guided angler fish" refers to part of a Catch Sharing Plan proposed by the Council in October 2008, for resolving halibut resource allocation issues between the commercial and charter vessel fisheries. The proposed Catch Sharing Plan has not been submitted to NMFS for review and is outside the scope of this final rule. Once the Catch Sharing Plan is submitted, NMFS will publish a

proposed rule in the **Federal Register** for public review and comment.

Comment 11: In an editorial in the *Juneau Empire* dated September 21, 2008, the Deputy Director of the Council stated that no stock of groundfish off Alaska is overfished or subject to overfishing.

Response: NMFS notes that the reference to groundfish is to the species managed under the Council's two groundfish fishery management plans. Pacific halibut is not a "groundfish" as that term is defined in those plans or in their implementing regulations.

Comment 12: Because the 32-inch rule in 2008 applied to charter boats only, the implication is that the action was not designed to protect resources, but rather to target charter boats.

Response: The 32-inch rule in 2008 applicable to charter vessel anglers in Area 2C was first implemented in 2007 (72 FR 30714, June 4, 2007). That rule allowed a daily bag limit of two halibut but required at least one of the two fish to be no more than 32 inches (81.3 cm) in length. This rule was applied to charter vessel anglers in Area 2C because the number of guided vessels participating in the charter fishery was increasing rapidly and the charter vessel sector (about 67 percent of the combined charter and non-charter sport harvest), had exceeded its GHL in Area 2C in 2004, 2005, and 2006.

The 32-inch rule was designed to maintain a two-halibut bag limit and reduce the halibut harvest by the charter vessel sector in Area 2C to a level comparable to the seasonal one-halibut bag limit proposed that year by the IPHC. The 32-inch rule did not appear to have its intended effect. The charter vessel harvest in 2007 actually increased about six percent compared to the charter vessel harvest in 2006. Because the 32-inch rule proved ineffective at reducing the Area 2C charter vessel harvest to a level consistent with GHL trends while maintaining a two-halibut daily bag limit, more restrictive measures are warranted.

Comment 13: In the responses to several comments in the final rule that implemented a one-fish halibut bag limit in 2008 (73 FR 30504, May 28, 2008), NMFS asserted that there was no conservation rationale in its defense of the 2008 one-fish limit. In the response to Comment 79, NMFS agreed that the rule dealt with a pure allocation issue and did not present any resource conservation questions. NMFS went on to say, "* * * the healthy status of the halibut resource is evidence that IPHC policies are conservative and successful." In the response to

Comment 81, NMFS said, "The best available evidence indicates that the Area 2C stock is not over fished and the IPHC has not made that determination." In the response to Comment 82, NMFS said, "* * * the environmental analysis prepared for this rule did not find that failure to limit the guided sport charter vessel halibut harvest to the GHL would cause significant environmental impacts on the resource." Thus, there is no conservation concern.

Response: As noted in the response to Comment 1, conservation issues are inherent when the harvests of multiple user groups are being constrained to stay within an overall aggregate harvest limit.

The essence of last year's Comment 79 was that conservation of the halibut resource is an objective of the IPHC's policies and the need for restrictions on the charter vessel sector is primarily one of allocation. NMFS acknowledged the long history of the IPHC in maintaining a relatively healthy halibut resource coastwide. This final rule thus supports the appropriateness of the IPHC's caution that departures from assumed levels of harvest, such as the GHL, will compromise the IPHC's ability to achieve its overall harvest strategy. NMFS would modify that response now in light of recent information indicating the effects of several previous years of excessively high harvest rates in Area 2C. Hence, this action has a conservation effect of helping to reduce the overall harvest rate in Area 2C while also serving an allocation purpose.

Comment 81 did not say that the rule does not have a conservation objective. It says that the fishery was not over fished at the time of the publication of the final rule (May 2008). An action may have a conservation objective under those circumstances. Both Comment 81 and Comment 82 discuss the role of the one-fish bag limit in helping the IPHC achieve its exploitation yield objectives for the fishery.

Comment 82 referred to the significance determination made in the environmental assessment for the 2008 action. A NEPA analysis is meant to determine whether or not the action would have a significant impact on the human environment in order to determine whether or not an EIS would be necessary, but does not preclude an action from having a conservation objective. The analysis concluded that the action would not have a significant impact on the human environment. This is not the same thing as determining that the action would have no impact on the halibut resource or on resource management.

Comment 14: The final rule should provide a clearer explanation of the conservation rationale. The proposed rule does not fully explain the conservation imperative for holding the charter harvest to the 2009 GHL. The rule must be corrected to explain the conservation basis, including area-wide and local depletion issues, and the imperative conservation mandate to restrict charter harvest to the GHL given the status of the Area 2C halibut resource.

Response: The response to Comment 1 describes the conservation rationale for this action. As explained in the response to Comment 65, NMFS does not have scientific information to characterize localized depletion or attribute it to a particular gear group. This action was not intended to address localized depletion of the halibut resource.

Comment 15: According to the 2008 IPHC Annual Report, North Pacific halibut stocks have declined fishery wide by 10 percent from 2007 levels. The Area 2C exploitable biomass of halibut has declined by an estimated 58 percent over the past three years and is near historic low levels. Halibut catch rates, or the amount of fish caught per hook set or hours fished, have declined in all Area 2C sectors including the catch rates of charter halibut anglers. This drop in catch rates is evidence that all fishermen are working harder to catch halibut because there are less halibut to catch. The IPHC now understands that assessment models used before 2008 overestimated abundance in Area 2 (which includes the Pacific Northwest (2A), British Columbia (2B), and Southeast Alaska (2C)). In a summary of the 2007 stock assessment, IPHC staff said that a disproportionate share of the halibut catch has been coming from Area 2. Other resource considerations, such as slowed growth rates and the overharvest of older, more fecund fish from the population also indicate the need for caution and reduced harvest.

Response: NMFS agrees with the comment that the overall harvest rate from all sources of fishing mortality in Area 2 should be reduced. This action will contribute to that goal by reducing the harvest of charter vessel anglers in Area 2C and will work in concert with actions taken by the IPHC to reduce the overall exploitation rate in Area 2C.

Comment 16: The IPHC has expressed concern about the Area 2C halibut stocks and has emphasized the need to reduce Area 2C exploitation rates for conservation reasons. The IPHC has stated that failure to control the charter sector harvests in Area 2C exacerbates

conservation concerns for halibut in that area.

Response: Reducing charter vessel angler harvests in Area 2C likely would have conservation benefits by reducing the overall harvest rate in this area. This action is intended to have this effect. Also see response to Comment 14.

Comment 17: The IPHC has taken action to address conservation in Area 2C by reducing the commercial fishery catch limits. Area 2C longline catch limits have been reduced by an unprecedented amount, totaling 53 percent over the past three years.

Response: NMFS agrees that the commercial halibut fishery in Area 2C has faced large reductions in its catch limits in recent years.

Comment 18: Catch limits must be adhered to for protection of the resource. In the absence of a one-halibut daily limit, the Area 2C charter industry can be reasonably expected to once again double its GHL because status quo management resulted in a 2008 charter vessel harvest of 1,900,000 lbs in Area 2C. This 2008 harvest marked the fifth consecutive year in which the Area 2C harvest of halibut by the charter sector exceeded the conservation target established for the sector by the IPHC. Quoting again from an IPHC statement in May, 2008, "Exceeding the GHL specified for 2008 in Area 2C will mean that the combined removals by all sectors in 2008 will exceed the IPHC's conservation targets, which have been accepted by the U.S. government, to the detriment of the halibut stock in this area."

Response: The premise of this comment is that the overall harvest rate target that the IPHC has for Area 2C can not be achieved without all sources of fishing mortality staying at about the level that the IPHC uses as the best available estimate of harvest. The best available estimate of 2008 charter vessel harvest for Area 2C is based on ADF&G logbook and creel survey information. The ADF&G estimated a charter vessel harvest of 1,914,000 lbs for 2008. The Council, the public, and NMFS will likely receive the final 2008 charter vessel harvest estimate, based on the statewide postal survey, in November or December 2009.

However, the best available estimates indicate that the 2008 GHL of 931,000 lbs was exceeded. The GHL is not a conservation target established by the IPHC. The Council developed the GHL as a level of harvest to target for the guided sector, and NMFS implemented it as such. Nevertheless, exceeding the GHL likely would contribute to exceeding the overall harvest rate target

estimated by the IPHC for Area 2C for conservation purposes.

The overall target harvest rate set by the IPHC for Area 2C would be undermined in the absence of controls on fisheries that take significant amounts of halibut. Without knowledge of the economic demand for charter vessel fishing trips in Area 2C and other factors that are difficult or impossible to forecast, NMFS can not estimate what the charter vessel fishery would harvest in the absence of this action. NMFS can say, however, that without this action, the Area 2C charter vessel fishery would likely substantially exceed its GHL. Further, harvest controls implemented in 2007 (two-halibut daily bag limit if one is no more than 32 inches) did not appear to reduce the guided harvest as intended. In fact, guided harvest increased from 2006 to 2007. This experience indicates a need for the more restrictive controls implemented by this action.

Comment 19: Until 2007, increased charter harvest resulted in a direct reallocation of halibut from the longline to the charter sector. This occurred as a result of the IPHC quota setting process, which subtracts from the total area CEY the estimated sport, subsistence, charter, bycatch and wastage removals of halibut, then establishes the remainder as the Fishery CEY, or longline catch limit. Longline fishermen expected the reallocation to end when the GHL was established. However, because charter harvest control measures were not in place in 2005 and 2006, the IPHC used projected catch, instead of the GHL, to estimate charter harvest, and charter GHL overages were deducted from the longline quota in an effort to constrain total harvest to the area CEY. In other words, the charter sector's overages, totaling over one million pounds, continued to be deducted from the IFQs of longline fishermen even after the GHL was implemented, despite the substantial investments longline fishermen have made in those quota shares under the IFQ program, and the adherence of longline fishermen to IPHC catch limits. It is unfair and inequitable to punish fishermen who are living within restrictive catch limits for the excess harvest of a sector that ignores resource constraints and consistently overfishes.

Response: The GHL for Area 2C was established in 2003 (August 8, 2003, 68 FR 47256). As stated in that action, the GHL is an acceptable amount of halibut harvest by charter vessel anglers during a year in an area. By itself, it does not impose any restriction on the charter vessel fleet. Hence, an expectation by longline fishermen that the GHL would

automatically limit the charter vessel fishery to the GHL was mistaken.

The Council has the authority to develop regulations that would restrict the charter vessel fishery to the GHL if that is determined by the Council to be necessary. In June 2007, the Council took final action to limit guided harvest to approximately the GHL. It was that June 2007 final action that led to this final rule.

Policy making, including data collection, analysis, and rulemaking, is a time-consuming process. NMFS will act as promptly as it can with the best information available to give effect to Council action. NMFS understands the frustration of IFQ fishermen who have seen their shares eroded by increasing harvests above the GHL by the guided sector. This action is designed in part to remedy this situation.

Comment 20: The IPHC recommended a one-halibut daily limit for charter vessel anglers in Area 2C and, assuming the management measure would be implemented, did not subtract charter halibut overages from the longline catch limit for 2007. In 2008, the IPHC again assumed the one-halibut daily limit would be in place to prevent GHL overages, and established the longline catch limit accordingly. For this reason, the lawsuit filed by Southeast charter operators that stayed implementation of the one-halibut daily limit resulted in an unaccounted-for overage of the Southeast Total CEY in 2008.

Response: NMFS acknowledges the comment. If the IPHC bases its estimate of the Fishery CEY and the catch limit on the assumption that charter vessel anglers will harvest the GHL, the Total CEY will be exceeded if charter vessel anglers exceed the GHL, the commercial fishery harvests its catch limit, and other user groups take the harvests the IPHC expected they would.

Comment 21: Because NMFS published the one-halibut daily limit proposed rule on December 22, 2008, the IPHC assumed that the 2009 charter harvest would be restricted to the Area 2C GHL and recommended longline catch limits accordingly. Failure to implement the rule will, in the short-term, result in overharvest of the Area 2C resource.

Response: NMFS acknowledges the IPHC's assumption of timely implementation of the one-fish bag limit rule for the 2009 guided fishery season. Although this final rule will contribute to the conservation of halibut in Area 2C, by itself, a one-fish bag limit may not prevent the total halibut harvest in Area 2C from exceeding the harvest rate target set for this area by the IPHC.

Comment 22: In the absence of this action, the cuts to the longline fleet will have no effect on helping the halibut stocks recover. Continuing to allow the charter vessel sector to exceed its GHL compromises the halibut resource and undermines the IPHC's effort to rebuild the stocks.

Response: NMFS disagrees. Even in the absence of this action, cuts to commercial catch limits would help constrain harvest in Area 2C and contribute to the achievement of exploitation yield targets. Also see responses to Comments 1 and 19.

Comment 23: The commercial halibut fishery is under stress because of overfishing by charter and sports sectors. The charter sector has exceeded GHL for several years.

Response: NMFS agrees that guided harvest in excess of the GHL for several years in Area 2C is a contributing factor to harvests in this area exceeding harvest targets set by the IPHC.

Comment 24: It is important to the IPHC goal of lowering the historical harvest rate in Area 2C that the schedule of annual catch limits and harvest rates adopted by the IPHC be met. Uncontrolled harvest by the charter vessel fishery or harvests in excess of established GHL levels that formed part of the IPHC's decision on commercial annual catch limits will result in negative impacts on the IPHC's ability to achieve its stock management goal. Not implementing a one-halibut daily limit for the charter vessel fishery in 2009 could result in a harvest rate approximately 15 percent higher than that assumed for the IPHC's commercial catch limit. The impact of a consistent overage of this level puts at risk various stock metrics of production, including potentially falling below the threshold reference point for this stock at which the harvest rate must be decreased linearly with biomass. Ultimately, the associated harvest rate could fall to zero (no directed fishery) if the spawning biomass falls to the limit reference point.

Response: NMFS agrees that the target exploitation rate of 20 percent set by the IPHC for Area 2C would be undermined to the extent that the amount of halibut harvested by charter vessel anglers exceeds the GHL for Area 2C.

Comment 25: The halibut harvests by charter vessel anglers are overestimated. The charter vessels are not even close to taking the GHL on a yearly basis.

Response: The best scientific information available on the harvests of halibut in Area 2C comes from the ADF&G's postal survey, logbook, and creel survey programs. This information indicates a steady increase in halibut

harvest by charter vessel anglers starting from 1999 to 2005. In 1999, the guided harvest in Area 2C was estimated at 939,000 lbs (425.9 mt). The guided harvest increased annually to a peak in 2005 of 1,952,000 lbs (885.4 mt). In 2006 the charter harvest declined slightly to 1,804,000 lbs (818.3 mt) but increased again in 2007 to 1,918,000 lbs (870.0 mt). The charter harvest in 2004 through 2007 was consistently above the GHL as indicated in Table 1 of this preamble. The final estimate of guided harvest in 2008 has not been developed by ADF&G, but the best available estimates indicate that the harvest exceeded the GHL.

Comment 26: The halibut harvests by charter vessel anglers are underestimated. One commenter has seen suspiciously large volumes of halibut being shipped out of Wrangell. One charter operator shipped 428 lbs of halibut for one client and said that there were no weight limits on charter halibut. Once, two fishermen left Wrangell with 28 boxes of fish or about 1,900 lbs. Overfishing is not rare. Therefore, the commenter supports the one-fish daily bag limit.

Response: NMFS appreciates the commenter's notes and regards potential retention violations as an enforcement issue. Halibut can grow quite large. It is possible that charter vessel anglers could harvest hundreds of pounds of halibut and other fish in full compliance with existing daily bag limits. The charter operator is correct in that there are no poundage limits on sport charter halibut catch. Limits on the sport harvest of halibut are on the number of fish caught and retained, not on the total pounds of halibut harvested as the commercial fishery is regulated. Nevertheless, information regarding illegal halibut harvests should be reported to the NOAA Office of Law Enforcement.

Comment 27: Because the charter vessel fleet's catching capacity has outgrown monitoring and accounting systems, impacts of charter catch on the halibut resource likely are underestimated. A 2008 report prepared by ADF&G states that existing catch accounting systems for the charter harvest of halibut in Southeast Alaska may underestimate that harvest by 20 percent. Hence, the actual GHL overages in recent years may be far greater than reported and are a significant cause of the rapid decline of the Area 2C halibut stocks.

Response: The comment refers to a study of logbook and Statewide Harvest Survey data prepared by ADF&G in 2008. The study reported that estimates of numbers of charter halibut derived

from logbook information and creel census information were 23 percent greater than similar estimates derived from the Statewide Harvest Survey, and that estimates of halibut weight were 16 percent greater. The report, however, did not say that catch accounting systems may underestimate harvest. ADF&G is scheduled to present an expanded report to the Council in late 2009 that compares additional years of data to better assess the comparison between logbook and Statewide Harvest Survey estimates of halibut harvest by anglers on board charter vessels. Until this study is completed, ADF&G has indicated that it will continue to rely on the estimates of harvest derived from the survey as best representing charter vessel fishery harvests.

Guideline Harvest Level

Comment 28: The GHL is a guideline, advisory in nature, and was not meant to constrain overall guided sport harvests. It is not a hard cap, either in the sense that the fishery would be closed within a year if it were reached, or in the sense that the guided fishing must be more heavily regulated so as to keep overall guided harvests within it if it has been or is likely to be exceeded. It represents a non-binding random political reference number. According to the December 31, 2007 proposed rule to limit charter vessel anglers to one halibut per day (72 FR 74258), the GHL is not supposed to restrict or limit in any way angler harvests from charter vessels.

Response: The Area 2C GHL was established in 2003 as a benchmark for a level of guided harvest (August 8, 2003, 68 FR 47256). By itself, the GHL does not restrict or limit charter vessel anglers, as demonstrated by the fact that charter vessel harvest exceeded the Area 2C GHL in four consecutive years, 2004 through 2007.

The GHL is not a limit above which further fishing is prohibited, which is often referred to as a "hard cap." NMFS normally manages commercial fisheries for groundfish off Alaska in this manner, closing a fishery when it reaches its specified catch limit regardless of whether time remains in the fishing season. In recommending the GHL, however, the Council's intent was that guided harvests would not lead to a mid-season closure of the fishery because of the nature of guided businesses. Hence, the GHL is a benchmark and not a limit like a hard cap.

The GHL was developed by the Council and approved by NMFS as an allowable level of harvest for the charter vessel fishery that is linked to halibut

abundance. Hence, this allowable level of harvest decreases in stepwise increments as the abundance of halibut decreases. Further, the Council and NMFS have the authority to take subsequent regulatory action to control the harvest of the charter vessel fishery as necessary to stay within its GHL. Thus, this regulatory action to reduce the harvest of halibut by charter vessel anglers in Area 2C is completely within the authority of NMFS, and is being implemented to meet the policy of the Council when it recommended the GHL.

The citation from 72 FR 74258 does not provide the full context of the remark, which reads,

The GHLs serve as benchmarks for monitoring the charter vessel fishery relative to the commercial fishery and other sources of fishing mortality. The GHLs do not limit the charter vessel fisheries. Although it is the Council's policy that the charter vessel fisheries should not exceed the GHLs, no constraints have been imposed on the charter vessel fisheries for GHLs that have been exceeded in the past.

The text states that the GHLs themselves do not constrain harvest, but that the Council policy is that the guided sector should not exceed the GHLs. More details on the Council's policy response to GHL overages may be found in the responses to Comments 19 and 29.

Comment 29: The final rule implementing the GHL states that the GHL is the "level of allowable harvest by the charter vessel fishery" (68 FR 47256, 47257). The GHL is not a benchmark but is meant to be a maximum harvest amount. The Council intended that the GHLs would not close the fishery in season but would instead trigger other management measures in years following attainment of the GHL (68 FR 47259). In October 2008, the Council stated its intent to maintain the GHL and manage halibut charter vessel harvest to their allocation limits. Each year since the GHL was implemented the charter fleet has exceeded their allowable harvest. The charter fleet is still growing with an increased number of anglers served, fishing trips, and active vessels. NMFS should not use the words "benchmark" or "approximately to the GHL" in the final rule.

Response: No changes from the proposed rule are made in the final rule. As noted in our response to Comment 28 above, the Area 2C GHL was established in 2003 as a benchmark for a level of guided harvest, and the approved GHL policy contemplates that the Council and NMFS would take subsequent regulatory action to control the harvest of the charter vessel fishery as necessary to stay within its GHL.

NMFS uses the term "approximately to the GHL" because it does not have tools to manage guided harvest to precisely the GHL.

Comment 30: There is no analysis of the interaction between removals in excess of the Total CEY and the GHL, and this is not covered in the proposed rule.

Response: The IPHC takes all sources of halibut fishing mortality into account when setting the Total CEY. Hence, to the extent that harvests of halibut by charter vessel anglers in Area 2C can be reduced, any removals in excess of the Total CEY for this area also should be reduced.

Comment 31: The IPHC substituted the GHL for the best estimate of guided recreational harvest in its calculation of Area 2C and 3A directed fisheries and set a GHL of 931,000 lbs instead of a more realistic harvest estimate of 1,900,000 lbs. This policy resulted in the Fishery CEY being inflated by approximately one million pounds and the subsequent overharvest of the total CEY by the same amount. It is obvious that an allocation scheme, which allocates millions of pounds of fish in excess of the Fishery CEY to commercial fishermen at the expense of the GHL in following years, is neither fair nor equitable.

Response: NMFS disagrees. The IPHC's use of the GHL in the calculation of catch limits reflects the stated intent of NMFS and the Council to manage charter fisheries to stay within its GHL (see the response to Comment 28). The statement that the policy would result in an " * * * overharvest of the total CEY by the same amount [one million pounds]" is based on a conclusion that the charter fishery will not be managed to its GHL in 2009. This is counter to the Council's intent and the NMFS's management goals for 2009.

Comment 32: NMFS and the Secretary have failed to validate the need for the arbitrary and capricious GHL allocation. The charter fishery has only grown one percent a year since 1993 and only accounts for seven percent of the removals in Alaska, while the commercial industry removes 90 percent. Although GHL policy recognized a 25 percent growth in the charter fishery from the 1995 to 1999 catch, it did not provide for a fair and equitable allowance considering the 100 percent free increase in commercial quota shares during 1997 and 1998. Moreover, it is not fair and equitable to impose the one-fish bag limit on the guided halibut anglers when the longline fishermen already enjoy a disproportionate share of the resource. Some commenters characterized the

large longline share as an excessive share.

Response: The GHL for Area 2C was determined to be consistent with the Halibut Act and other applicable federal law when it was implemented in 2003 (August 8, 2003, 68 FR 47256).

Growth in the halibut harvests by the charter vessel fishery may be slight on an Alaska-wide basis; however, this action is focused on reducing harvests only in Area 2C. In this area, charter vessel fishery harvests increased from 939,000 lbs (425.9 mt) in 1999 to 1,952,000 lbs (885.4 mt) in 2005. This is an increase of 1,013,000 lbs (459.5 mt) or 107 percent over six years. In 2006 and 2007, charter vessel anglers in Area 2C did not increase their halibut harvest above the record high harvest in 2005; however, the harvest in 2007 (the most recent year for which final sport harvest estimates are available) remained slightly more than 100 percent above the harvest in 1999. The percentage of the sport harvest generally and charter vessel harvest in particular also is much higher in Area 2C than in other areas of Alaska. In 2007, total removals of halibut from Area 2C are estimated to be 12,210,000 lbs (5,538.4 mt). Of this total amount the commercial fishery harvested 68.3 percent and the combined sport fisheries (charter and non-charter) harvested 24.7 percent. The charter vessel fishery harvested 15.7 percent and the non-charter sport fishery harvested 9.3 percent of the total removals from Area 2C in 2007. Hence, charter vessel anglers in Area 2C have demonstrated rapid growth in their Area 2C halibut harvests since 1999, and their contribution to the total harvest in Area 2C, the area this action affects, is greater than the statewide percentages stated in the comment.

Comment 33: The GHL allocation is fair and equitable. The initial allocation was established as 125 percent of the historically highest catch levels of the charter sector, thus allowing new and existing businesses in the charter fishery some amount of growth. In contrast, when NMFS implemented the halibut IFQ program in 1995, the average commercial QS holder received only about 80 percent of his historical catch levels. Many of these participants had to purchase additional IFQ to maintain a viable fishing business, and new commercial entrants are required to buy IFQ to participate in the fishery. The Council process to set the allocation was based on the testimony and the historical resource dependence of all user groups and included detailed debate and analysis. The current allocation balances the needs of all

halibut sectors, including subsistence, recreational and commercial.

The Halibut Act indicates that if it becomes necessary to allocate or assign halibut fishing privileges among U.S. fishermen, such allocation shall be "carried out in such manner that no particular individual, corporation, or other entity acquires an excessive share of the halibut fishing privileges." (16 U.S.C. 773c(c)) This requirement refers to individual entities rather than the sectoral allocation made in this rule. Under the terms of the IFQ program, no person may hold or control more than one percent of the Southeast Alaska quota. Only one quota share holder is currently at this cap, and most are significantly below it. Moreover, the harvest supports thousands of fishermen and crew, others involved in downstream processing and distribution, and millions of consumers.

Response: NMFS notes support for the GHL.

Comment 34: The GHL was set using incorrect, inconsistent or dated information, and therefore is not fair and equitable. Section 1853(b)(6)(A) of the Halibut Act clearly states that the Secretary must take into account present participation in the fishery. The GHL was built upon angler harvest and trend data generated more than a decade ago for a recreational industry that at the time was in its infancy in Southeast Alaska. Under the Halibut Act, no GHL allocation can be fair and equitable until the Secretary evaluates current participation by each sector.

The GHL is nothing more than a historical snapshot of the Area 2C guided angler catch and stock status for a certain period of time. The historical catch data upon which the GHL is based is 1995 to 1999, while the step-down mechanism is based on halibut stock distribution in 1999 and 2000. Thus, the data used to create the GHL is between nine and fifteen years old. Since the GHL was established the number of guided anglers has increased nearly 79 percent. Meanwhile, there has been a decline of 16 percent in the number of commercial quota shareholders. In order for present participation to be properly considered, the Secretary would have to look at more recent catch data for guided anglers and commercial harvesters, numbers that are readily available and are set forth in the analysis, as well as the current distribution of the halibut stock.

Response: NMFS disagrees that incorrect, inconsistent, or dated information was used for the GHL or this action. The Council and NMFS have used the best information available at each step of the process, beginning

with the GHL, and continuing through this final rule. The Council and NMFS analyzed and considered data that relate to the criteria found at 16 U.S.C. 1853(b)(6) (Magnuson-Stevens Act), and referenced at 16 U.S.C. 773c(c) (Halibut Act), when it developed and implemented the GHL. These data included past and present participation, historical dependence of various sectors on the halibut resource, economic impacts of the action on various sectors, cultural and social framework of the various sectors, impacts on other fisheries, and other relevant considerations. Data that relate to the criteria at 16 U.S.C. 1853(b)(6) were also analyzed and considered in issuing this final rule, including past and present participation levels, economic impacts of the action on various sectors and fishing communities, impacts on other fisheries, etc. The commenter is referred to the GHL analysis and the analysis that accompanies this action for further details on the data considered in developing these actions. The GHL analysis is available on the Council Web site at http://www.fakr.noaa.gov/npfmc/current_issues/halibut_issues/halibut.htm and the analysis for this action is available on the NMFS Alaska Region Web site at <http://www.alaskafisheries.noaa.gov/sustainablefisheries/halibut/charters.htm>.

Comment 35: The GHL was implemented as a reference measure to evaluate guided angler catches under the IPHC "closed area assessment" model. The GHL did not take into account exclusive, post-CEY overage allowances to the longline sector through implementation of the SUFD policy. The GHL also did not account for changes in IPHC methodology, such as the switch to coastwide assessment modeling.

Response: The GHL is responsive to the IPHC's switch to a coastwide assessment model for developing its estimate of the halibut biomass. Regulations at 50 CFR 300.65(c)(1) establish that the annual GHLs will be based on the Total CEY established for the year by the IPHC. Regulations at 50 CFR 300.65(c)(2) require that GHLs for IPHC regulatory Areas 2C and 3A be specified by NMFS and announced by publication in the **Federal Register** no later than 30 days after receiving information from the IPHC on the annual Total CEY for halibut in regulatory Areas 2C and 3A, and regulations. To the extent that the IPHC develops the Total CEY from a coastwide assessment model, the GHL will be based on and reflect that method of estimating the halibut biomass. The

SUFD process is described in the response to Comment 4.

Comment 36: The Secretary is obligated to issue regulations implementing the GHL for the charter fishery, under 16 U.S.C. 773c(a) and (b). The Halibut Act states that the Secretary "shall" issue regulations necessary to carry out the purposes and objectives of the Halibut Act. The GHL became one of those purposes and objectives, upon its establishment and approval. Failure to manage to the GHL results in a reallocation in violation of the Halibut Act and of the Council's policy and intent in establishing the GHL.

Response: NMFS implemented the GHL in 2003 (August 8, 2003; 68 FR 47256) with regulations that appear at 50 CFR 300.65(c), as revised by this final rule. These regulations provided the responsibilities of NMFS in regard to the GHL. However, NMFS agrees that implementing the one-fish bag limit is necessary to carry out those purposes and objectives of the Council in recommending the GHL and, hence, is consistent with the Halibut Act.

Comment 37: The Council has stated its intent to manage the charter halibut fishery to the GHL until a long-term plan is adopted. This includes a limited entry program for halibut charter businesses and new regulations for the allocation of halibut between the commercial and charter fisheries.

Response: NMFS agrees. In March 2007, the Council adopted a recommendation to implement a limited access program for the guided charter vessel fishery in Areas 2C and 3A. A proposed rule and solicitation for public comment on the recommended limited access proposal was published on April 21, 2009 (74 FR 18178).

Comment 38: Rescind the GHL.

Response: Rescinding the GHL is outside the scope of this action.

Comment 39: The final rule should clearly explain the conservation and fairness elements used as the basis for the initial allocation incorporated into the GHL regime. The GHL for the charter fishery was based on 125 percent of the historic catch and should not be changed due to the lack of other management measures to stabilize the fishery.

Response: This final rule does not change the GHL. Instead, this rule is expected to reduce the harvest of halibut by charter anglers in Area 2C to better meet the objectives for the GHL and to contribute to reaching the overall harvest rate target set for this area by the IPHC. This action is a rational response to charter harvests in excess of the GHL and was developed with public

participation at the Council and Secretarial levels.

Comment 40: This proposed rule circumvents the proper rule making procedures for changing the definition of GHL. This action inappropriately changes the definition of the GHL (50 CFR 300.61) and allocates resources between charter and commercial users. Therefore, this rule is required to follow additional rulemaking procedures such as proper notification to the public, public comment periods in both Areas 2C and 3A, adequate analysis, and a reasonable explanation for the change.

Response: This action complies fully with Administrative Procedure Act (APA) rulemaking procedures. All comments received on the proposed rule were considered and changes were made where they were deemed appropriate. This action was proposed in a **Federal Register** notice published on December 22, 2008 (73 FR 78276). The proposed rule proposed changing the GHL definition by substituting the word “the” for the word “a” at 50 CFR 300.61. This change is designed to more precisely define the GHL as it relates to the GHL table at 50 CFR 300.65(c)(1). The phrase “a level” in the former definition could be misinterpreted to mean any level in the table whereas “the level” more clearly indicates the level in the GHL table that is annually announced pursuant to 50 CFR 300.65(c)(2). As discussed in the proposed rule preamble under the heading “other proposed changes,” these changes were proposed to clarify NMFS’s authority to limit charter angler harvest to the GHL.

Comment 41: The Secretary has failed to explain his change in the GHL regulations. Specifically, the agency has failed to explain why it has abandoned the position the court found in *Van Valin* that it had adopted when it promulgated the GHL in 2003. That is, that the schedule for adopting management measures would be backward looking. Specifically, the Secretary hasn’t explained why he no longer intends that GHL-based management measures lag behind a GHL reduction by a year or two. There is nothing in the record to explain the reason for this change. If the Secretary does not correct that failure in the final rule (after first publishing those reasons for comment in a supplemental proposed rule), then the proposed rule will be subject to reversal on review on that ground as well.

Response: The proposed rule for this action (73 FR 78276, December 22, 2008) indicated that NMFS was proposing language changes to clarify its “authority to take action at any time to

limit the charter angler catch to the GHL.” (page 78279, column 3). Despite interpretations to the contrary, NMFS never intended that GHL-based management measures lag behind a GHL reduction by a year or two and this clarification is not a change in policy. According to the preamble to the GHL final rule (68 FR 47256, August 8, 2003), “[i]f end-of-season harvest data indicated that the guided recreational sector likely would reach or exceed its area-specific GHL in the following season, NMFS would implement management measures to reduce guided recreational halibut harvest.” (page 47257, column 3). This clearly indicates that NMFS can take prospective action based on past information, behavior that is not uncommon in NMFS’s management of other fisheries under its purview. However, the following sentence in the GHL final rule preamble could have caused confusion, and is why NMFS chose to clarify its authority at 50 CFR 300.65. At page 47257, column 3, the preamble continues, “[g]iven the one-year lag between the end of the fishing season and the availability of that year’s harvest data, *management measures in response to the guided recreational fleet’s meeting or exceeding the GHL would take up to two years to become effective.*” (emphasis added) This statement was meant as an explanation to why management measures might not be imposed immediately, not as a restriction on NMFS that it had to wait a period of time before it could implement management measures. Even if this sentence could be read as a restriction, as opposed to an explanation regarding the timing of data availability (that changes over time, as data source change) and the rulemaking process (that has certain time determinative requirements that can be waived with good cause), the sentence states “up to two years.” This phrase is generally interpreted as a range—any time between now and two years from now, and not usually interpreted as a guarantee of any amount of time. However, to be very clear about its intent, NMFS proposed a change to its regulations to clarify that it did not have to wait for a time period before taking action. This was not a change in policy. The proposed regulatory language for 50 CFR 300.65 is a clarification of NMFS’s authority and this response is an explanation of NMFS’s intent for language used in the preamble of the GHL final rule, which has been misinterpreted in the past.

There are several other places in the preamble to the GHL final rule where

statements could be taken out of context and be misconstrued as restrictions as opposed to examples. For instance, on page 47258, column 3, NMFS explains that under the GHL final rule, “if the GHL were exceeded, subsequent harvest restrictions *could* be implemented as needed under normal APA rulemaking with accompanying analyses,” and “this final rule would establish the GHL policy and *require* NMFS to notify the Council when a GHL is exceeded, which *could* serve as a trigger for subsequent rulemaking.” (emphasis added) Emphasis was added to show that NMFS was aware of the difference between the mandatory portions of the GHL policy, i.e., NMFS is *required* to “notify the Council,” and the example of actions that could occur, i.e., “subsequent harvest restrictions *could* be implemented as needed,” and notification to the Council “*could* serve as a trigger for subsequent rulemaking.”

Perhaps the best way to illustrate that NMFS has not changed its intent or policy, but only clarified its authority, is the found in the preamble to the GHL final rule. On page 47257, column 2, NMFS states:

This final rule establishes a GHL policy which specifies the level of harvest for the guided sport recreational fishery. If the GHL is exceeded, then NMFS will notify the Council within 30 days of receiving information that the GHL has been exceeded. At that time the Council may initiate analysis of possible harvest restrictions and NMFS may initiate subsequent rulemaking to reduce guided recreational harvests. This final rule does not establish specific harvest restrictions for the guided recreational fishery. This final rule does not prevent the Council from recommending management measures before the guided recreational fishery exceeds the GHL, nor does it obligate the Council to take specific action if the GHL is exceeded.

In other words, the final rule preamble indicated that the Council could take action after it is informed that the guided sport fishery exceeded its GHL, but it was not obligated to do so. More importantly, however, in response to this comment about changes in policy, the final rule preamble indicates that the final rule does not prevent the Council from taking action before the guided sport fishery exceeds the GHL. Any action by the Council would require NMFS’s approval, and would need to be promulgated pursuant to the APA, whether it occurred before or after the guided recreational fishery exceeded the GHL. The changes in regulatory text proposed in 73 FR 78276, and made final by this rule, are consistent with the final rule for the GHL, do not represent a change in policy, and clarify the authority of

NMFS to act consistent with Council recommendations and the purposes and objectives of the Halibut Act.

Comment 42: There are troubling similarities between the situation in *Hawaii Longline v. NMFS*, 281 F.Supp.2d 1 (D.D.C. 2003) and the current instance. That case dealt with a situation in which a court had struck down a NMFS rule because of an inadequate Endangered Species Act biological opinion. NMFS represented to the court that it would issue a new rule based on a new biological opinion. In fact, the new rule was ultimately based on the old, invalidated, biological opinion. The court struck down the new rule because the Secretary had not provided a new record and new rationale for it. In this instance, NMFS convinced the court to dismiss *Van Valin* saying that any new rule would be accompanied by a new rationale and new record. In this instance, the new rationale is simply a stated desire for a different outcome this time, unaccompanied by an explanation of the policy considerations that led to the outcome last time. The analysis for this action is in all material respects identical to the analysis that supported the rule enjoined in *Van Valin*. Specifically, this analysis re-confirms that: (1) This is an allocation action without significance for the health of the halibut stock; (2) lodge-based guide operations are likely to be forced out of business; (3) no consideration has been given to whether the allocation levels are fair and equitable; (4) guided angler catch levels are down from their peaks and are likely to remain stable for at least long enough to put a long-term solution in place in 2011.

Response: On December 22, 2008, NMFS published a proposed rule to “reduce the halibut harvest in the charter vessel sector to approximately the guideline harvest for Area 2C” (73 FR 78276, December 22, 2008). NMFS indicated that its intent for the rule “is to manage the harvest of halibut consistent with an allocation strategy recommended by the North Pacific Fishery Management Council for the guided sport charter vessel fishery and the commercial fishery.” NMFS published the proposed rule, and this final rule, under its authority found at 16 U.S.C. 773c(a) and (b) (Halibut Act), which unlike the example biological opinion provided in the comment, has not been invalidated by a court. Sections 773c(a) and (b) provide that NMFS has the general authority to carry out the Convention between the United States of America and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and the

Bering Sea (the Convention) and the Halibut Act and the authority to adopt regulations consistent with its general authority. The allocation strategy recommended by the Council was the GHL, as explained in response to Comment 41. The Council had the authority to make the recommendation to NMFS under the Halibut Act sec. 773c(c), and NMFS published those recommendations as regulations at 50 CFR 300.61 and 300.65.

These regulations defined the GHL, provided a table with various levels of the GHL based on the annual Total CEY, and requirements for NMFS to publish a notice in the **Federal Register** establishing the GHL on an annual basis and to notify the Council when the GHL has been exceeded. As explained in the response to Comment 41, examples of how future harvest restrictions could be implemented should not be read as how future harvest restrictions must be implemented. NMFS is not aware of any legal reason preventing the Council from recommending management measures to limit the guided fishery under the Halibut Act sec. 773c(c), whether or not the guided fishery exceeded the GHL. Further, NMFS has the authority to approve such recommendations and implement them as regulations.

Comment 43: The intended effect of this action is to manage the harvest of halibut consistent with an allocation strategy recommended by the North Pacific Management Council for the guided sport charter vessel fishery and the commercial fishery. Has NMFS taken upon itself to follow Council recommendations before the Secretary has approved them?

Response: No. This question appears to be based on a misunderstanding. NMFS is acting on behalf of the Secretary, and appropriately so under a delegation of authority. The one-fish bag limit will not become effective without delegated Secretarial approval.

Comment 44: The Magnuson-Stevens Act National Standard 1: Annual Catch Limits (ACL) guidelines reinforce the importance of restricting charter harvest to the GHL cap. The ACL guidelines are clear that accountability measures are to be used “to prevent ACLs, including sector-ACLs, from being exceeded, and to correct or mitigate overages of the ACL if they occur” (74 FR 3178–3213). It would be inconsistent and legally suspect for NMFS to manage halibut stocks by a different standard.

Response: Section 301(a) of the Magnuson-Stevens Act requires any fishery management plan and regulations implementing such plan to be consistent with the ten national

standards. This requirement does not apply to this action because it is implemented under the authority of the Halibut Act and not the Magnuson-Stevens Act. Hence, the National Standard 1 guidelines published January 16, 2009 (74 FR 3178) do not apply to this action or to the GHL.

Comment 45: The final rule should be clear that the GHL is a cap, not a benchmark. The proposed rule describes the GHL as a benchmark, which conflicts with the definition of GHL, “Mean[ing] the level of allowable harvest by the charter vessel fishery.” NMFS should correct all references to a benchmark found in the proposed rule prior to the issuance of the final rule. For example, the preamble to the proposed rule states that the guided industry will be managed “near” their GHL. This section needs to be corrected to state that the intent of this rule is to follow Council action and manage the guided fleet so it does not exceed the GHL.

Response: No changes from the proposed rule are made in the final rule. The rule refers to the GHL as a benchmark (at § 300.65(c)(3)) because that is the purpose the GHL was designed to serve. Essentially, the GHL serves as a standard or reference point against which the harvest of halibut by the charter vessel fishery is measured or judged. Also see responses to Comments 28 and 29.

If the Council or NMFS finds it necessary to limit harvest by the guided sector, the approach recommended by the Council and approved by NMFS is to use various restrictive rules to reduce the charter vessel sector harvest to approximately the GHL. Such restrictions are often imprecise in their effect. Therefore, NMFS can not be certain that these restrictions will prevent the charter vessel fishery from harvesting no more halibut than the GHL amount. As such, the GHL is a harvest level target to which NMFS can try to get close but likely will never exactly hit.

Comment 46: IPHC allocation procedures setting the GHL violate the fair and equitable clause of the Halibut Act. This proposed rule halves the charter bag limit while commercial catch is allowed to exceed catch limits. The IPHC GHL management serves a few commercial fishermen at the cost of the many sport fishermen. For 15 years, the Council and NMFS have pursued an unfair and inequitable “allocation” policy solely for the benefit of the halibut longline sector. It is irresponsible of NMFS to continue to circumvent analysis and implementation of a legally binding, fair

and equitable allocation between user groups. This proposed rule is based on outdated "GHL Policy" that seeks only to financially benefit the commercial sector.

Response: The IPHC does not set the GHL, although the GHL in any particular year is linked to the Total CEY, which is set by the IPHC. Any resource allocation policy likely will result in some resource users feeling unfairly burdened with the costs of reducing their use of the resource.

As the halibut resource has declined in abundance in Area 2C in recent years, the commercial longline fishery's catch limits have been substantially reduced from 10,930,000 lbs (4,957.8 mt) in 2005 to 5,020,000 lbs (2,277.0 mt) in 2009. This represents a 54 percent reduction over four years.

During part of this period (2005 through 2007) charter vessel anglers in Area 2C have had record high levels of harvest. If there is a policy to benefit the commercial longline fishery at the expense of the charter vessel fishery, it is not apparent under the facts described above. Regarding the claim of violating the fairness and equity provision of the Halibut Act, see the response to Comment 74.

Comment 47: The final rule should be based on the 2009 Area 2C GHL, instead of the 2008 GHL, as the proposed rule is. For 2009 the IPHC has adopted catch limits based on the Area 2C CEY of 5,570,000 lbs. The GHL rule published August 8, 2003 (68 FR 47256; corrected on May 28, 2008, 73 FR 30504) describes the procedure to identify the Area 2C GHL on the basis of the IPHC's approved CEY for Area 2C. The GHL in Area 2C was 931,000 lbs in 2008. The final rule should clearly state that the GHL in place for the 2009 season is 788,000 lbs.

Response: NMFS agrees that the GHL for Area 2C in 2009 is 788,000 lbs (357.4 mt) and not 931,000 lbs (422.3 mt). This change is based on new Total CEY information from the IPHC meeting in January 2009, shortly after the proposed rule was published. The notice of the 2009 GHL for Area 2C was published in a **Federal Register** notice on February 24, 2009 (74 FR 8232). NMFS is not changing the proposed management measures, however, because the one-halibut daily bag limit and accompanying measures have the best chance of achieving the objectives of this action of all the alternatives analyzed. Requiring a new analysis of other, possibly more restrictive management measures would mean that those measures would not be in effect for the 2009 summer fishing season.

Comment 48: This action will not constrain the guided industry to stay within the GHL. NMFS has relied on 2007 data because final 2008 harvest numbers are not yet available. The proposed rule indicates that a one-halibut daily limit will not reduce the guided harvest to the GHL unless demand reduction further reduces harvest. The rule also states that in 2008 the guided sport harvest may have been near double the GHL of 931,000 lbs under the status quo management option (73 FR 78278), which translates to an estimated harvest of 1,862,000 lbs. The Council's 2007 Area 2C GHL analysis indicated that a one-fish bag limit for the entire 2008 season would have resulted in a harvest reduction of 808,000 lbs of halibut in Area 2C (Table 4 in analysis). Given that the correct 2009 GHL in Area 2C is 788,000 lbs, the one-halibut daily limit can be expected to allow a GHL overage of 200,000 to 700,000 lbs. Clearly an overage of this magnitude does not meet the Council's intent to limit harvest to the GHL. Therefore, NMFS should adopt measures in addition to those identified in the proposed rule to achieve the goal of limiting guided harvest in Area 2C to the 2009 GHL. Establishing a maximum size limit on the retained halibut is the management measure identified to control guided harvest at times of low abundance in the recently adopted Council Catch Sharing Plan (October 2008). This measure was identified by the Council as less onerous to the guided industry than a season closure, but reasonably calculated to achieve the necessary reductions based on existing analysis.

Response: The analysis indicates that it would take a 30 percent to 40 percent reduction in the demand for guided trips to bring the guided harvest down to approximately the GHL level along with the one-fish bag limit. NMFS does not have information to project the precise impact of this action on demand for guided trips. Guides commenting on this action and a similar action in 2008 have indicated that a demand decrease of this magnitude may take place. Moreover, the current financial crisis and recession may reduce demand independently of this action. NMFS believes that the combination of the one-fish limit and the reduction in demand may reduce harvest to approximately the GHL. NMFS also notes that the GHL itself is not meant to be a hard cap. See also the responses to Comments 28 and 47.

Comment 49: The one-fish limit alone will not constrain guided harvest to the GHL. The proposal must be supplemented by a maximum size limit

or a non-retention period. A maximum size limit may be less onerous to the charter industry than a non-retention period. Retain carcass retention, as it has considerably improved data quality and is necessary for maximum size limit enforcement.

Response: The ability of the one-fish limit to control guided harvests to the GHL is discussed in responses to Comments 29 and 48. The response to Comment 110 addresses the proposal for a maximum size limit, and the responses to Comments 105 and 114 deals with carcass retention comments.

Comment 50: Annual guided catch limits are less conservative than the commercial catch limits. The annual commercial fishing management target is set by a precautionary method. The IPHC SUFD policy fluctuates catch limits with stock abundance, leaving more fish in the water than a policy of managing catch limits to CEY. The guided industry requested and received a GHL "stair step" policy to implement catch limits that is similar to the commercial sector's SUFD approach. The SUFD approach increases catch limits slowly as halibut biomass increases and decreases catch limits quickly as biomass decreases, while the guided sector uses the same rates to modify catch limits regardless of halibut abundance trends. The stair-step down provisions allow the biomass to change by 15 percent before dropping to the next level. This was implemented at the guided sector's request to provide a more stable fishery before management measures were changed.

Response: As noted in the response to Comment 4, the SUFD policy has a measured response to changing stock conditions. The GHL is not a catch limit in the same sense as the commercial catch limit set by the IPHC. However, the GHL also is linked to halibut abundance through the Total CEY.

Comment 51: The GHL should include step up as well as step down provisions. The method used to set the GHL does not allow for increases in annual catch limits regardless of halibut abundance trends. This method is incompatible with the SUFD approach that allows the commercial sector IFQ allocations to exceed the Fishery CEY by 300,000 lbs in 2006, 900,000 lbs in 2007, 3,070,000 lbs in 2008, and up to 3,290,000 lbs this year, at a time of decreasing abundance. The IPHC has applied its SUFD policy solely to the commercial fleet and there is no analog for the charter fleet. The IPHC policy ignores conservation by awarding charter "underages" to the commercial fleet with a SUFD policy to benefit the seafood industry.

Response: Revising the GHL is outside the scope of this action. NMFS notes that while the GHL does not increase beyond the maximum GHL established by the Council regardless of halibut abundance trends, it does increase above current GHL levels if there is an increase in the Total CEY, up to the maximum GHL of 1,400,000 lbs. The stair-step down provision of the GHL (see the response to Comment 50) provides the guided sector with a lagged GHL decrease in response to declining halibut biomass levels. The SUFD component of the IPHC's management regime is not necessarily advantageous to the commercial sector, as discussed in the response to Comment 4.

Comment 52: The proposed rule assumes all guided anglers catch their limit. Guided anglers are seeking a fair opportunity to catch two halibut per day. This does not mean each angler catches two halibut per day.

Response: NMFS acknowledges the comment. Based 2007 data, the analysis of the harvest impacts of the proposed rule assumed that approximately 60 percent of charter vessel anglers in Area 2C would catch two halibut.

Economics

Comment 53: This action will reduce tourist demand for Southeast guided trips. A one-fish limit will make halibut fishing less attractive to charter vessel anglers, and will increase the cost per pound of halibut harvested with the assistance of guides. Quality differences mean that fish purchased in a store are an imperfect substitute for fish harvested in a recreational fishery. Evidence from declining bookings in 2008, questions about bag limits from guided clients and potential clients, cancellations in 2009, and statements made by potential clients, indicate that the one-fish limit will lead to large reductions in visits. Typical comments noted that many operations had reported a decline in bookings, for example, of about 15 percent because of the published one-fish rule in 2008; reduced 2009 bookings; a 20 percent to 30 percent estimate of reduced visits is not unreasonable. One fish per day is too few to justify the high expense of a trip to Area 2C for many potential clients. Many customers will go elsewhere, for example, to other parts of Alaska, British Columbia, or Mexico. It may not be easy for the guided industry demand to recover; the business depends on repeat customers and many of these will now go elsewhere. Uncertainty interferes with willingness of customers to make bookings. The impacts of surprise regulatory changes

outlast the regulation by many years. It takes years to build up a client base.

Response: NMFS acknowledges that the reduced bag limit is likely to reduce the demand for guided fishing in Southeast Alaska. Other than acknowledging the potential for lost business, as was done in the analysis, NMFS cannot predict the number of charter vessel anglers that will choose to not take a guided sport fishing trip in Area 2C as a direct result of this final rule. NMFS notes that the current financial climate may be affecting bookings at this time, so that the entire decline in 2009 bookings may not be solely attributable to the pending one-fish bag limit.

Comment 54: Guided charter operations will be badly hurt by the demand decrease associated with this action. Many comments from within the guided industry pointed to concrete instances of the adverse business impacts because of the proposed 2008 one-fish bag limit, and to adverse word of mouth and bookings impacts already observed from the proposed 2009 limit. For example, one lodge operation with 1,000 clients a year is only successful and profitable when booked to 85 percent of capacity. At the time the comment was submitted, bookings were 60 percent, down from 80 percent at the same time the previous year. The business has a very thin margin. A sustained loss of 20 percent of customers means the lodge will no longer be viable. Ultimately the statement in the analysis that some businesses will fail is a gross underestimate. Reductions in demand on the scale necessary to bring harvest within the GHL means bankruptcy for all but a few guided operations. Halibut charter businesses will be devastated and many forced out of business.

Response: NMFS agrees that this action is likely to have adverse impacts on charter business profitability in 2009 and that some charter operators may fail or leave the business, however, NMFS does not agree that all but a few guided operations will go bankrupt. NMFS agrees that an action taken in one year may have impacts on marketing and bookings in subsequent years.

Comment 55: This action will have severe adverse impacts on the businesses, jobs, and communities that depend on guided charter operations. The businesses include firms that supply food, fuel, material and capital equipment to the charter operations, and businesses that supply transportation, food, lodging, fish processing, gifts, and other tourist services to clients. Jobs include jobs provided by the charter operations and

these other firms. Communities also suffer from lost income spent by people who would have worked in the guided charter business. Communities suffer from the direct losses of jobs and businesses, indirect impacts, and loss of tax revenue. These jobs and businesses are important to small local Alaskan communities. National Standard 8, which requires NMFS to "take into account the importance of fishery resources to fishing communities to provide for the sustained participation of, and minimize adverse impacts to, such communities (consistent with conservation requirements) requires a consideration of these issues.

Response: NMFS agrees that the guided sport charter vessel industry is an important industry for many communities, generating jobs and revenue for the communities involved as well as direct employment for the guides and crew. A reduction in the daily bag limit for charter vessel anglers will affect those communities and their efforts to develop guided businesses.

The potential impact on bookings and demands for tourist activities is discussed in the analysis supporting this final rule, but quantitative estimates of how such impacts will influence demand for these services and commensurate impacts on local communities are unavailable. The response to Comment 72 describes recent studies on the relationship between sport and commercial fishing and regional economies, but notes that these analyses do not provide enough information to evaluate the impacts of this action on individual communities.

Finally, NMFS and the Council considered impacts to communities, as is evident in sections 2.3.5 and 2.5.5 of the analysis for this action. However, National Standard 8 does not directly apply to this action as it is taken under the Halibut Act and not the Magnuson-Stevens Act.

Comment 56: The one-fish bag limit proposal in Area 2C has adverse impacts in Area 3A, because potential Area 3A out-of-state clients do not understand the geographical differences between areas. Area 3A guides report adverse impacts on business and cancellations and adverse word of mouth at trade shows for this reason. Commenters noted that the Area 2C rule would provide an incentive for charter vessel anglers to substitute fishing trips to Area 3A for trips to Area 2C. Commenters noted that this could increase guided harvests in Area 3A, potentially causing Area 3A fishermen to exceed the 3A GHL and become subject to new regulatory restriction, causing economic harm to guides in 3A. One commenter

recommended that the one-fish bag limit be adopted throughout Alaska and the Pacific Northwest. This would limit shifts out of Area 2C, protecting Area 2C guides, and would protect the resource in other areas from excessive harvest as fishermen substitute out of Area 2C. One commenter noted that the proposed action is necessary because the conservation and management problem in Area 2C will likely come to Area 3A soon and it should be addressed and corrected now to prepare NMFS and the guided charter vessel fleet for its later implementation in Area 3A.

Response: NMFS agrees that the one-fish bag limit could adversely affect bookings in Area 3A if charter vessel anglers outside of Alaska are unable to discriminate between geographic areas within Alaska. NMFS has no data that would allow it to estimate the potential impact on 3A guided operations because of this confusion.

NMFS notes that this could be offset to an unknown extent, if anglers substitute guided charters in Area 3A for guided charters in Area 2C because of a difference in bag limits. NMFS agrees that a shift of charter vessel anglers from Area 2C to Area 3A could lead to increases in Area 3A harvest that cause harvests to rise above the 3A GHL. It is not known whether or not increased guided fishing activity in Area 3A will increase harvest sufficiently to require additional fishing restrictions within Area 3A.

NMFS is taking the current action to address GHL overages in Area 2C and must evaluate events in Area 3A independently. The action taken for Area 2C is not being taken because of speculation regarding future events in Area 3A.

Comment 57: Captains, guides, and crew would like to consume halibut, and it is more cost-effective for them to catch it when they are already on the water guiding than if they have to make a separate independent trip to catch halibut. They can economize on fuel, and other costs, if they take their recreational harvest incidental to their work as guides and not make special trips. It is recommended that guide and crew personal use fishing be allowed, consistent with regulations, prior to May 16 and after August 15, or some other agreed upon dates outside of the busy tourist season. This would allow taking fish for summer use, then taking fish for winter use. Total restriction of fishing by guides and crew does not achieve the goal of "minimizing the adverse impacts on the charter fishery" which was a NMFS goal in its 2008 proposed rule, or of optimizing benefit to the Nation. Minimization of the

adverse impacts will be achieved by allowing personal use fishing by guides and crew to eliminate the expenditure for fuel and other resources that they will unnecessarily incur while trying to put food on their tables.

Response: Prohibitions on retention of halibut by charter vessel guides, operators, and crew may make it more costly for them to harvest halibut for personal use.

In 2006 and 2007, the State Commissioner of the ADF&G (Commissioner), consistent with his authority, issued emergency orders prohibiting the retention of all fish by the skipper and crew of a charter vessel in Area 2C (ADF&G Emergency Orders 1-R-01-06, 1-R-02-07). The Commissioner could not make his emergency order apply only to halibut because the State of Alaska is not authorized to directly regulate halibut fishing. The comprehensive application of the emergency order to all fish effectively prevented charter vessel skippers and crews from harvest of salmon, rockfish, lingcod, and other species. No emergency order was issued in 2008 when NMFS implemented a similar prohibition, but which would only apply to halibut, as a part of the one-fish bag limit rulemaking. No emergency order has been issued as of March 2009.

This action provides charter vessel operators relief from a potential comprehensive state prohibition on skipper and crew harvests by having a federal prohibition on skipper and crew harvest apply only to halibut. Assuming that the Commissioner would issue an emergency order prohibiting skipper crew and harvest if a federal prohibition was not forthcoming, this action would relieve charter vessel skippers and crew from the more comprehensive prohibition against retention of all fish on charter vessels but would impose this prohibition on the retention of halibut. This substitution of the federal restriction for the more burdensome state restriction helps minimize the burden on guided charter operators.

Comment 58: This action will increase enforcement costs.

Response: This action may or may not increase enforcement costs. The analysis noted that this action will increase incentives for charter vessel anglers to illegally harvest more than one fish a day, and for guides to help them do it. However, it also noted that the enforcement procedures for enforcing a one-fish bag limit were not substantially different from those for enforcing a two-fish a day limit or a size limit and that this action may reduce the number of separate operations to be monitored, as

explained in the analysis. The analysis also noted that the level of enforcement effort was a policy decision.

Comment 59: The one-fish limit will lead to legal and illegal avoidance activity. People will try to get around the rules. They may switch to bare boat charters, fail to register as guides or charters, fish for other species and "incidentally" catch halibut, or take other actions. These measures will defeat the purpose of the rules. Some commenters indicated that because of problems they saw with the proposed rule, they would not accept the regulations.

Response: NMFS agrees that this action will increase incentives for anglers to substitute non-guided fishing for guided fishing, and for guides and anglers to conspire to illegally evade the bag limit for guided anglers. To the extent this happens, the reduction in guided sport fishing may be offset to a greater or lesser extent by an increase in unguided sport fishing.

NMFS, however, does not have the information to estimate the extent to which the substitution of unguided for guided sport fishing will take place. Much will depend on the preferences of anglers, their opportunities to fish elsewhere, and the ability of businesses to substitute unguided for guided capacity.

NMFS notes that it would expect proportionately more substitution of unguided for guided sport fishing by persons visiting on multi-day and overnight trips than by persons visiting Alaska on cruise ships.

Comment 60: The adverse impacts to the guided sport fishery will be in addition to adverse impacts associated with the economic crisis, and to adverse impacts associated with restrictions on harvests of other species targeted by sport fishermen. The depressed economy on its own is projected to decrease tourism to Alaska by 30 percent. The combination of the recession and one-fish limit could reduce total demand by 50 percent. Consideration of the one-fish limit must take account of the 48-inch minimum size limit for king salmon in the second half of the summer, and the prohibition on taking ling cod from June 16 to August 15.

Response: NMFS agrees that the current recession and financial crisis are likely to reduce demand for guided sport fishing trips in the summer of 2009, and perhaps in subsequent years. Moreover, in recent years the State of Alaska has tightened regulations governing the harvest of other species of fish targeted by sport anglers. These tighter restrictions can be assumed to

reduce the attractiveness of a Southeast Alaska fishing trip and to reduce the demand for guided charters. The adverse impact of this final rule on guides will be in addition to these other impacts. Although NMFS is unable to quantify these other impacts, they were considered qualitatively in developing the final rule.

Comment 61: This action creates a paperwork burden for guided charter operations. A five-minute response per angler for new reporting requirements adds about a half hour to the paperwork time at the start of each four-hour half-day charter. Did NMFS consider the capabilities of non-English speaking, younger, and older anglers when estimating the compliance burden associated with these requirements?

Response: In the proposed rule, NMFS reported that the new logbook information required for this action includes the regulatory area in which halibut were caught and kept during the fishing trip, the printed name of the charter vessel angler, including youth anglers under 16 years of age, and the signature of the angler on the back of the logbook sheet to verify that the number of halibut caught and recorded is accurate. NMFS estimated that the additional time requirement for each trip was four minutes for the guide and one minute for each angler. For example, for a guided charter vessel with six anglers, total elapsed time to comply with this reporting requirement could be 10 minutes. Actual total elapsed time is likely to be shorter. The discussion in the preamble to the proposed rule did not estimate a reporting burden of five minutes per angler. Only the charter vessel guide would need to have an ability to read and write English. A charter vessel angler would be required only to sign his or her name. This can be done in a minute, on average, even considering the groups identified in the comment.

Comment 62: It is erroneous to assume that all guided sport fishing lodges are small entities. In testimony before the Council owners of certain Area 2C lodges have said that their businesses annually gross between \$7 million and \$12 million. The threshold for identifying large and small entities in the fishing guide service industry is \$7 million. The number of large lodges should be documented in the record.

Response: The Regulatory Flexibility Act (RFA) required NMFS to provide an estimate of the numbers of small entities that are directly regulated by the action. The threshold for discriminating between large and small entities under the RFA in this case is \$7 million in gross revenues. NMFS does not have

access to systematic estimates of lodge operation gross revenue estimates similar to those that are available for the commercial setline fishery, or for many other commercial fisheries in Alaska. Moreover, the RFA requirement is to provide an estimate of the number of small entities, not the number of large ones. While the analysis did indicate that there may be large lodges according to this criterion, it did not subtract an estimate of their number, which was unavailable, from the count of total entities to estimate the number of small entities. Since the number of large entities is likely to be small in comparison to all entities, it is unlikely that this would seriously bias the estimate of small entities.

Comment 63: This action will not significantly adversely impact angler demand for guided charters and charter operators can address adverse impacts by modifying their operations. One guide indicated that the customers will still come. This was a very small minority among the guides. Similarly, a very small proportion of comments from anglers indicated that they, personally, would not reconsider a trip to Alaska. Another comment indicated that, based on a study given to the Council in June 2007, when asked about the impact of a one-fish limit, as many respondents (26 percent) said it wouldn't make a difference as said they would be much less likely to return (24 percent). One commenter notes that this will not put the guided charter companies out of business, but will force them to move to a charter business that is friendlier on the natural resource such as catch-and-release and sightseeing.

Response: As noted in its response to Comment 53, this action is likely to reduce the demand for guided sport fishing in Southeast Alaska, as indicated in the analysis. The comment that charter operations may modify their operations so as to take advantage of other Southeast Alaska resources, or to engage in more catch-and-release fishing, is most likely accurate.

Comment 64: The guided sport fishery, as conducted, is adversely impacting the commercial longline fishery. Charter GHL overages affect the long-term constant exploitation yield, and potentially the long-term sustainability of the halibut stock. This has an adverse indirect impact on longline fishermen. Guided angler harvest overages have been deducted from the longline catch limit, imposing a direct burden on longline fishermen. Guided anglers operate in the summer when larger females are inshore and more susceptible to rod and reel gear. Thus they tend to target the larger fish

that contribute more in proportion than smaller fish to the reproductive capacity of the halibut stock. This has an adverse indirect impact on commercial fishermen. Many commercial fishermen have had to borrow money, sometimes mortgaging their homes, to buy the halibut quota share (QS) they needed to operate in the fishery. The decline in current and prospective longline revenues and profits makes it harder for them to repay these loans. Moreover, declines in current and prospective profits reduce the market value of their QS.

Response: NMFS acknowledges that guided charter harvests in excess of the GHL can have direct and indirect adverse impacts on commercial fishermen, and that many commercial longline fishermen have had to borrow money to purchase quota shares. NMFS agrees that allocative and stock impacts can reduce their ability to repay those loans. See also responses to Comments 1 and 19.

In 1999, the IPHC reviewed options for a maximum size limit of 60 inches (150 cm) in the commercial fishery and concluded that, based on the research at the time, it did not add substantial production to the stock. Applying the limit to the sport fishery would have an even smaller benefit because the sport fishery harvest is much smaller than commercial harvest, and also because this action would only apply to Area 2C. The halibut stock is managed as a single population throughout its entire range. Also see response to Comment 103.

Comment 65: The guided sport fishery, as conducted, is adversely impacting subsistence, personal use, and unguided sport fisheries. Two issues have been raised: (1) Excessive harvest hurts these user groups in the same way it hurts commercial fishermen; (2) localized depletion of stocks creates a special burden for these other user groups. Subsistence can be an important source of food, particularly in remote, rural communities with high poverty rates. Excessive harvest by the guided sector requires subsistence and local sport anglers to travel farther to catch halibut and can result in fishing grounds preemption by charter vessels anglers. The distance issue becomes worse when fuel costs are high. Guided sector harvests violate the subsistence priority. The area within which localized depletion is occurring is getting larger as charter operations upgrade their equipment. Localized depletion may have cultural impacts for Native fishing communities via the impact on subsistence harvests. Commenters report localized depletion near Sitka, Juneau, Craig, Prince of

Wales Island, and in the Icy Straits area. Commenters cite ADF&G estimates of catch per rod hour as evidence of localized depletion near Sitka and Craig. Localized depletion may also occur for species such as rockfish, taken as bycatch by sport fishermen. Localized depletion was recognized by the Council in its 1993 problem statement and played an important part in the Council's GHL allocation decision. Halibut harvest by the guided fishery should be managed to stay below the GHL because of concerns about depletion of local stocks and the long-term effects on local businesses.

The record should be supplemented to include the effect of guided charter fishing in excess of the GHL on local depletion, the effect of local depletion on subsistence harvesters, and the weight given to subsistence concerns when the Council recommended the GHL allocation adopted in 2003.

Response: NMFS agrees that subsistence harvests of halibut are an important use of halibut in Southeast Alaska, and that a key factor in their importance is the significant cultural role they play in the lives of Alaska Natives. While there is no direct allocative effect, NMFS agrees that harvest in excess of the GHL can complicate the sustainable management of the halibut stock and potentially indirectly impact other non-commercial users.

With respect to localized depletion, NMFS does not have data to confirm that short-term localized depletions of halibut are due to focused harvest activity by one or more fishing sectors. Current data do not clearly indicate what the causes, magnitude, and geographical distribution of nearshore depletions might be. While it is accurate that commercial fishermen may fish in areas that are accessible to sport fishermen, any localized depletions resulting from high halibut catch rates may be offset in the medium-to-long term by egg and larval drift and migrations of juveniles and adults.

Comment 66: The guided sport fishery, as conducted, is adversely impacting communities that depend on the commercial fishery. The Area 2C halibut fishery is the economic lifeblood of many longline fishermen and the fishery dependent communities in which they live. The livelihoods of too many Alaskans that live away from the major transportation corridors of Juneau, Sitka, and Ketchikan have been seriously harmed. The guided fishery harvest must be limited to established GHL amounts. The unrestricted growth of the guided charter fishery is creating stress in coastal communities. The

economic insecurity inflicted by the combination of reduced quotas, reduced access to subsistence resources due to charter-driven local depletion, and the federal government's stalled effort to restrict guided sport harvest to established catch limits, after 15 years of policy reversals and ineffective actions, has intensified conflicts in small coastal communities. These tensions are manifested as stress, hostility, and other socially destructive responses that are pitting neighbor against neighbor. The failure of the management system to adequately regulate and enforce existing regulations on the guided sport fishery near Sitka has led to social unrest in the community and increasing conflicts on the grounds.

Response: As noted in the responses to Comments 64 and 65, NMFS agrees that the commercial longline fishery, and potentially the unguided sport and subsistence fisheries, may be adversely impacted when the guided charter fishery exceeds its GHL. This occurs through allocative impacts to the commercial fishery, and by complicating the sustainable management of the halibut stock. NMFS does not have data to confirm that short-term localized depletions of halibut are due to focused harvest activity by a particular user group. NMFS believes that adverse impacts to these fisheries listed above affect the communities in Southeast Alaska in which these fisheries are based. As noted in the analysis, the information that would make it possible to measure these impacts is not available.

NMFS acknowledges that the controversy has created conflict in some Southeast Alaska communities; the analysis (see **ADDRESSES**) cited a study from the U.S. Forest Service's Northwest Research Center that noted that "[c]ompetition for fish has created tension within communities with sizeable charter fishing fleets, such as Craig and Sitka."

Comment 67: When the guided sport fishery exceeds its GHL, there are secondary impacts on the commercial crab fishery. Many of the small processors around Southeast are being affected by the lowered halibut quotas and face insufficient production to cover overhead costs. The processor that would usually service the upcoming crab season is saying that it can't afford to cover the overhead to open the plant earlier without the additional halibut production.

Response: NMFS acknowledges the potential for secondary impacts of any fishery exceeding harvest targets. This action should reduce the effects of these

impacts by maintaining the guided sport fishery in Area 2C to its harvest target.

Comment 68: The guided sport fishery is not or is minimally adversely impacting the commercial longline fishery. Estimates of the loss to the commercial sector in the analysis appear to be minimal and are based on arbitrary assumptions. When the longline fishery has quota reductions, the decrease in production generally results in an increase in price that buffers the impact. Quota reductions in the sport fish industry do not have a similar buffering impact. In fact, the opposite happens in that the product becomes harder to sell. A number of metrics indicate that the longline fishery has been doing well during the period when the guided sport harvests have been increasing, contradicting the problem statement. IPHC policy changes have provided catch limit windfalls to the commercial fishery that have not been enjoyed by other gear sectors; QS values, ex-vessel prices, and overall ex-vessel earnings have increased a great deal; 75 percent of commercial ex-vessel revenues are personal profit; and two-thirds of QS holders are initial recipients who have enjoyed massive financial windfalls with no economic responsibility (presumably without having to take out loans).

Response: Halibut harvests in the guided charter fishery appear to impact the commercial setline fishery. NMFS does not have the information to prepare a quantitative analysis of the impacts although the analysis includes an illustrative table (Table 5) showing the scale of the potential gross revenue impacts. NMFS agrees that halibut prices have risen in recent years. In inflation-adjusted terms, the ex-vessel price for halibut rose by about 79 percent between 2001 and 2007.

NMFS agrees that a reduction in the quantity supplied may lead to an increase in price, all other factors held equal, and that this may buffer the impact of harvest reductions. However, NMFS does not believe that the impact of Area 2C harvest reductions on Area 2C price will be large as a result of this action. Halibut from Southeast Alaska compete with halibut produced from California to the Bering Sea in a regional (and international) market. Prices in this market are determined by overall supply, the prices of substitute goods, income, exchange rates, inventories, and other factors. Area 2C fishermen only contribute a part of the overall market supply, and thus a change in their production is likely to only have a modest impact on the price they receive.

IPHC statistics show that Area 2C longline harvests have fluctuated

between 8,410,000 lbs and 10,630,000 lbs over the last ten years, although since 2005, the IPHC catch limit has dropped in each year, falling by 54 percent overall. This decline in the catch limit is indicative of a large adverse impact to the longline fishery in recent years. Only part of this impact is attributable to the guided charter fishery GHL overages. Many factors affect ex-vessel prices and the value of QS. The fact that these values have increased in the past does not mean that guided charter operations have not had an adverse impact on these operations, although guided charter overages were a contributory factor during the years when the IPHC based its projections of guided landings on extrapolations from past landings and not on the GHL.

The comment about profitability appears to refer to a McDowell Group study prepared in April 2007 for The Halibut Coalition titled, "Economic Impact of the Commercial Halibut Fisheries in Areas 2C and 3A." While the McDowell group estimates that 75 percent of ex-vessel earnings become personal income for halibut fishery participants, this includes earnings for QS holders, management, and skipper and crew labor, as well as business profits. The 75 percent estimate would overstate profits.

Comment 69: The commercial longline fishery, as conducted, is adversely impacting the guided sport fishery. Removals in a given year will have an effect on Total CEY in subsequent years. In 2008 commercial catch limits were above the Fishery CEY by 2,300,000 lbs. If these halibut had been left in the water, assuming a 20 percent exploitation rate, the 2009 Total CEY would have been high enough to produce a GHL of 931,000 lbs rather than 788,000 lbs.

Current longline fishing methods and regulations have allowed longline fishing to occur nearly year-round every year and in unrestricted fishing grounds. Where halibut were once plentiful before the IFQ system, there are now few to be caught. Sport fishermen must use more resources and assume more personal risk for the opportunity to catch two halibut. When commercial long-line fishing was limited to season openers over a shorter period of time, halibut were able to migrate closer to shore and offered sport fishermen greater opportunity for success. The IFQ system reduced risks for commercial fishermen, as intended, but shifted them to sport fishermen.

Response: In part, this is a comment about the impact of the IFQ system on halibut sport fishermen. The IFQ program is not the subject of the current

action. NMFS agrees that leaving fish unharvested contributes to biomass and Total CEY in subsequent years. NMFS notes that, as shown in Figure 2 in this preamble, Fishery CEY has exceeded the catch limit by large amounts in the past, so that large portions of the Fishery CEY have been left unharvested. The change in Total CEY is the result of a number of factors including changes in our understanding of halibut stock biology and commercial longline and other harvests (including guided harvests in excess of the GHL between 2004 and 2008).

As discussed in the response to Comment 65, NMFS does not have data to confirm that short-term localized depletions of halibut are due to focused harvest activity by one or more sectors.

Comment 70: The environmental and cost-benefit analyses are inadequate. Commenters had a number of concerns: (a) The analysis tended to provide more information about commercial fishery impacts under the status quo than it did about the costs of the action alternative to the sports fishermen; (b) the analysis failed to estimate the net benefits or costs of the action; (c) additional economic research is necessary; (d) the analysis failed to adequately address the impacts of the status quo on subsistence and non-guided sport users; (e) the analysis failed to adequately recognize that GHL overages are a conservation issue; (f) NMFS erroneously assumes there will be an increase in charter boats and guided harvests in 2008 and 2009 over 2007; and (g) the analysis fails to provide an estimate of the number of large lodges, according to the criteria of the Regulatory Flexibility Act.

Response: Several of these issues have been addressed in other comments. Comment 70(a) is addressed in detail in the response to Comment 71. Comment 70(b) is addressed in response to Comment 73. Comment 70(c) regarding research projects underway, these are identified in the analysis (see ADDRESSES). The response to Comment 72 describes two studies released since the analysis was prepared. With regard to Comment 70(d), NMFS has modified the analysis to provide a brief description of unguided sport and personal use fishing activity. However, the discussion also notes the lack of information on the causes of localized depletion.

In response to Comment 70(e), the relationship of this action to conservation is discussed in detail in the responses to Comments 1 through 27. The response to Comment 7 notes that the environmental assessment part of the analysis is meant to determine whether the impact of the action would

have a significant impact on the human environment and does not determine whether an action has a conservation objective.

In response to Comment 70(f), NMFS did not assume that there will be an increase in the number of operations in 2009. NMFS notes that the GHL for 2008 was 931,000 lbs. As shown in Table 1 of the analysis, the guide sector has caught more than the 931,000 lbs every year over the period from 1997 to 2007. The best available harvest information for 2008 indicates that the guided fishery exceeded the 2008 GHL in that year as well. NMFS did not project increases in future guided angler activity. NMFS's conclusions about the impact of the action were based on the assumption that in the absence of action, if guided harvest levels persisted at levels observed in recent years, or even declined significantly, the guided fishery would harvest in excess of the GHL, as observed in recent years.

The response to Comment 70(g) is addressed in the response Comment 62.

Comment 71: The analysis tended to provide more information, including quantitative information, about commercial fishery impacts under the status quo than it did about the impacts of the action on the guided charter fishery. The analysis does not include estimates of gross revenue impacts to the charter fleet, even though NMFS provided such estimates for its analysis of the Catch Sharing Plan. The analysis of the Catch Sharing Plan included rough estimates of revenue impacts accruing to the guided charter fishery from a range of options. A comparison of two of the Catch Sharing options (1c and 2c in Table A-42, page 74) suggests that this action would have adverse revenue impacts of about \$10.4 million in the year the restriction was imposed. Despite the fact that NMFS was able to make gross revenue estimates of the impacts on guided charter operators from the Catch Sharing Plan action, it has not done so for the current bag limit action.

Response: The analysis includes a qualitative analysis of the impacts to charter vessel anglers (Section 2.5.1) and to guided operations (Sections 2.5.2 and 2.5.3) that is comparable to that provided for impacts to longline fishermen (Section 2.5.4). The analysis does not provide a quantitative projection of the impact on longline fishermen, although it does provide an illustrative table showing the longline costs under the status quo for one set of assumptions.

NMFS has not provided a similar illustrative table for the guided sport fishery because the fundamentally

different natures of the products of the two sectors (halibut sold in competitive markets as opposed to fishing experiences which are affected by the availability of halibut) preclude guided charter gross revenue estimates with the information currently available. The output of the commercial longline sector is halibut, and this output in Area 2C is small enough compared to overall output on the West Coast that the impact of changes in Area 2C production on Area 2C halibut prices are probably small. The quantity supplied by the longline sector appears to be closely related to the annual catch quota set by the IPHC. Under these conditions, NMFS has been able to provide illustrative calculations of gross revenues for the longline sector. However the situation is very different in the guided sector. The output in the guided sector is not halibut, but days of angler fishing time. To estimate gross revenue changes in the guided charter fleets, NMFS would have to have demand models based on survey research, which would allow the determination of changes in angler participation in the lodge-based and cruise ship-based industry segments in response to changes in the bag limit. Moreover, NMFS would need better information than it has on the possible guided charter operation supply responses.

The analysis for the one-fish bag limit included the best scientific and commercial information available to NMFS. The Catch Sharing Plan analysis cited in the comment was prepared for the Council. This analysis has not yet been submitted to NMFS for review.

As noted above, the analysis for the bag limit includes a qualitative discussion of the impacts of this action on guided anglers, half-day guided operations, and full and multi-day guided operations. Different assumptions and models will generate different approaches to a problem and different results. NMFS has worked with a conceptual model in which retained halibut catches are one input into the demand for guided charter fishing days. A change in the number of halibut retained will shift the demand curve; guided charter businesses may respond by altering their business models or prices. The impacts will be different in the half-day and full- and multi-day segments of the guided charter business. NMFS does not have the data necessary to better specify or estimate the parameters of this model. As noted in the analysis (see **ADDRESSES**), ongoing research conducted by NMFS at the Alaska

Fisheries Science Center may change this in the future.

The model used for the Catch Sharing Plan implicitly assumes that fishermen come to catch a certain weight of halibut, that the demand in terms of the number of angler-days is fixed for any given GHL, and that demand is not responsive to price or any other factor. The model assumes anglers come to Alaska to harvest 24 lbs of halibut (an estimate based on average harvests by charter vessel anglers in Area 2C) and the model equilibrates so as to set the number of angler-days demanded equal to the GHL divided by 24. The quantity of halibut harvested is central to the Catch Sharing Plan model, while the fishing experience in Southeast is central to the model used in this analysis. As the Catch Sharing Plan analysis notes, the analysis was provided at the request of Council members, despite the impossibility of providing rigorous estimates of charter sector revenue with the information available.

Comment 72: In December 2008, an economic study of the economic impacts and contributions of sport fishing, prepared by the Southwick Associates consulting firm, was published by the ADF&G. The new information in this study should be used in the analysis of this action.

Response: NMFS appreciates this comment, bringing this report to its attention. In fact, since the preparation of the analysis for the proposed rule, two new reports describing the relationship between sport and commercial fisheries and regional economies have become available. One, prepared by consultants to ADF&G, estimates regional impacts for fresh and salt water sport fishing in Alaska; a second, prepared by consultants for a consortium of fishing industry groups, estimates regional impacts for Alaska commercial fisheries. While the two studies are useful additions to the literature on the social impacts of Alaska fisheries, they are of limited use in estimating the impacts of the proposed action in Southeast Alaska.

Both studies are driven by changes in the quantity of the good or service demanded. In the case of the sport fishing study the demand is for days of fishing time, and in the case of the commercial study the demand is for volume of fish products at the first wholesale level. Neither study discriminates between halibut fishing and other types of sport or commercial fishing. This is a more important shortcoming for using the commercial study to evaluate the action's impacts than it is for the sport study, since the

level of aggregation is higher in the commercial study. The analyses do not provide information that would make it possible to estimate how this action would change the quantity of the outputs demanded. This is a serious shortcoming since there is great uncertainty about the impact of this action on days of guided sport fishing demanded. Moreover, both studies assign impacts based on the location where the fishing activity takes place, and not on the place of residence of the individuals earning incomes. Thus, for example, the impacts for a charter guide or longline crew member from Washington State or South Central Alaska are attributed to Southeast Alaska, where the activity took place. However, in each case, the individual in question may have had very limited contact with the Southeast economy and may have spent all their income outside of the region. Finally, as noted in the response to Comment 73, these studies are impact studies and not designed for cost-benefit analysis. The sport fishing study results were based in part on survey research on activity and spending during 2007. The analysis did not focus on or provide special information about trips targeting halibut. The information from the commercial study must be inferred from figures because it contains little tabular data.

NMFS recommends reading the actual studies for more information. The sport fishery study, titled "Economic Impacts and Contributions of Sportfishing in Alaska, 2007" is available online at <http://www.sf.adfg.state.ak.us/Statewide/economics/>; the commercial fisheries study, titled "The Seafood Industry in Alaska's Economy" is available at http://www.marineconservationalliance.org/docs/SIAE_Jan09.pdf.

Comment 73: A number of comments go beyond pointing to the impacts that imposing a one-fish daily bag limit will have on individual sectors and communities and make explicit comparative statements about which alternative will produce the greatest balance of benefits to costs. For example, one commenter notes that the December 2008 report from ADF&G discussed in the response to Comment 72 gives NMFS the information needed to properly weigh the benefits and costs of this action. This shows that the action may cause a 2009 loss of up to 40 percent of \$175 million (in non-resident angler spending in Southeast Alaska) for a benefit of additional revenues to longline fishermen of about \$2.5 million in 2009. Another commenter cites national figures from the NMFS

publication "Fisheries Economics of the U.S.," to argue that, because implied average income per job is higher in the recreational fishery than in the commercial fishery, a national shift from commercial to recreational fishery use of fish resources could lead to significant increases in national income. A third asks, what is better for our communities: one wealthy commercial fisherman spreading his wealth or several tourists spreading their wealth and creating word of mouth about the beauty and splendor of our waters? Which supports our community better, transporting a commercial crew a couple times over the summer or transporting charter vessel anglers a couple times a week? Which supports our community better, a commercial crew visiting in town between trips or a group of tourists seeing us for the first time or at least the first time this year? If we accept in theory that the same amount of money is made by both operations, then look at which operation puts more dollars back into Alaska and more importantly back into the economy; then the only rational argument is for the charter operation. These are offered as examples; there are other similar comments.

Response: With the limited information available, it is not possible to conduct quantitative cost and benefit analyses comparing the benefits and costs to the commercial longline and guided sport industries or evaluating impacts on the regional economy. In the absence of quantitative information, NMFS has conducted a qualitative analysis using the best information available to it. NMFS notes that many of the comparative comments about benefits and costs relate to costs and benefits in Southeast Alaska. While NMFS has a responsibility to look at impacts in Southeast Alaska, its ultimate responsibility is to conduct an analysis from a national accounting perspective. As noted in the response to Comment 72, while studies have recently become available that provide information on the output, income, and employment impacts of sport and longline fishing in Alaska and the Southeast Alaska region, these are not designed for use in a cost-benefit analysis and are not adequate to support an input-output analysis of the proposed action. These studies are useful, but they don't provide enough information to do a fully meaningful impact analysis of this action for several reasons described earlier.

Impact analyses such as these do not provide information that would be useful for a cost-benefit analysis. Impact multipliers measure gross changes in

income and jobs. Regional impact multipliers might show regional income and job changes, but would be much less likely to show national income and job changes because income and jobs created in one region would come at the expense of income and jobs in other regions.

Fairness

Comment 74: The allocation incorporated into the GHL system is not fair and equitable within the terms of reference of the Halibut Act. Although the proposed rule mentions 16 U.S.C. 773c (Halibut Act) in passing, it never mentions the "fair and equitable" standard, and it states that the Secretary is relying on the general rulemaking authority contained in subsections 773c(a) and (b). There never has been a determination by the Secretary that the GHL represents an allocation that is tied to any rational standard, much less the "fair and equitable" standard of the Halibut Act. The Secretary needs to explain how the "fair and equitable" clause in the Halibut Act is fulfilled in current action. The Secretary cannot merely assume that regulating to the GHL will result in an appropriate and legally defensible allocation; rather the Secretary must explain why that is so. The Secretary has not done this and as a result, the entire proposed rule is built on a faulty premise.

Response: NMFS disagrees. This action complies with the fair and equitable requirement of the Halibut Act. This Halibut Act requirement reads as follows:

If it becomes necessary to allocate or assign halibut fishing privileges among various United States fishermen, such allocation shall be fair and equitable to all such fishermen, based upon the rights and obligations in existing Federal law, reasonably calculated to promote conservation, and carried out in such a manner that no particular individual, corporation, or other entity acquires an excessive share of the halibut fishing privileges. (section 773c(c)).

The "fair and equitable" provision in 16 U.S.C. 773c(c) quoted above is substantially the same as the "fair and equitable" provision found at 16 U.S.C. 1851(a)(4), i.e., National Standard 4 of the Magnuson-Stevens Act. The only difference is the addition of the word "halibut" before "fishing privileges" in the provision in 16 U.S.C. 773c(c). Because of this similarity, NMFS determined that use of regulations promulgated by NMFS as guidelines for the National Standard 4 would be helpful to illustrate why this action, even though it is taken under the Halibut Act and not the Magnuson-

Stevens Act, meets the statutory requirement.

Guidelines to National Standard 4 provide that an allocation of fishing privileges should be rationally connected to the achievement of optimum yield or the furtherance of a legitimate fishery management objective (50 CFR 600.325(c)(3)(i)(A)). The Council and NMFS have articulated a legitimate objective for this action, i.e., to limit the use of halibut by one sector that has grown significantly in proportion to the other sectors that harvest halibut.

Further, the guidelines to National Standard 4 acknowledge that inherent in an allocation is the advantaging of one group to the detriment of another. The motive for making a particular allocation should be justified in terms of fishery management objectives; otherwise, the disadvantaged user groups or individuals will suffer without cause (50 CFR 600.325(c)(3)(i)(A)). Here, the fishery management objective has been articulated by the Council and NMFS, starting with the 1995 problem statement by the Council and continuing through this final rule. The 1995 problem statement (as revised in the 2001 GHL analysis) demonstrates that the Council was concerned about the expansion of the halibut charter industry and how that expansion may affect "the Council's ability to maintain the stability, economic viability, and diversity of the halibut industry, the quality of the recreational experience, the access of subsistence users, and the socioeconomic well-being of the coastal communities dependent on the halibut resource." The Council went on to indicate six issues of particular concern, including the absence of limits on the annual harvest of halibut by the guided sector and the rapid growth in that sector, which amounted to an "open-ended reallocation from the commercial fishery to the charter industry."

To address the open-ended reallocation, the Council established a GHL, based on historic catches in that sector (125 percent of the average harvest from 1995 to 1999). The decision to make the GHL 125 percent of actual harvest would "allow for limited growth of the guided recreational fishery, but would effectively limit further growth at the (GHL) level" (68 FR 47256, 47259, column 2, August 8, 2003).

Under the fair and equitable requirement, the motive for making a particular allocation should be justified in terms of the objective. Hence, the legitimate objective is to limit the growth of one sector and the resulting

reallocation from other sectors that use the same finite resource. The GHL accomplished that objective by basing harvest limits on historic catches with some room for additional growth.

The development of this action, and the actions that preceded it, illustrate how the fair and equitable standard was met throughout the process. The Council articulated a legitimate objective and established an allocation consistent with that objective, allowing some growth of harvests by the guided recreational sector. This action implements management measures to give effect to that allocation. It should be understood that a fair and equitable allocation does not mean that all U.S. fishermen should be able to harvest equal amounts of the halibut resource. However, a legitimate objective is required and the means to achieve that objective must be reasonable. This action is consistent with those requirements.

Comment 75: The proposed rule is consistent with the fair and equitable clause of the Halibut Act. The guided charter fishery was given a fair and equitable GHL and allowing them (i.e., charter vessel anglers) to exceed it is unfair and inequitable to all other halibut harvesters. The original GHL allocation was fair and equitable for several reasons. It allowed for guided sector growth; the Council evaluated and balanced the needs of all halibut user groups; it is based on a long public record; and guided charter fishermen did not challenge the allocation when the GHL rule was published in 2003. Continuing to allow charter vessel anglers harvests to exceed the GHL is unfair and inequitable to other harvesters, including those who supported conservation through quota cuts.

Response: NMFS acknowledges the comment and agrees that this action is fair and equitable as required by the Halibut Act. Also see the response to Comment 74.

Comment 76: This action provides special benefits to the longline fishermen at the expense of the American public. Halibut is a public resource that belongs to all citizens of the United States, and public access should not be restricted to benefit commercial fishermen. The proposed rule would give poundage back to the commercial fleet and cut the guided sport catch, which discriminates against recreational fishermen. This violates the fair and equitable terms in the Halibut Act, Magnuson-Stevens Act, and other statutes. The Magnuson-Stevens Act clearly indicates that holders of halibut IFQ do not hold ownership or property

rights. The citizenry is endowed with priority access to natural resources, yet this action reduces the non-commercial catch privilege by 50 percent in favor of the commercial sector.

Response: NMFS disagrees with the commenter's assertion that this action disproportionately benefits the commercial setline fishery. The halibut catch limit for Area 2C commercial fishermen is reduced by about 19 percent from 2008 to 2009 and has decreased by 54 percent between 2005 and 2009. During the comparable period of 2005 through 2008, the guided fishery harvest in Area 2C has remained high, exceeding its GHL by about 32 percent (compare Figures 1 and 2 above). See the response to Comment 74 with regard to fairness and equity.

Comment 77: All Alaskans share the halibut resource and all have equal rights to it. Many commercial boats are not from Alaska.

Response: Federal law prohibits NMFS from discriminating between residents of different states when implementing halibut fishery regulations that are applicable to nationals or vessels of the United States. Also see the responses to Comments 76 and 82.

Comment 78: There is a commercial bias in the IPHC and Council. The IPHC and Council have supported growth in commercial harvest while stifling the guided sector. The guided charter vessel owners do not have representation in these bodies; therefore, all decisions tend to favor the commercial sector. This creates concerns about the fair and equitable allocation of fishing privileges, and as a result, the commercial sector was allocated an excessive share of the halibut resource. This is inconsistent with the Magnuson-Stevens Act, the Halibut Act, and the Alaska Constitution. The Secretary of Commerce needs to address the question of whether or not the membership of the Council is "fair and balanced" in accordance with the Magnuson-Stevens Act. Guided charter vessel operators will not accept regulations that come from the Council or NMFS until they have a meaningful way to determine a "fair and equitable" allocation with "fair and balanced" representation.

Response: This action is being taken by NMFS based on a recommendation by the Council. Actions by the IPHC are evaluated and approved under a different process.

The process for selecting Council members is set in statute and employs mechanisms to assure representation of the various states represented on the Council and fair and balanced

apportionment to the extent practicable. The Council makes decisions through a transparent and public process, and in a manner that is consistent with the requirements of the relevant statutes.

The Council has the authority to develop regulations to address allocation issues among different domestic sector users of halibut off Alaska, including the commercial and guided sport fisheries. In 1998 the Council initiated a public process to identify GHL management options and formed a GHL committee including representatives from the guided industry. The Council has continued to use this committee to develop long-term management recommendations that promote harvest stability between the commercial and guided sport fishery sectors. The Council has used the recommendations from this committee to formulate its GHL management options. Furthermore, NMFS reviews all Council regulations for consistency with the Halibut Act, the Convention, and other applicable law. This final rule does not unfairly favor any sector over any other.

Comment 79: The combination of SUFD and GHL policy has resulted in an annual *de facto* reallocation to the commercial sector solely to the economic benefit of the longline fleet with no consideration of fairness or equity for other users. The stair-step provisions of the GHL are compromised by three distinct non-scientific IPHC policies that directly result in an increased allocation to the commercial fishery: (1) The "fast down" policy sets a commercial harvest level in excess of the Fishery CEY in times when biomass is decreasing, which in turn triggers the lowering of the GHL; (2) the substitution of the GHL for the best estimate of guided sport fishery harvest instead of a more realistic harvest estimate inflates the Fishery CEY and the subsequent overharvest of Total CEY by the same amount; and (3) the IPHC catch decisions can differ from IPHC staff recommendations for political reasons and have resulted in allocation schemes that allocate millions of pounds of fish in excess of the Fishery CEY to commercial fishermen at the expense of the GHL in following years.

Response: The policies followed by the IPHC in setting annual commercial catch limits are beyond the scope of this action. However, although different approaches for projecting halibut mortality in different sectors could be used when setting annual catch limits, the IPHC's approach accounts for total mortality of halibut in a manner that conserves the halibut resource.

The response to Comment 4 discusses the SUFD management policy and why this policy is not necessarily advantageous to the commercial sector. See also the response to Comment 3 for why the IPHC adopted the GHL as its projection of the guided sport harvest in response to a commitment by NMFS to implement the one-fish bag limit for 2008 and again in 2009. Finally, the response to Comment 5 addresses the IPHC's rationale for deviating from its staff recommendations for Area 2C fishery CEY while managing the halibut resource area-wide in a manner intended to meet overall objectives for resource exploitation rates.

Comment 80: This action discriminates inappropriately between guided and unguided sport fishermen. Sport fishermen without their own boats, who choose to fish from charter vessels, would be penalized, especially those who because of residence, age, physical ability, or financial limits cannot operate or buy their own boat. Unguided anglers would still have the two-fish daily limit. This violates equal access and equal protection rights. All recreational anglers should be treated equally and be subject to the same regulations.

Response: NMFS disagrees that this action inappropriately discriminates between guided and unguided anglers. The problem the Council and NMFS are addressing was the growth of the guided recreational sector compared to other halibut user groups. According to the analysis, participation and harvest levels for the unguided recreational sector has remained relatively steady, while participation and harvest levels for the guided recreational sector has increased to a level that prompted action by the Council and NMFS. The Council articulated the objective of limiting the guided recreational sector, which by its growth was affecting other user groups that historically utilized the halibut resource. The Council established an allocation level consistent with that objective, i.e., the GHL. The one-fish daily bag limit was determined by NMFS to be a reasonable means to achieve the objective of limiting the guided recreational sector to approximately the GHL established for that sector.

Comment 81: The proposed action does not discriminate inappropriately between guided and unguided sport fishermen. A charter vessel angler receives the benefit of the guide's knowledge and skill, which provides a higher harvest success rate. In addition, when the GHL was adopted, the guided sport sector was growing, while other sport sectors remained stable.

Response: NMFS agrees. NMFS also notes that the guided sport harvest in Area 2C grew every year from 1999 to 2005. During that time the non-guided sport harvest fluctuated from year to year, not showing any strong increasing trend. In 2006 and 2007, the guided sport harvest was slightly down from its 2005 peak but remained high and substantially above the GHL, while the non-guided sport harvest grew slightly but stayed within its 1999 through 2005 range. Therefore, self-guided angler harvest is not restricted by this action. It is the increase in halibut harvest by the guided industry that prompted the Council and NMFS to propose controls on the Area 2C charter vessel angler harvest consistent with the Halibut Act.

Comment 82: The proposed rule discriminates between residents of different states. The supplementary information states, "In Area 2C, the sport fishery is comprised of guided fishing on charter vessels and unguided angling. Residents of Southeast Alaska and their family and friends are the primary unguided anglers, while non-resident tourists are the main clients for guided fishing on charter vessels." From this passage, it is clear that the rule is primarily intended to restrict non-resident tourists while not restricting Southeast Alaska residents and their family and friends. This is in direct violation of the Halibut Act, which states it is illegal to differentiate between users from different states.

Response: Regulations established by this action apply to all charter vessel anglers, regardless of their state of residency. See the response to Comment 80. NMFS did not propose to limit halibut harvests by non-guided sport and subsistence fisheries, or halibut mortality from bycatch and wastage in commercial fisheries because the analysis (see **ADDRESSES**) indicated that removals from categories other than the guided sport sector have remained relatively stable during the past five years and have not grown at the rate of the guided fishery. It is this information that originally prompted the Council to recommend restrictions in 2007 to limit Area 2C charter vessel angler harvest, and prompted NMFS to take this action.

Comment 83: The prohibition of captain and crew fishing unfairly discriminates against the sport fishing rights of these individuals and may not comply with the non-discrimination clause in the Halibut Act. The prohibition is not justified because skipper and crew harvest was not included in the GHL allocation. Captain and crew members are required to have a current fishing license while they are on the vessel, and their catch should be

considered unguided sport harvest and limited to two halibut per day. Captain and crew are simply trying to minimize the costs of fuel and use of their time by combining personal use fishing with their charter trips, rather than making a separate trip for their recreational limit. Many captain and crew depend on halibut for food at home and should not be penalized for trying to gather halibut in an efficient manner.

Response: NMFS disagrees. The Council and NMFS, working with stakeholders, approved a prohibition on the catch and retention of halibut by charter vessel guides, operators, and crew as a preferred first tool for restricting harvest in the guided fishery. The Council intended that the GHL include halibut harvested by captain and crew. The ADF&G estimated that its prohibition on crew-caught fish reduced halibut harvest in the guided sport fishery by between 78,000 lbs and 84,000 lbs in 2006.

Captains, guides, and crew are on guided charter vessels in their commercial capacity to operate the charter vessel and to direct charter vessel anglers on fishing expeditions, and their commercial status is fundamentally different from other individuals doing non-guided sport fishing. Also, their ability to retain one or two halibut could disguise the retention of halibut in excess of the bag limit applicable to charter vessel anglers. Preventing this potential circumvention of daily bag limits is a rational means of achieving the objective of NMFS for this action.

NMFS acknowledges that the prohibition on retention of halibut by charter vessel guides, operators, and crew could lead to higher costs for these individuals to harvest halibut for their personal use. Requiring a separate fishing trip for this purpose, however, does not make fishing any more expensive than it is for any other individual engaged in recreational fishing. Also see the response to Comment 57.

Comment 84: This action will have an unfair economic burden on lodges, hotels, B&Bs and charter operators that offer full day or multi-day trips. The number of cruise ship visitors to Alaska has grown over the last 10 years. Many of these cruise visitors take half-day charters and have significantly contributed to the increase in halibut catch over that time period. Therefore, the economic burden of this rule will be borne unfairly by those businesses that depend on full day or multi-day charter trips.

Response: The analysis (see **ADDRESSES**) indicates that the segment

of the charter industry that caters to cruise ship tourists will not be impacted by changes to the daily bag limit to the same extent as the lodge-based guided charter businesses. Tourists on the four-hour charter fishing trips associated with cruise ships often do not have enough time to harvest two halibut. Tourists coming to communities on cruise ships and choosing to take a charter trip for halibut will likely continue to do so and businesses that cater to these tourists will continue to benefit from their visits.

NMFS acknowledges that independent or repeat tourists who take multi-day vacations at lodges within Area 2C may consider the reduced halibut bag limit in their decision to book a vacation, along with considerations for alternative fishing or tourist opportunities. The potential impact on bookings and demands for tourist activities is discussed in the analysis supporting this final rule, but quantitative estimates of how such impacts will influence demand for these services and commensurate impacts on local communities are unavailable. Other than acknowledging the potential for lost business, NMFS cannot quantify the probability or extent to which this might occur.

Comment 85: The commercial fishery benefits a few participants, and the recreational fishery spreads benefits more broadly. This action represents the big commercial interests trying to drive out the smaller guided charter operators.

Response: NMFS disagrees that the recreational fishery necessarily has more beneficiaries than the commercial fishery. In addition to commercial fishermen, the commercial fishery benefits persons working in the processing, transport, wholesale and retail industries, and ultimately the large number of persons who buy halibut in grocery stores or restaurants. Businesses that serve commercial fishermen in communities in which the commercial halibut fishing industry is based also are beneficiaries. Of course, there are also many beneficiaries of the guided sport fishing industry other than the charter vessel anglers. However, claims that the guided industry or the commercial fishing industry has more or less beneficiaries than the other misses the objective of this action, which is explained above under "Objective of this action." Regarding the relative size of commercial interests in the guided and commercial fishing industries, NMFS observes that both industries have large and small operations and both industries participate in Council meetings.

Comment 86: The timing of this action is unfair to sport fishermen and guided businesses. It is unfair to those who have already made reservations or paid nonrefundable deposits for 2009. The timing is also unfair to those recreational fishermen considering whether to make advance reservations; many are leery of planning a trip when the season bag limits are uncertain. Finally, this is unfair to guided businesses dependent on long reservation lead times, which are often made two years in advance.

Response: NMFS acknowledges that a change in guided sport fishing regulations can be disruptive at any time of the year and may cause some charter vessel anglers to reconsider bookings. However, information about the potential for this action has been available since June 2007 when Council action indicated a potential for a one-halibut daily bag limit for charter vessel anglers in 2008. A final rule was published to implement this requirement in 2008 (73 FR 30504, May 28, 2008), but NMFS withdrew this final rule in response to a court order (73 FR 52795, September 11, 2008). This action to implement a reduced daily bag limit in 2009 was proposed on December 22, 2008 (73 FR 78276), and invited public comments until January 21, 2009. Most recently, a notice of the GHL that resulted from the 2009 IPHC annual meeting was published on February 24, 2009 (74 FR 8232) announced a reduction in the GHL for Area 2C to 788,000 lbs (357.4 mt), a further indication that some limit on the harvest of halibut by charter vessel anglers would be likely. NMFS took action to inform the public and the guided sport industry about the proposed regulation changes as soon as possible through an information bulletin and a press release published on its Web site. Hence, sport fishermen and guided businesses have had nearly two years to become informed and prepare for the potential of this action.

Comment 87: The burden of conservation cutbacks should fall on the commercial fishermen. Recreational fishermen take a very small percentage of halibut compared to the commercial fleet. Individual commercial boats can take large amounts of fish at one time compared to individual anglers with a single hook. Reducing commercial harvests to accommodate the two-fish guided sport bag limit would impose a small burden on individual longliners in terms of lost average harvest. Commercial fishing has a significant impact on the ecosystem and on food supplies for wildlife. In addition, the amount of halibut "bycatch and

wastage" by the commercial fleet is greater than the total amount of recreational catch. Sport anglers have a smaller environmental impact. If there is a conservation concern, NMFS should impose more restrictions on commercial catch, such as reduced harvest limits or better bycatch controls.

Response: The burden of conservation cutbacks appears to have fallen primarily on commercial fishermen. Between 2005 and 2009, the commercial catch limit has been reduced by about 54 percent. Between 2005 and 2008, however, the guided sport harvest was relatively high and steady (see Figures 1 and 2). NMFS agrees that the commercial fishery removes more halibut than the recreational fishery, but disagrees that the recreational harvest of halibut in Area 2C is a very small percentage. The best available estimates of 2008 removals indicate that the commercial fishery took 59.2 percent of the total halibut harvest in Area 2C while guided and unguided sport fisheries took 29.7 percent (IPHC 2009 annual meeting "blue book" Table 1). Based on this information, the combined commercial and sport harvest removed 88.9 of the total halibut removals in Area 2C during 2008 leaving all other sources of halibut mortality (i.e., subsistence, bycatch, wastage, and research) to account for about 11 percent of total halibut removals. Looking only at the proportions of the commercial and sport harvests combined, the commercial sector took about two-thirds and the sport sector took about one third of the combined harvest in Area 2C during 2008. Hence, the sport harvest of halibut in Area 2C is not trivial. Estimates of sport harvests of halibut in this area during the four-year period 2004 through 2007 indicate that charter vessel anglers took an average of two thirds of the total sport harvest annually.

The commercial fishery for halibut, although larger than the sport fishery in Area 2C, is governed by an annual catch limit. The catch limit is distributed among commercial fishermen under the IFQ program. Fishing must stop when each fisherman reaches the limit of his or her IFQ, thus assuring that the commercial catch limit is not exceeded. By contrast, the sport fisheries are governed primarily by daily bag and gear limitations, but are not required to stop fishing when an overall annual limit is reached. An overall annual catch limit for the sport fisheries in Area 2C similar to the commercial catch limit was not considered as an alternative to this action because further restrictions on halibut mortality in the non-guided

sport fishery, the subsistence fishery, or on bycatch and wastage in the commercial fisheries were not considered as an alternative to this action and because harvest estimates indicate that halibut removals from these categories have remained relatively stable during the since 1999 and have not grown at the rate of the guided sport fishery.

In implementing the reduced daily bag limit for the guided sport fishery, NMFS has considered conservation and management objectives for this resource that have been reflected in the recommendations by the Council and management decisions by the IPHC. Hence, this final rule is objective and necessary to reduce the harvest of halibut in the guided sport fishery to address conservation concerns expressed by the IPHC and the competition for the halibut resource between the commercial and guided fisheries.

Comment 88: This action is inconsistent with the requirements of the Americans with Disabilities Act.

Response: NMFS disagrees. This rule is not inconsistent with the Americans with Disabilities Act because physical access to guided sport fishing opportunities is not the subject of this action. This final rule is designed to reduce the harvest of halibut in the guided sport fishery to approximately the GHL to address conservation and allocation problems. Recreational anglers who could be physically accommodated as a charter vessel angler under the former regulations may be similarly accommodated under this action. This final rule does not discriminate based on physical ability.

Comment 89: Guided charter fishing is a recreational fishery. A sport fisherman with a valid sport fishing license catches the fish, not the charter operator.

Response: NMFS agrees. Also see response to Comment 92.

Comment 90: It is unfair for commercial halibut fishermen to make sacrifices for conservation when guided sport fishermen do not. All user groups must bear the economic burden of managing the halibut fishery in a way that is fair and sustainable. Retrospective analysis shows that the IPHC has been overestimating abundance for the last four years and halibut harvest should be reduced. The commercial harvests of halibut were reduced in Area 2C over the past three years to address the long-term sustainability of the resource, which resulted in significant reductions in income for commercial fishermen. The guided sport fishery also must reduce its

halibut harvest. Implementing the one-halibut daily limit for Area 2C is essential for rebuilding the halibut stocks and addresses the continued overharvest of the halibut resource by charter vessel anglers.

Response: NMFS agrees that implementing the one-halibut daily bag limit for the guided sport fishery, as well as managing other sectors consistent with conservation principles, is essential to proper management of the halibut resource. The reduction in the 2009 Area 2C Total CEY will be shared by the commercial fishery, through the reduction in the Fishery CEY, and by the charter vessel fishery, through the reduction of the GHL to 788,000 lbs (357.4 mt). This reduction in the GHL is not a part of this action, but is a consequence of the GHL rule promulgated on August 8, 2003 (68 FR 47256).

Comment 91: Increased guided charter effort and concentration have caused local depletion in some areas, which reduces the availability of halibut and decreases catch rates for subsistence and unguided sport fishermen. In Alaska, subsistence harvest has priority over all other uses. The lack of charter regulation has violated that priority, imposing impacts that are unfair, inequitable, and legally suspect. Subsistence is not only culturally important in Alaska; it is an economic imperative for many residents, particularly native residents who have an extensive history of depending on cultural and traditional foods. Because charter vessel angler harvest is concentrated near towns to accommodate day anglers, allowing this harvest disproportionate to halibut abundance is directly and immediately causing irreparable harm to subsistence residents of rural communities throughout Southeast Alaska. In times of low halibut abundance in Area 2C, halibut should be allotted to residents with subsistence needs. The majority of Alaska's subsistence halibut harvest occurs in Area 2C, and it is unfair for the guided sector overages to negatively impact residents of local communities who rely on halibut for food.

Response: NMFS is implementing management measures in the final rule to achieve the objective of this action (see "Objective of this action" above). The extent to which a one-halibut daily bag limit will reduce the guided sport harvest depends on numerous factors, including the possibility that current economic conditions will limit the amount of disposable income that potential anglers will choose to spend on a charter vessel fishing trip and the costs of alternative fishing trips.

NMFS agrees that subsistence fishing in Alaska is culturally important. As explained in the response to Comment 65, NMFS does not have scientific information indicating localized depletion of halibut. Addressing localized depletion is not the purpose of this action.

Comment 92: Guided charter fishing is not a recreational fishery. Charter operators receive income based on use of the halibut resource. In addition, the volume of charter vessel anglers and the amount of fish they catch and take with them, along with a lack of catch and release behavior, qualify the charter sector for commercial status.

Response: Charter vessel anglers are recreational fishermen. Charter vessel operators run commercial businesses. These terms are defined in this action.

Comment 93: Commercial setline fishermen provide the Alaskan and American public with millions of meals yearly that are available in restaurants, supermarkets, and fish markets. This is the only access to halibut for most consumers, unless they can afford an expensive trip to Alaska to catch their own.

Response: NMFS acknowledges the comment although a sport fishing trip in Alaska (e.g., in Area 2C) may or may not be considered expensive by the angler, depending on individual circumstances.

Comment 94: Charter vessel anglers are highly motivated to take home large quantities of halibut, usually at least two 50-lb boxes of filleted halibut or more per angler. After taking four large fillets off each fish, the carcasses are dumped overboard, with considerable wastage of fish meat, including all the belly meat. Many people in our community are upset about the waste, greed, and the depletion of the halibut stock in our area.

Response: The purpose of this action is to limit the harvest of halibut by charter vessel anglers in Area 2C. It is not intended to control what anglers choose to do with legally harvested halibut, how they butcher their halibut, or whether they choose to keep or give away the meat. During the past few years, charter vessel anglers have been required to retain carcasses until an angler leaves the vessel at the end of a trip so that angler compliance with halibut size limits can be monitored and enforced. This final rule removes the size restriction on halibut, so carcasses no longer must be retained until the guided charter vessel reaches port.

Comment 95: Commercial fishermen should not profit from leasing their halibut quota to others and never setting foot on a boat. If commercial fishermen

transfer their halibut quota for any reason, they should lose their permit.

Response: This action makes no change to rules concerning the transfer of halibut IFQ or quota share. No such changes were proposed and are beyond the scope of this action. However, the Council has recommended a program that would allow commercial IFQ holders to lease some IFQ poundage to guided charter business owners. This proposed program will be the subject of a future proposed rule for public comment.

Alternative Management Measures

Comment 96: It is important to keep the guided charter bag limit at two fish per day. Some respondents to a survey of charter vessel anglers proposed increasing the bag limit to three or five halibut per day, while others submitted that there should be no bag limit at all.

Response: The analysis (see **ADDRESSES**) indicates that a two-halibut daily bag limit for charter vessel anglers would not be sufficient to meet the objective of the action (see "Objective of this action" above). Daily bag limits higher than two halibut per day could result in total halibut harvests by charter vessel anglers that are larger than recent harvests which have been substantially in excess of the GHL in Area 2C. Hence, a higher daily bag limit would not accomplish the objective of this action.

Comment 97: Better data and additional monitoring and enforcement measures are needed for the guided charter fishery. NMFS should adopt the National Research Council's recommendation that recreational fisheries need to be managed more like the commercial sector in terms of survey and reporting requirements. Management agencies need better survey, reporting, and in-season monitoring information for the guided charter fleet. Guided charter operators should record real-time harvest either with cameras on board their vessels or on a punch ticket to improve the precision of catch estimates. All guided charter halibut should be weighed and logbooks checked at the dock to ensure they are not taking more than their limit. NMFS should also check boxes that are shipped from lodges to anglers to ensure that anglers are in compliance with regulations, just as commercial shipments are checked.

Response: Significant effort is being made to improve reporting. ADF&G has made numerous changes to its logbook program in recent years. For example, ADF&G has conducted dockside checks and post-season charter vessel angler verifications to validate logbook data. In addition, NMFS has coordinated with

ADF&G to establish new logbook requirements that will further validate halibut harvest information recorded in the State's Saltwater Sport Fishing Charter Trip Logbook, including requiring the signatures of anglers to verify that the number of halibut caught and recorded is accurate. ADF&G supports this requirement as it will lead to more reliable logbook data and more accurate estimates of guided charter halibut harvest. Enhanced recordkeeping and reporting, together with ongoing monitoring and enforcement by state and federal enforcement personnel as time and resources allow will serve as a deterrent to large scale violations of sport fish regulations. NMFS has been exploring the possible use of electronic monitoring of small vessels. See the response to Comment 122.

Comment 98: Reduce halibut harvest in the commercial sector by buying back IFQ from Areas 2C and 3A when it comes available on the market. Government agencies should fund this reallocation. For example, the State of Alaska could purchase IFQ to take it off the market and reduce the amount of commercial harvest.

Response: Government purchasing commercial quota share or IFQ was not proposed and would not address the objective of this action (see "Objectives of this action" above).

Comment 99: Implement a charter IFQ program. If charter IFQs had been implemented at the time they were proposed in 1993, the rapid growth of the guided charter fleet would have been controlled.

Response: The Council adopted a recommendation in 2001 to include the guided sport fishery in the existing IFQ system. In 2005, however, on request from NMFS, the Council failed to confirm its 2001 decision. The proposed rule for the charter IFQ program was never published as a consequence. If an effective IFQ program had been implemented, NMFS agrees that the current allocation problems between the commercial and guided sectors might have been easier to resolve.

Comment 100: Any plan to limit charter harvest should include a requirement that they pay back their overages for the last few years.

Response: This final rule is intended to reduce the guided sport harvest in Area 2C. The GHL for this area was designed to serve as a benchmark or harvest policy target and not as a "hard cap" or firm catch limit that can not be exceeded. Harvests above or below the GHL could occur because the management measures used are not so finely tuned that they can control

guided sport harvests precisely to a specific point. Amounts of harvest in excess of the GHL can not be attributed as a violation to a person who legally harvested halibut in the guided sport fishery under the regulations that existed at that time.

Comment 101: Delay implementation of the one-fish bag limit.

Response: NMFS disagrees. The GHL has been exceeded in Area 2C every year since 2004. Delaying the one-halibut daily bag limit would not achieve the policy objective of the Council and NMFS to limit the guided sport halibut harvest to approximately the GHL. The one-fish bag limit will reduce the harvest of charter vessel anglers to a range of 1,495,000 lbs (678.1 mt) to 602,000 lbs (273.1 mt) and was the only management option that could reduce guided sport harvest consistent with the objective of this action.

Comment 102: Guided charter anglers should not have to lease Guided Angler Fish from the commercial fleet to catch more than one halibut per day.

Response: The concept of Guided Angler Fish is associated with the Council's proposed Catch Sharing Plan. This was not proposed and is not part of this action. NMFS is assisting the Council to develop regulations that may implement the proposed Catch Sharing Plan if it is approved. A proposed rule for the Catch Sharing Plan, including the Guided Angler Fish concept, likely will be published in the future for public comment.

Comment 103: Adopt female catch and release.

Response: This comment presumes that large halibut generally are females that contribute disproportionately to the reproductive potential of the stock, and that harvest of these females will substantially decrease juvenile halibut abundance. In 1999, the IPHC reviewed options for a maximum size limit of 60 inches (150 cm) in the commercial fishery and concluded, based on the research at the time, that it did not add substantial production to the stock. Applying the limit to the sport fishery would have an even smaller benefit (if any) because the sport fishery harvest is smaller than commercial harvest, and it would apply only to Area 2C. The halibut stock is managed as a single population throughout its entire range. See also the response to Comment 64.

Comment 104: Consider in-season closures in the event of charter overages.

Response: At this time, charter vessel angler harvest data do not become available to NMFS in a timely manner that would permit this regulatory approach. Moreover, the Council stated its intent that guided sport harvests in

excess of the GHL should not lead to mid-season closure of the fishery because such closures would be disruptive to guided operations and anglers who booked a charter fishing trip after the date on which the fishery was closed. The potential for in-season closures for guided charter anglers would likely discourage anglers from booking charter vessel fishing trips in advance.

Comment 105: NMFS should keep the carcass retention provisions. This requirement, implemented in 2007, has greatly improved data quality, and the need for fish to cross the dock for enforcement. Carcass retention is also necessary to implement size restrictions, which should be implemented in conjunction with the one-fish limit, to restrict the guided harvest to the GHL.

Response: In 2007, NMFS implemented a size limit in Area 2C on one of the two halibut that could be harvested under the two-fish daily bag limit at that time. To help enforce this size limit, NMFS prohibited mutilating or otherwise disfiguring a halibut carcass such that the head-on length could not be determined. This requirement to retain carcasses is no longer necessary with a one-halibut daily bag limit and no size limit. This action requires only an ability to count the number of halibut retained by a charter vessel angler. Hence, IPHC regulations in the annual management measures published March 19, 2009 (74 FR 11681) prohibit the possession of halibut “* * * that has been filleted, mutilated, or otherwise disfigured in any manner except that each halibut may be cut into no more than 2 ventral pieces, 2 dorsal pieces, and 2 cheek pieces, with skin on all pieces” (section 28). This allows sport fishermen to butcher their halibut before returning to port while improving the enforcement officers’ ability to count the number of fish in possession by an angler. Discussion of the need for a size limit is deferred to the responses to Comments 64 and 110.

NMFS agrees that carcass retention facilitates enforcement and more accurate data collection, but it is burdensome to guide operators given that this action does not include a size limit on retained halibut. Guide operators have expressed concerns about disposal of carcasses at ports, time constraints, the diminished meat quality of fish that are not processed immediately, and limited storage space onboard some vessels.

Comment 106: Limit entry into the guided charter fishery rather than the number of fish they may catch.

Response: In March 2007, the Council adopted a recommendation to implement a moratorium on entry into the guided sport halibut fisheries in Areas 2C and 3A. The proposed moratorium program is a limited entry program. The April 2007 Council newsletter provides an overview of the proposed program. A proposed rule and solicitation for public comment on the recommended limited access proposal was published on April 21, 2009 (74 FR 18178). NMFS expects that, if approved, the limited entry program would complement but not substitute for the harvest controls implemented by this action.

Comment 107: The one-fish bag limit for halibut could shift guided charter fishing effort to other groundfish species such as lingcod and red snapper. NMFS should monitor these fisheries if the rule is implemented.

Response: NMFS acknowledges that this action may cause some charter vessel businesses to modify their operations to supplement fishing experiences for their anglers. The analysis (see **ADDRESSES**) reviewed the potential impacts on other species, such as salmon or rockfish, and found no significant impacts on those resources. Sport fishing for these stocks currently is managed by the State of Alaska. An increase in the sport harvest of these species may lead to increased allocation problems between sport and commercial sectors. However, any such allocation problems that may occur because of this action would be resolved by state and federal governments to maintain sustainable stocks.

Comment 108: Relax minimum size and bag limit restrictions on lingcod caught in the recreational fishery.

Response: The State of Alaska, not NMFS, currently manages lingcod fisheries and has established seasons, size, possession, and annual limits for sport lingcod fisheries. Also, the suggested change in restrictions on sport fishing for lingcod is beyond the scope of this action, which is to restrict guided sport halibut harvests in Area 2C.

Comment 109: Rather than impose substantial economic hardship and further litigation on the guided charter sector, NMFS should withdraw the one-fish daily limit rule and focus its efforts on establishing a long-term, fair, and equitable solution to the issue of allocation among recreational anglers (both guided and unguided), subsistence users, and commercial halibut fishermen. Develop a stable, long-term management plan for the guided charter sector.

Response: This action is complementary to long-term

management of the guided sport halibut fishery. The Council has adopted a limited access system for this fishery and a Catch Sharing Plan to promote the stable, long-term management of the halibut fisheries. Consistent with approved Council policy, this action is necessary to manage the halibut harvest of the guided sport fishery to the GHL until a different allocation system is proposed, approved, and implemented. NMFS acknowledges that this will impose costs on certain charter businesses. The analysis (see **ADDRESSES**) supporting this action addresses these costs.

Comment 110: The one-fish daily limit rule may not adequately control harvest to the GHL and additional measures may be necessary. NMFS should also implement a maximum size limit on the retained halibut for guided charter anglers.

Response: The analysis (see **ADDRESSES**) provides a range for the potential harvest reduction that the one-fish bag limit may realize. The analysis notes that even in the absence of the current uncertain economic climate, a reduction in demand may result from the one-halibut daily bag limit. NMFS does not have information that will allow it to select an estimate of the likely reduction in demand, which is why a range of potential reductions is provided. For future regulatory actions, consideration of size restrictions or other controls may be necessary. The Council considered minimum size limits of 45 and 50 inches on a second fish (assuming a two-fish bag limit). A key reason why the Council rejected alternatives with minimum size limits was the difficulty in measuring larger fish. Also see the response to Comment 115.

This action imposes additional restrictions to the one-halibut daily bag limit to achieve the objective of this action (see “Objective of this action” above). This action prohibits harvest by the vessel’s guide, operator, and crew members during a guided sport fishing trip for halibut and limits the number of lines that could be fished to the number of charter vessel anglers onboard the vessel or six, whichever is less. See the response to Comment 57 for more details.

Comment 111: Develop a Catch Sharing Plan for Area 2C. The plan should include a mechanism for guided charter anglers to lease IFQ from the commercial fleet so commercial fishermen are compensated for any reallocation between the sectors.

Response: The Council took final action on a Catch Sharing Plan in October 2008. The plan includes a

Guided Angler Fish provision that allows for the transfer of halibut IFQ pounds to fish that may be harvested by charter vessel anglers. The details of the Guided Angler Fish provision will be explained in a proposed rule for the Catch Sharing Plan, which currently is under development. That proposed rule will allow additional public comment on the Catch Sharing Plan and its Guided Angler Fish proposal.

Comment 112: Do not impose annual halibut limits on guided charter anglers.

Response: The Council and NMFS considered but did not choose to include an annual limit as a recommended management measure for this action.

Comment 113: Impose an annual limit on numbers or pounds of fish taken by guided charter anglers rather than a daily limit.

Response: NMFS has reviewed the potential for annual catch limits of four, five, and six fish, alone and in combination with other measures. Annual catch limits create an additional monitoring burden, and in comparison to this action, were not as effective in achieving the objectives of this action. An annual limit on the pounds of halibut retained by charter vessel anglers is similar to an annual limit on numbers halibut retained and it would have similar effects.

Comment 114: Eliminate carcass retention provisions or skin-on requirements.

Response: This action removes the previous requirement to retain halibut carcasses. The previous carcass retention requirement was necessary to enforce the previous maximum size limit on one of two halibut retained by charter vessel anglers. Substitution of this size limit by the one-halibut daily bag limit removes the need for the size limit, and therefore the need to retain halibut carcasses. Current IPHC regulations (at section 28(2)) published March 19, 2009 (74 FR 11681) prohibit the possession on board a vessel of halibut that has been filleted, mutilated, or otherwise disfigured in any manner except that each halibut may be cut into no more than two ventral pieces, two dorsal pieces, and two cheek pieces, with skin on all pieces. See also the response to comment 105.

Comment 115: Adopt a slot limit based on size or weight, such as a poundage limit between 20 and 80 lbs. Large numbers of small halibut are taken by sport fishers coming to Alaska, and this harvest reduces recruitment. The safety concerns from measuring large fish could be addressed with a pre-measured mark on the hull of the vessel

and the fish could be measured without bringing them on board.

Response: The purpose of this action is to limit the harvest of halibut by charter vessel anglers in Area 2C. Restrictions on the size or weight of halibut retained by charter vessel anglers would not achieve this purpose without other harvest constraints. The analysis developed by the Council in support of its June 2007 recommendation for a one-halibut daily bag limit considered halibut slot limits. These slot limits were rejected because they potentially could result in an increased harvest, and with other options, they could increase monitoring and enforcement costs beyond what is necessary to achieve the objective of this action. Minimum size limits of 45 or 50 inches in length were rejected in part because of the difficulty in measuring and releasing large fish without injuring them. Also, safety concerns were raised for charter vessel anglers and crew when attempting to measure large muscular fish. Moreover, the previous maximum size limit has not been effective in reducing the halibut harvest of charter vessel anglers. To minimize the burden on the guided charter fishery, NMFS implemented a 32-inch maximum size on one fish in 2007, without apparent effect on guided harvests. The Council and NMFS have looked at the potential efficacy of a large number of alternative restrictions and none appear to be able to achieve the objectives of this action.

Comment 116: The bag limit should be the same for the entire Alaska and British Columbia coastline so that no one area is more desirable than another to anglers. This would prevent overharvest in other regions if guided sport fishermen substitute other areas for Area 2C. It will also reduce the incentive for Area 2C fishermen to leave Area 2C for those other areas and help protect the Area 2C economy.

Response: This action responds to concerns that are specific to Area 2C. The harvest of halibut by charter vessel anglers in Area 2C has substantially exceeded the annual GHL for this area each year since 2004. Conversely, the harvest of halibut by charter vessel anglers in other areas off Alaska has not posed the level of management concern that warrants restriction at this time.

NMFS recognizes that different restrictions for the guided sector in different IPHC regulatory areas off Alaska and British Columbia may influence where charter vessel anglers choose to fish. However, applying different regulations and bag limits to different areas to respond to management needs specific to those

areas is a common practice in fishery management. Although a one-halibut daily bag limit in Area 2C may change the demand for guided charter trips if anglers are unwilling to substitute other species, as noted in response to Comment 53, charter vessel anglers traveling by cruise ship may show little inclination to change their behavior.

NMFS lacks authority to manage halibut fisheries in British Columbia. NMFS notes that in 2009, the recreational fishery in British Columbia will open its season with a one-halibut daily bag limit. This may be increased to a two-halibut daily bag limit later in the season, depending on recreational harvest levels.

Comment 117: The rule needs a sunset provision. Without it, the rule may continue well beyond 2009 and NMFS will not have a mechanism to rescind the one-fish bag limit in a timely manner when other long-term management measures are developed for the guided charter sector.

Response: NMFS disagrees that the rule needs a sunset provision. Although proposed rules are being developed for a limited access system for guided sport businesses and a Catch Sharing Plan, fishing under these proposed new programs, if approved, likely will not occur before 2010 or 2011, respectively. NMFS may rescind or change this action in subsequent rulemaking if necessary. In the interim, the proposed action is needed to restrict the halibut harvest of guided sector to approximately the GHL until these long-term management measures are implemented.

Comment 118: Adopt the Charter Halibut Task Force proposal.

Response: The Charter Halibut Task Force proposal, as presented to the Council in October 2008, would adopt a coastwide halibut spawning biomass of 225,000,000 lbs (102,059.3 mt) as a threshold. When the halibut biomass is above this threshold, the daily bag limit would be two halibut for guided and unguided sport fishermen alike. When the biomass is below that threshold, the daily sport bag limit would be one halibut. This proposal was advanced at the Council meeting as an alternative to the Catch Sharing Plan. The Council did not endorse this proposal. Implementing the Charter Halibut Task Force proposal is beyond the scope of this action, which is to limit the guided sport fishery harvest to the GHL adopted for that harvest by the Council and NMFS.

Comment 119: A two-fish bag limit with a 32-inch maximum size limit on one of the fish will not have a positive effect on halibut stocks.

Response: NMFS agrees that the previous bag limit and size limit

combination will not achieve the objective. NMFS implemented this combination first in 2007 as an alternative to a seasonal one-halibut daily bag limit. The combination bag and size limit was expected to have a comparable effect as the seasonal one-halibut daily bag limit in reducing the guided sport fishery harvest. Instead, the guided sport harvest in Area 2C actually increased in 2007 under this combination rule relative to 2006. The GHF in Area 2C in 2007 was 1,432,000 lbs (649.6 mt) and the guided sport harvest of halibut was 1,918,000 lbs (870.0 mt), or 486,000 lbs (220.4 mt) over the 2007 GHF and more than twice the 2008 GHF of 931,000 lbs (422.3 mt) (see Table 1 above). Because the two-halibut daily bag limit in combination with a maximum size limit proved ineffective, it is likely, even if the current economic recession leads to a substantial decrease in guided fishing activity, that the 2009 harvest would exceed the 2009 GHF in the absence of this action.

Comment 120: Adopt a two-fish bag limit, with no size limits.

Response: A two-halibut daily bag limit with no size limit would be less restrictive than the previous two-halibut daily bag limit with a maximum size limit on one halibut that was first implemented in 2007. This two-halibut daily bag limit combined with a maximum size limit proved ineffective in reducing the halibut harvest by charter vessel anglers in Area 2C that year (see response to Comment 125). Therefore, a less restrictive two-halibut daily bag limit with no size limit would not achieve the objective of this action.

Comment 121: Instead of a one-fish bag limit, the halibut resource could be better managed using other measures, such as a halibut tag to fund halibut farming or ranching.

Response: The suggested alternative of raising funds through a fish tag to support halibut farming would not address the objective of this action.

Comment 122: Do not implement a one-fish bag limit on guided charter anglers. If conservation of the halibut resource is a concern, NMFS should implement additional commercial catch regulations to reduce that sector's halibut harvest. These could include implementing requirements for video monitoring on commercial halibut vessels to improve recording of catch, discards, and wastage; reducing commercial bycatch by prohibiting bottom trawling or reallocating some of the commercial bycatch limit to the recreational sector; reducing the length of the commercial fishing season; or developing markets for bycatch species

in the halibut longline fishery such as arrowtooth flounder and dogfish.

Response: Implementing additional restrictions on the commercial fishing sector would not address the objective of this action and is outside the scope of this action. The commercial halibut setline and groundfish trawl fisheries currently are subject to binding limits set by the IPHC and Council, respectively, as a part of their efforts to maintain sustainable groundfish stocks. These commercial fisheries are required to stop fishing when their halibut limits (IFQ or prohibited species catch limit) are taken. Commercial groundfish fisheries are often closed before quotas of their target species have been fully harvested. Participants in these fisheries incur significant costs to stay within their halibut catch limits. These halibut resource user groups are adequately constrained by their catch limits, which have not been increasing. For example, the catch limit for Area 2C commercial halibut fishermen has decreased 54 percent between 2005 and 2009.

Halibut vessels are often small, and it has not been feasible to place observers on them. The IPHC and NMFS are investigating the use of electronic monitoring measures to provide more comprehensive monitoring at sea. A report on a workshop on electronic fisheries monitoring, held at the Alaska Fisheries Science Center in July 2008, may be found at http://www.alaskafisheries.noaa.gov/npfmc/misc_pub/EMproceedings.pdf.

Comment 123: Restrict the guided sport charter vessel fishery to only allow retention of halibut greater than 32 inches in length like the commercial sector to protect recruits of the halibut biomass.

Response: Implementing a size limit in addition to the one-fish daily bag limit would be overly restrictive. Other reasons may exist to consider size restrictions in the guided charter fishery in the future, but not as a provision of this final rule. NMFS notes that the Council has considered minimum size limits of 45 and 50 inches on a second fish (assuming a two-fish bag limit), but determined that these measures would not accomplish the objectives of the proposed action. Thus, these options were rejected without further consideration in the analysis supporting this final rule. A key reason why the Council rejected alternatives with minimum size limits was the difficulty in measuring larger fish.

General Comments

Comment 124: This action will adversely affect the safety of sport fishing in Southeast Alaska since it will

encourage guided anglers to substitute unguided for guided fishing days.

Unguided days are not as safe as guided days. In order to become a licensed sport fishing guide on a charter boat in Southeast Alaska, a person must meet the following requirements set by the U.S. Coast Guard: (1) A minimum of 365 days at eight hours/day or the equivalent of 2,920 hours on the water; (2) attend a U.S. Coast Guard approved sea school; (3) pass four tests including: rules of the road, general deck knowledge, navigation, and charting; (4) enroll in a random drug testing program; and (5) obtain a transportation worker identification card. As the Coast Guard will attest, the saltwater charter fleet has the finest safety record of all boaters in Alaska, with the last accidental fatality on a charter boat occurring in 1998. In contrast, unguided angler fatalities occur in Alaska every year. It should be readily apparent to NMFS that any movement of anglers from guided access to unguided access will be accompanied by a statistically measurable decrease in safety.

Magnuson-Stevens Act National Standard 10 requires that conservation and management plans shall, to the extent practicable, promote the safety of human life at sea. While National Standard 10 does not apply to halibut, it is a common sense standard that should not be overlooked just because halibut is managed under the Halibut Act.

Safety status affects the enjoyment of a halibut fishing trip, even in the absence of an accident; as one commenter said, "We know we will be much safer on a charter boat that meets U.S. Coast Guard regulations and we do not have to worry about being safe while we are having fun catching our halibut."

Response: NMFS agrees that this action may create some incentives for anglers to substitute non-guided fishing in Southeast Alaska for guided fishing. New information from an ADF&G study on sport fishing activity in Alaska indicates that non-guided fishing is a popular alternative to guided fishing for resident and non-resident anglers. In 2007, about 60 percent of salt water sport fishing days in Southeast Alaska were unguided and about 40 percent were guided. The non-guided proportion was higher for resident anglers and lower (about 40 percent) for non-resident anglers.

This rule may prompt some charter vessel anglers to substitute unguided fishing in Southeast Alaska for guided fishing so as to retain a two-fish bag limit. These anglers may make arrangements to go fishing with friends or relatives in Southeast Alaska, to

patronize lodges and rentals with associated skiffs, or to patronize businesses providing access to supported (lodging, meals, instructions, and gear) fishing from unguided small boats. This latter business model is already present in Southeast Alaska. Firms with this business model are likely to see an increase in demand for their product, and some guided firms may shift to this business model. This possibility is discussed in the analysis (see **ADDRESSES**).

NMFS, however, does not have the information to estimate the extent to which this substitution will take place. Much will depend on the preferences of anglers, their opportunities to fish elsewhere, and the ability of business to substitute unguided for guided capacity. Proportionately more such substitution could be expected by persons visiting on multi-day and overnight trips than by persons visiting Alaska on cruise ships. The U.S. Coast Guard is not convinced that a significant increase in the use of "bareboat" or non-guided charters will occur and does not see an overarching safety concern with this action.

NMFS has been unable to confirm with the Coast Guard the number of guided saltwater charter business fatalities since 1998. Guided sport fishing activity is included in commercial boating accident statistics. Coast Guard statistics show non-commercial boating deaths every year, with 12 fatalities throughout coastal Alaska in 2008. NMFS cannot rule out the possibility that some guided anglers will shift to unguided sport fishing in Southeast, and that a fatal accident may occur to one or more of these persons, just as it cannot rule out the possibility of fatal accidents on guided charter vessels.

Nevertheless, NMFS believes it is appropriate to implement this final rule for several reasons. First, a potential shift from guided to unguided fishing within Southeast Alaska focuses on one option available for guided anglers. While some may make this substitution, others may substitute activities in other regions, and those activities may be associated with their own risks which may be greater or less than those of guided charters in Southeast Alaska. While the guided charter vessel fleet may have a good safety record on the water, travel to and from the fishing site is often done in small airplanes which, in Alaska, has inherent dangers. It is possible that some charter vessel anglers may substitute activities with less overall risk considering all the elements involved in a guided charter fishing trip. The net effect of this action on risk

when all elements are considered cannot be determined with the available information.

Second, NMFS anticipates that the potential for accidents among the persons making this switch will be smaller than for recreational boaters in Alaska in general. This is because at least a part of this switch is likely to be associated with tourist-service businesses providing supported recreational fishing. Some of these businesses will be firms that formerly provided guide services, or that begin to offer guided and unguided services. These firms are likely to provide monitoring of, and support to, anglers despite the absence of a guide on board a vessel.

Third, large proportions of resident and non-resident sport anglers already are involved in non-guided sport fishing in Southeast Alaska, and non-guided business models already are used to provide resident and non-resident access to halibut fishing opportunities. The risks associated with this practice and business model clearly are considered acceptable by sport anglers, businesses, and the broader community.

Therefore, the safety of anglers was considered for this action.

Comment 125: The proposed action would increase halibut mortality from catch-and-release fishing, because guided anglers would release many small halibut in order to take home the largest fish possible. In addition, many fishermen would substitute king salmon fishing for halibut fishing and increase the mortality rate for this species. The king salmon size limits for recreational anglers that are currently in place result in a high mortality rate, because many smaller fish are killed but must be released. Under this action, guided charter anglers will do more catch-and-release fishing and sightseeing. While this may be less environmentally damaging, the halibut mortality rate could increase. If the proposed action is adopted, NMFS should offer angler education to minimize release mortality and do a careful evaluation of the effects of increased catch-and-release on halibut mortality.

Response: NMFS acknowledges that this action may cause increased halibut catch-and-release mortality, but the impact on the resource will not be significant. The analysis (see **ADDRESSES**) discusses the halibut catch-and-release mortality rate for the Area 2C guided charter fishery. It noted that catch-and-release mortality for halibut is estimated to be small (about 5 percent) and that there may be limited opportunities for practicing catch-and-release fishing in the hope of harvesting

a larger halibut in the sector of the guided fishery that serves anglers from cruise ships, given the relatively short (four hour) guided trips in this sector. NMFS agrees that there may be some substitution of king salmon for halibut fishing and that there could be additional king salmon catch-and-release mortality from this source. To the extent that charter vessel anglers fish for salmon and halibut together on the same trips, this action would tend to decrease demand for salmon fishing. This should ameliorate any adverse impacts on the salmon stocks from this source.

Comment 126: The proposed rule does not explain how this action is consistent with E.O. 12962. The one-fish bag limit is a *de facto* reallocation to the commercial sector. In addition, the proposed rule states that the one-fish bag limit does not diminish "the potential productivity of aquatic resources for recreational fisheries" or "countermand the intent" of E.O. 12962, which is "to improve the quantity, function, sustainable productivity, and distribution of aquatic resources for increased recreational fishing opportunities." The proposed rule does not mention *how* it is improving or increasing recreational fishing opportunities by decreasing the halibut bag limit from two to one fish.

Response: This rule is consistent with Executive Order (E.O.) 12962. The pertinent part of E.O. 12962 as amended by E.O. 13474 appears in Section I of the E.O. under the heading, "Federal Agency Duties." In part, this section requires Federal agencies, "to the extent permitted by law and where practicable," to improve the quantity, function, sustainable productivity, and distribution of U.S. aquatic resources for increased recreational fishing opportunities. Of the means listed to accomplish this mandate, the one most applicable to this action requires management of recreational fishing as a sustainable activity. Exceeding the GHL in Area 2C year after year as has been done since 2004 is not a sustainable activity, under the approved GHL policy of the Council. Although the current GHL policy could be changed to allocate a greater portion of the halibut resource to the guided sport fishery, doing so is outside the scope and purpose of this action. To the extent that the overall realized harvest rate of halibut can be reduced closer to the IPHC's target harvest rate by this action, the abundance of halibut in Area 2C is fostered which would improve the quantity, function, sustainable productivity, and distribution of halibut

resources for increased recreational fishing opportunities.

Comment 127: Guided sport fishermen are harvesting more fish than they are legally entitled to.

Response: The GHL is a target for the aggregate halibut harvests of charter vessel anglers. Guided charter operators, individually and collectively, do not break any laws when the GHL is exceeded. See the responses to Comments 26 and 97 concerning general enforcement of the limitations placed on individual anglers.

Comment 128: Unconstrained growth of the guided sport sector is not consistent with Council intent to stabilize the longline fishery. The guided charter user group has grown without bounds and is displacing the existing fleet. This certainly does not reflect the expressed spirit and intent of the Council.

Response: NMFS agrees that the Council sought to stabilize the growth in the guided sport halibut fishery and to respond to concerns from the commercial fishery participants about growing competition among commercial and guided sectors. The Council intends to maintain a stable guided sport season of historical length, using area-specific harvest restrictions. If end-of-the season harvest data indicates that the guided sport sector likely would exceed its area-specific GHL in the following season, regulations would be implemented to reduce the guided sport harvest. This action is consistent with that intent.

Comment 129: The proposed action is necessary because the conservation and management problem in Area 2C will likely come to Area 3A soon and it should be addressed and corrected now to prepare NMFS and the charter fleet for its later implementation in Area 3A. The record of charter sector harvests of halibut and other species in Area 2C, such as rockfish and lingcod, clearly shows that the charter sector can have a significant impact on the abundance and availability of fisheries resources that are intended for the benefit of all users and all segments of the public. In recent years, the charter sector halibut harvest in Area 3A has been close to or has exceeded the GHL; long-term trends indicate that harvests will continue to increase steadily. It is only a matter of time before Area 3A is faced with the same problems that now plague Area 2C as a result of the growth in halibut catches by the guided charter sector.

Response: NMFS acknowledges the comment, although the characteristics of the fisheries in Areas 2C and 3A are different. The Council and NMFS are committed to using area-specific harvest

restrictions that are tailored to the circumstances of the particular area.

Comment 130: Why does the IPHC include commercial bycatch and wastage in the "other removals" category instead of as a part of the commercial fishery quota? Isn't this a *de facto* reallocation away from the recreational sector?

Response: With respect to halibut, the IPHC regulations define "commercial fishing" in part as "* * * fishing, the resulting catch of which is sold or bartered * * *" (section 3 of annual management measures published March 19, 2009 at 74 FR 11681). Halibut taken as bycatch in directed fisheries for other species or wasted in the directed commercial halibut fishery are not sold or bartered and therefore are not considered part of the "commercial harvest." The commercial catch limit set by the IPHC does not include bycatch and wastage amounts. For conservation purposes, however, the IPHC accounts for all sources of fishing mortality. Bycatch and wastage is not a *de facto* reallocation away from the sport fishing sector because that sector does not operate under a firm catch limit as does the commercial sector. Bycatch and wastage is a *de facto* reallocation away from the commercial sector because anticipated bycatch and wastage amounts, like the anticipated sport and other non-commercial harvests, are subtracted from the Total CEY to arrive at the Fishery CEY and ultimately the commercial catch limit. In Area 2C, bycatch and wastage combined account for about 5.5 percent of all sources of fishing mortality in that area, according to the IPHC 2009 annual meeting "blue book" Table 1.

Comment 131: The rule proposes to convert the GHL from an advisory harvest level to a firm allocation in both Areas 2C and 3A, without analysis and without proper notification to Area 3A user groups, and without the opportunity for public comment.

Response: This action does not change the GHL regulations at 50 CFR 300.65(c). The GHL is not a hard cap or catch limit, and by itself, does not restrict or limit charter vessel anglers (see the response to Comment 28).

Comment 132: The Council, NMFS, and the Secretary have failed to promulgate recreational harvest rules that pass the test of the Halibut Act and the APA. The root cause of the problem rests with the decision long ago by the Council to treat guided and unguided portions of the recreational fishery differently. Another cause is the willingness of NOAA Alaska General Counsel to openly seek out ways to circumvent published laws rather than

follow them to the letter. The Secretary should consider peer review of future proposed recreational fishing rules by NOAA General Counsel based in areas other than the Pacific Northwest or by external parties. Hopefully, review by unbiased peers would reveal the flaws in proposed rules before they are published, saving taxpayer dollars as well as future embarrassment to NMFS resulting from the publication of such rules.

Response: All rules promulgated by NMFS go through the appropriate layers of agency review and comply with the applicable notice and comment procedures required by the APA in an effort to fully comply with applicable law. Despite that intention, some rules are overturned, or like the 2008 management measures for charter vessel anglers in Area 2C, some are stayed, i.e., have no force or effect, pending further adjudication. In the case of the 2008 management measures for charter vessel anglers in Area 2C, NMFS withdrew the rule before final disposition by the court.

Comment 133: The December 22, 2008 press release announcing the proposed rule for this action contained conflicting and misleading information. While the release implies that halibut stocks are threatened by the growth of the guided charter fishery, this is contradicted by NMFS' past statements in the 2008 proposed and final rules for a one-fish bag limit on halibut. The proposed rule states that it would allow each charter vessel angler to use only one fishing line, that no more than six lines targeting halibut would be allowed on a guided charter vessel at one time and that the rule would prohibit guides and crew from catching and retaining halibut while charter halibut anglers are on board. While this statement is correct, the press release does not point out that ADF&G already has regulations in place to control these activities and in the case of one line per fisherman, six line maximum per boat, these regulations have been in place for a number of years. The purpose of the proposed rule is to save ADF&G from issuing emergency rules on an annual basis, which also has been previously stated in earlier NMFS publications and proposals. NMFS does not issue a sport fishing regulation booklet readily available to the general public.

Response: The factual statements made in the press release are correct. The responses to Comments 1 through 27 discuss the conservation rationale for this action and this is not discussed further here. The proposed rule discusses the measures described above. A press release is often less detailed

than the subject it describes. NMFS plans to publish a brief summary of federal sport fishing regulations applicable to halibut fishing for the convenience of the public. Regardless of the presence or absence of this summary, guided or non-guided sport fishermen targeting halibut are obliged to comply with sport fishing regulations appearing at 50 CFR 300.65, 50 CFR 300.66, and the annual management measures published March 19, 2009 (74 FR 11681).

Comment 134: The proposed rule clarifies the issues associated with the *Van Valin* case. The proposed rule also clarifies NMFS's authority to implement management measures applicable to the current fishing season that prevent exceeding catch limits.

Response: NMFS agrees, but further clarifies here that this action will remain in effect until changed by subsequent rulemaking. Hence, this action may apply beyond the current fishing season. Also, the GHL does not serve as a catch limit or hard cap on the aggregate harvest of charter vessel anglers. See the response to comment 31.

Comment 135: A one-fish limit would reduce guided activity and lead to halibut overpopulation.

Response: Having too many halibut in the sea is not a current concern of the IPHC or NMFS. Information presented to the IPHC and public in January 2009 (IPHC 2009 annual meeting "blue book"), indicates that the population of halibut, although healthy, has been in decline for the past several years. This trend may reverse if strong year classes of juvenile halibut recruit to the adult population. This forecast is based to some extent on an assumption that the target harvest rates set by the IPHC are actually realized. In Area 2C, the realized harvest rates in recent years have been more than twice the target harvest rate. This has prompted a conservation concern by the IPHC and a dedicated effort to reduce the realized harvest rate in Area 2C (and Areas 2B and 2A also). This action contributes to that effort.

Comment 136: The proposed rule contradicts NMFS's mission to promote sustainable fisheries, recover protected species, and maintain the health of coastal marine habitats in the United States. NMFS must reinforce its mission as a science-based organization and ensure a sustainable halibut fishery by balancing sport and commercial uses.

Response: On the contrary, this action serves the NMFS mission, as a science-based organization, to promote sustainable fisheries. The purpose of this rule is precisely to ensure a

sustainable halibut fishery by balancing sport and commercial uses of the halibut resource.

Comment 137: Any size limit restrictions placed on guided sport fishermen should also be placed on commercial fishermen.

Response: This action does not include a maximum or minimum size limit on halibut retained by sport fishermen. Commercial fishermen, however, must comply with a minimum size limit that has been in effect for many years. The commercial size limit, set by the IPHC, is at section 13 of the annual management measures published March 19, 2009 (74 FR 11681) and requires no possession of halibut with a head on length less than 32 inches (81.3 cm).

Comment 138: Recreational anglers are one of the nation's most powerful forces for the environment, paying over \$600 million a year in special federal excise taxes to support fisheries conservation and access. In 2006, Southwick and Associates estimated a total effect of recreational angling at almost \$250 million annually in Alaska alone.

Response: NMFS acknowledges the comment. Recreational fishermen have been, and continue to be, an important source of funding and support for conservation programs. Halibut, like all fishery resources, is a finite resource. As users of this resource increase, regulatory regimes governing all users necessarily become more restrictive and complex to meet conservation and allocation policy goals. Most fishermen who participate in one or more of the halibut fisheries continued to be supportive of conservation of the resource and appreciate the need for balance in allocation policies. NMFS does not believe that this final rule will appreciably reduce that support.

Comment 139: Why is NMFS renaming the charter moratorium, established by the Council, a limited entry program? The moratorium was supposedly a temporary measure to allow closer examination of the guided charter industry. A limited entry program gives the impression of finality and similarity with commercial fisheries, when there is no similarity between guided fishing and commercial fishing.

Response: This comment is not relevant to this action, but pertains instead to a proposal to establish a limited access system for vessels in the guided sport fishery for halibut. A proposed rule and solicitation for public comment on the recommended limited access proposal was published on April 21, 2009 (74 FR 18178).

Comment 140: For over ten years, the ADF&G has told us their Statewide Harvest Survey is untouchable (even though it is not finalized until after the following summer) and logbook data cannot be relied upon. In 2007, the ADF&G did a major modification in their collection of halibut harvest data (prior to 2007, the ADF&G extrapolated pounds of halibut harvested from Sitka, with samples taken from Sitka that were biased and too small). Are we now supposed to have a high level of confidence in the logbook data, even though there is no other year with comparable data because of the change in methodology?

Response: NMFS is committed to using the best available information when making management decisions. At this time, this includes information provided by ADF&G based on the Statewide Harvest Survey. It also includes information from other sources of data, including logbooks and data obtained through creel census surveys. In an effort to obtain information for management in the timeliest manner possible, NMFS has pursued, and will continue to pursue, the use of data from reports required to be recorded contemporaneously or as close to the action being recorded as possible, and that require such information to be reported to the management agency in a timely manner (e.g., daily or weekly). Questions regarding ADF&G's observations and concerns about fishery data collected by ADF&G should be addressed to ADF&G.

Comment 141: Did NMFS follow all the procedures for issuing a guideline harvest level, published in the 2003 **Federal Register** on the GHL?

Response: All procedures described in the GHL regulations at 50 CFR 300.65(c) are being carried out as required, including the requirement at paragraph (c)(2) to publish a notice in the **Federal Register** on an annual basis establishing the GHL for Areas 2C and 3A for that calendar year based on the CEY set by the IPHC. The most recent such notice was published February 24, 2009 at 74 FR 8232. Also, the requirement at paragraph (c)(3) to notify the Council in writing that the GHL has been exceeded has occurred annually since 2004 with respect to Area 2C. Typically, in October each year, the Council receives a report from ADF&G on its estimate of the harvest of halibut by the guided and non-guided sport fisheries during the preceding year. The Council and NMFS officially receive this information at the same time. NMFS subsequently sends a letter to the Council informing it of whether the Area 2C GHL or Area 3A GHL has been exceeded.

Changes From the Proposed Rule

This action was proposed and public comments were solicited for 30 days beginning on December 22, 2008 (73 FR 78276). 179 public submissions were received by the comment ending date of January 21, 2009. All comments received by the comment ending date are summarized and responded to above under the heading "comments and responses." No changes from the proposed rule are made in this final rule.

Classification

This final rule has been determined to be not significant for purposes of Executive Order 12866. This final rule complies with the Halibut Act and the Secretary's authority to implement harvesting controls for the management of the halibut fishery.

Halibut Act

Regulations governing the U.S. fisheries for Pacific halibut are developed by the International Pacific Halibut Commission (IPHC), the Pacific Fishery Management Council, the North Pacific Fishery Management Council (Council), and the Secretary of Commerce. Section 5 of the Northern Pacific Halibut Act of 1982 (Halibut Act, 16 U.S.C. 773c) authorizes the Secretary of Commerce (and NMFS, through delegation of authority) to adopt regulations that are necessary to carry out the purposes and objectives of the Convention between the U.S. and Canada on the Pacific Halibut Fishery and the Halibut Act. NMFS has determined that this action meets those requirements.

Regulatory Flexibility Act

A Final Regulatory Flexibility Analysis (FRFA) was prepared as required by section 604 of the Regulatory Flexibility Act. The FRFA describes the impact of this rule on directly regulated small entities and compares that impact to the impacts of other alternatives that were considered. A copy of this analysis is available from NMFS (see **ADDRESSES**). A description of this action, an explanation for why it was considered, the legal basis for this action, and changes made to the rule in response to public comments are discussed above. Comments on the economic impacts of this action are addressed in responses to comments 53 through 73 above. A summary of the analysis follows.

In 2007, 403 businesses operated 724 state-licensed active charter vessels in Area 2C. The largest companies involved in the fishery, lodges or resorts that offer accommodations as well as an

assortment of visitor activities, may be large entities under the Small Business Administration size standard of \$7.0 million, but it is also possible that all the entities involved in the harvest of halibut from charter vessels have grossed less than this amount. Since it is not possible to estimate the number of large entities, and since in any event these would be a small proportion of the total, all of these operations are assumed to be small entities. The number of small entities may be overestimated because of the limited information on vessel ownership and operator revenues and operational affiliations. However, it is likely that nearly all entities qualify as small businesses and for purposes of this analysis, all entities were assumed to be small entities.

This analysis examined two alternatives, the status quo and the preferred alternative. The objective of this action is to reduce the guided sport harvest of halibut in Area 2C as described in the preamble above under the heading "Objective of this Action." The status quo alternative was introduced in 2007 with the intent of reducing halibut harvest in the charter vessel sector while minimizing negative impacts on the charter vessel sector, its charter vessel anglers, and the coastal communities that serve as home ports for the charter vessel sector. The status quo would retain the two-fish bag limit with one of the two fish less than or equal to 32 inches (83.1 cm) in length, without changes. Under the status quo, both the number of charter customers and the volume of fish harvested rose to their highest recorded levels. In 2007, the GHL for Area 2C was 1,432,000 lbs (649.6 mt). Since that time reductions in the Total CEY in Area 2C have led to a reduction in the GHL to 931,000 lbs (422.3 mt) in 2008 and to 788,000 lbs (357.4 mt) in 2009. The 2007 guided sport harvest in Area 2C was 1,918,000 lbs (870.0 mt), exceeding the GHL for that area by 486,000 lbs (220.4 mt) or 34 percent of the GHL. The best available data from ADF&G indicate that the 2008 guided sport harvest in Area 2C also substantially exceeded the 2008 GHL for that area. Thus, the status quo alternative would not achieve the objective of this action.

Seven management measures, combined into 11 specific options, were considered for this analysis, but were ultimately rejected without being subjected to detailed analysis. These measures were analyzed for the final rule published by NMFS on May 28, 2008 (73 FR 30504), but prevented from taking effect in 2008 by an injunction. These alternatives were thoroughly analyzed at that time, and were rejected

by the Council and NMFS for a number of reasons; primarily because none of these alternatives would achieve the stated objective. Additional reasons for rejecting these alternatives included: (1) The economic effect of an option falling on too few businesses; (2) the option being easily diluted by changes in angler behavior; and (3) the difficulty in measuring large fish before bringing them onboard vessels.

The preferred alternative would implement a one-fish daily bag limit for charter vessel anglers, a prohibition on harvest by charter vessel guides, operators, and crew, and a maximum six-line limit. A range of harvest results are possible under the preferred alternative. Assuming a range of possible demand reductions from zero to 50 percent, the preferred alternative is estimated to reduce the halibut harvest in the guided sport fishery to between 1,495,000 lbs (678.1 mt) to 602,000 lbs (273.1 mt). The GHL levels for Area 2C recently have been 1,432,000 lbs (649.5 mt) in 2007, 931,000 lbs (422.3 mt) in 2008, and 788,000 lbs (357.4 mt) in 2009. Hence, under the assumptions outlined in the analysis about changes in demand, the preferred alternative may reduce the harvest to the GHL and achieve the objective of this action. Although the status quo would have a smaller impact on directly regulated small entities, it would not achieve the objectives of this action. The preferred alternative would minimize the impacts on small entities and best meet the management objective. NMFS considered additional alternatives to achieve the objectives of this action in 2007 and 2008. These alternatives were analyzed in the April 2008 Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis for a Regulatory Amendment to Implement Guideline Harvest Level Measures in the Halibut Charter Fisheries in International Pacific Halibut IPHC Regulatory Area 2C (see **ADDRESSES** for availability). The 2008 analysis found that only the preferred alternative, the one-halibut bag limit, was capable of achieving the objectives of the 2008 action. The current analysis reached a similar conclusion.

Collection of Information

This rule contains a collection of information requirement subject to the Paperwork Reduction Act (PRA) and which has been approved by OMB under control number 0648-0575. The public reporting burden for charter vessel guide respondents to fill out and submit logbook data sheets is estimated to average four minutes per response.

The public reporting burden for charter vessel anglers to sign the logbook is estimated to be one minute per response. These estimates include the time required for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

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.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule, or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule and shall designate such publications as "small entity compliance guides." The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, NMFS Alaska Region has developed an Internet site that provides easy access to details of this final rule, including links to the final rule. In addition, NMFS is collaborating with IPHC to develop a brief summary of sport fishing regulations for halibut. These Small Entity Compliance Guide materials are available on the Internet at <http://www.alaskafisheries.noaa.gov>. Copies of this final rule are available upon request from the NMFS, Alaska Regional Office (see ADDRESSES).

Executive Order 12962

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

List of Subjects in 50 CFR Part 300

Fisheries, Fishing, Treaties.

Dated: April 29, 2009.

James W. Balsiger,

*Acting Assistant Administrator for Fisheries,
National Marine Fisheries Service.*

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

PART 300—INTERNATIONAL FISHERIES REGULATIONS

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

Authority: 16 U.S.C. 773–773k.

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

§ 300.61 Definitions.

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

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

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

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

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

Crew member, for purposes of § 300.65(d), means an assistant, deckhand, or similar person who works directly under the supervision of and on

the same vessel as a charter vessel guide.

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

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

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

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

(c) * * *

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

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

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

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

(2) *Charter vessels in Area 2C*—(i) *Daily bag limit*. The number of halibut caught and retained by each charter vessel angler in Area 2C is limited to no more than one halibut per calendar day.

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

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

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

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

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

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

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

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

(4) *Regulatory area fished.* Circle the regulatory area (Area 2C or Area 3A) where halibut were caught and retained during each charter vessel fishing trip. If halibut were caught and retained in Area 2C and Area 3A during the same charter vessel fishing trip, then a separate logbook data sheet must be used to record halibut caught and retained for each regulatory area.

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

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

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

(8) *Angler signature.* The charter vessel guide is responsible for ensuring

that charter vessel anglers comply with the signature requirements at paragraph (d)(2)(iv)(A) of this section.

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

* * * * *

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

§ 300.66 Prohibitions.

* * * * *

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

* * * * *

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

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

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

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