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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**15 CFR Part 902**

**50 CFR Part 300**

**[Docket No. 140724618-5506-02]**

**RIN 0648-BE41**

**Pacific Halibut Fisheries; Revisions to Charter Halibut Fisheries Management in Alaska**

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues regulations that revise Federal regulations regarding sport fishing guide services for Pacific halibut in International Pacific Halibut Commission Regulatory Areas 2C (Southeast Alaska) and 3A (Central Gulf of Alaska). The regulations remove the requirement that a guided sport (charter) vessel guide be on board the same vessel as a charter vessel angler to meet the definition of providing sport fishing guide services. This final rule clarifies that all sport fishing for halibut in which anglers receive assistance from a compensated guide would be managed under charter fishery regulations, and all harvest (except halibut harvested under the Guided Angler Fish Program) would accrue toward charter allocations. This final rule aligns Federal regulations with State of Alaska regulations. This final rule makes additional minor changes to the regulatory text pertaining to the charter halibut fishery to

maintain consistency in the regulations with these new definitions. This action is necessary to achieve the halibut fishery management goals of the North Pacific Fishery Management Council.

**DATES:** Effective [*INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER*].

**ADDRESSES:** Electronic copies of the Categorical Exclusion and the Regulatory Impact Review/Initial Regulatory Flexibility Analysis (RIR/IRFA) prepared for this action are available from <http://www.regulations.gov> or from the NMFS Alaska Region website at <http://alaskafisheries.noaa.gov>. A Final Regulatory Flexibility Analysis (FRFA) was prepared and is included in the Classification section of this final rule.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted to NMFS at the above address and by e-mail to [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov) or fax to 202-395-5806.

**FOR FURTHER INFORMATION CONTACT:** Julie Scheurer, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** NMFS published a proposed rule for this action in the **Federal Register** on December 3, 2014 (79 FR 71729), and public comments were accepted through January 2, 2015.

#### **Authority for Action**

The International Pacific Halibut Commission (IPHC) and NMFS manage fishing for Pacific halibut (*Hippoglossus stenolepis*) through regulations established under authority of the Northern Pacific Halibut Act of 1982 (Halibut Act). The IPHC adopts regulations governing the Pacific halibut fishery under the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the North Pacific Ocean and Bering Sea (Convention), signed at Ottawa, Ontario, on March 2, 1953, as amended by a Protocol Amending the

Convention (signed at Washington, D.C., on March 29, 1979). For the United States, regulations developed by the IPHC are subject to acceptance by the Secretary of State with concurrence from the Secretary of Commerce. After acceptance by the Secretary of State and the Secretary of Commerce, NMFS publishes the IPHC regulations in the **Federal Register** as annual management measures pursuant to 50 CFR 300.62. The final rule implementing IPHC regulations for the 2015 fishing season published on March 17, 2015 (80 FR 13771). IPHC regulations affecting sport fishing for halibut and vessels in the charter fishery in Areas 2C and 3A may be found in sections 3, 25, and 28 of that final rule.

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

The Halibut Act, at section 773c(c), also provides the North Pacific Fishery Management Council (Council) with authority to develop regulations, including limited access regulations, that are in addition to, and not in conflict with, approved IPHC regulations. Regulations developed by the Council may be implemented by NMFS only after approval by the Secretary of Commerce. The Council has exercised this authority in the development of subsistence halibut fishery management measures, and sport halibut fishery management measures in Convention waters off Alaska, codified at 50 CFR 300.61, 300.65, 300.66, and 300.67. The Council also developed the Individual Fishing Quota Program for the commercial halibut fishery, codified at 50 CFR part 679, under the authority of section 773 of the Halibut Act.

## **Background**

This final rule aligns Federal regulations for charter halibut fishing with State of Alaska regulations for sport fishing to clarify the Council's and NMFS' intent for management of charter halibut fisheries in Areas 2C and 3A in Convention waters off Alaska. The regulatory clarifications also will facilitate enforcement and clarify recordkeeping and reporting requirements for the charter halibut fishery. This final rule does not revise regulations for unguided sport halibut fishing in Alaska found in sections 3, 25, and 28 of the IPHC annual management measures; however, the 2015 IPHC annual management measures for charter halibut fishing were modified to maintain consistency with this final rule. A general description of the halibut fisheries in Alaska was provided in the proposed rule for this action (79 FR 71729, December 3, 2014) and is briefly summarized here.

#### *Description of Halibut Fisheries*

Sport fishing activities for Pacific halibut in Areas 2C and 3A are subject to different regulations, depending on whether those activities are guided or unguided. Guided sport fishing for halibut is subject to charter restrictions under Federal regulations. These regulations apply if a charter vessel guide is providing assistance for compensation, or sport fishing guide services, to an angler during a fishing trip. Unguided anglers typically use their own vessels and equipment, or they may rent a vessel and fish with no assistance from a guide.

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

and Section 1.3 of the RIR/IRFA prepared for this action provide additional detail on the charter halibut management programs that have been implemented in Areas 2C and 3A.

The CHLAP established Federal charter halibut permits (CHPs) for operators in the charter halibut fishery in Areas 2C and 3A. Since 2011, all vessel operators in Areas 2C and 3A with charter anglers on board must have an original, valid permit on board during every charter vessel fishing trip on which Pacific halibut are caught and retained. CHPs are endorsed for the appropriate regulatory area and the number of anglers that may catch and retain halibut on a charter vessel fishing trip. Complete regulations for the CHLAP are published at §§ 300.65, 300.66, and 300.67.

The CSP established sector allocations that vary proportionally with changing levels of annual halibut abundance and that balance the differing needs of the charter and commercial halibut fisheries over a wide range of halibut abundance in each area. The CSP describes a public process by which the Council develops recommendations to the IPHC for charter angler harvest restrictions that are intended to limit harvest to the annual charter halibut fishery catch limit in each area. The CSP also authorizes limited annual leases of commercial individual fishing quota for use in the charter fishery as guided angler fish (GAF). GAF authorizes individual charter operators in Area 2C and Area 3A to offer anglers the opportunity to retain additional halibut when charter vessel anglers are subject to a more restrictive daily harvest limit than unguided sport anglers in the same area. Complete regulations for the CSP are published at §§ 300.65 and 300.66. Additional detail on the development and rationale for the CSP can be found in the final rule implementing the program (78 FR 75844, December 12, 2013).

Each year, based on recommendations from the Council, the IPHC annually adopts charter halibut management measures designed to keep charter harvest in Area 2C and Area 3A

to the catch limits specified under the CSP. Once accepted by the Secretary of State with the concurrence of the Secretary of Commerce, NMFS publishes in the **Federal Register** the charter halibut management measures for each area as part of the IPHC annual management measures. The 2015 IPHC annual management measures were published on March 17, 2015 (80 FR 13771).

The Alaska Department of Fish and Game (ADF&G) monitors and estimates charter halibut harvests using the Saltwater Charter Logbook (hereafter, logbook). The logbook is the primary reporting requirement for operators in the charter fisheries for all species harvested in saltwater in Areas 2C and 3A. Logbook data are compiled to show where fishing occurs, the extent of participation, and the species and the numbers of fish caught and retained by individual charter anglers. This information is essential to estimate harvest for regulation and management of the charter halibut fisheries in Areas 2C and 3A. ADF&G collects logbook information from charter vessel guides on halibut harvested by charter vessel anglers to accommodate the information requirements for implementing and enforcing Federal charter halibut fishing regulations, such as daily bag limits and the CHLAP.

### **Purpose of this Final Rule**

This final rule is primarily intended to clarify that 1) compensated assistance to an angler to catch halibut during a fishing trip will be managed under Federal charter fishery regulations, whether or not the person providing that compensated assistance is on board the vessel with the angler, and 2) halibut harvested by an angler receiving compensated assistance will accrue toward charter allocations. These clarifications are necessary to apply Federal charter fishing regulations to a small number of businesses that offer services in which guides provide assistance to halibut anglers for compensation, from adjacent vessels or shore. Under previous Federal

regulations, a person providing assistance to an angler during a fishing trip, and who was not on board the vessel with the angler, was not providing sport fishing guide services. As a result, an operator was not required to have a CHP on board the vessel, as required by the CHLAP regulations at § 300.67, if the compensated assistance provided to an angler during a fishing trip was by a person who was not on board the vessel with the angler. In addition, an angler receiving assistance during the fishing trip from a guide that was not on board the vessel with the angler was not subject to regulations that limit a guided angler to more restrictive daily bag and size limits that are intended to limit charter harvest to allocations specified by the Council's CSP for Area 2C and Area 3A.

In recommending the revisions to Federal regulations implemented by this final rule, the Council specified that providing compensated assistance to an angler from an adjacent vessel or from the shore is a *de facto* form of charter fishing and should be managed under charter fishing regulations. A guide who is not on the same vessel with an angler and who provides assistance for compensation to an angler will be included in the definition of sport fishing guide services under this final rule. The Council was concerned that guide-assisted sport fishing services might increase if no action was taken to define these fishing activities as charter fishing.

This final rule also implements regulations recommended by the Council clarifying that halibut harvests by an angler receiving compensated assistance from a person not on board the vessel with the angler (except GAF, which is an alternative use of commercial halibut individual fishing quota) should accrue to the charter sector allocation under the CSP. This final rule clarifies logbook reporting requirements and will improve harvest estimates by aligning the Federal and State definitions of sport fishing guide services so that halibut harvested by an angler who receives compensated assistance are required to be recorded in the logbook, whether the

person providing the assistance is physically present on board the vessel or not. Aligning State and Federal definitions of sport fishing guide services will provide the public with clear and consistent management between management agencies.

### **Regulations Implemented by this Final Rule**

This final rule aligns Federal regulatory text regarding sport fishing guide services for Pacific halibut with State regulations in a manner that is consistent with the Council's intent for management of charter halibut fisheries. The revisions will enhance enforcement of sport fishing regulations by an authorized officer by clearly defining when a person is providing sport fishing guide services. This regulatory clarity will also aid anglers and operators providing sport fishing guide services to comply with regulations for the charter halibut fisheries.

This final rule implements clear and consistent regulations that apply to all businesses providing, and all anglers receiving, sport fishing guide services. This final rule will improve the accuracy of the data collected on sport fishing harvest. Specifically, this final rule requires anglers receiving sport fishing guide services, whether or not a charter vessel guide is on board, to comply with the restrictions in place for charter vessel anglers. This final rule requires businesses that provide sport fishing guide services for halibut from separate vessels to obtain CHPs for the vessels on which the anglers are fishing and comply with the restrictions in place for the charter halibut fishery. This final rule does not increase the number of CHPs issued under the CHLAP.

As described in the proposed rule and in Section 1.2 of the RIR/IRFA, this final rule is intended only to address fishing activities for the charter halibut sector, not businesses that provide equipment for unguided (or self-guided) sport fishing. The proposed rule provided a detailed description of the proposed regulatory changes and a brief summary is provided in the

following sections. This final rule implements three categories of regulatory changes: 1) revisions to definitions at § 300.61; 2) revisions to CHLAP and CSP regulations; and 3) other regulatory revisions. The last section describes changes made to the 2015 IPHC annual management measures to aid the implementation of this rule.

*Revisions to Definitions at § 300.61*

Most critically, this final rule revises the definition of “sport fishing guide services,” and adds definitions for “compensation” and “charter vessel” at § 300.61. This final rule also makes technical revisions to the definitions of “charter vessel angler,” “charter vessel fishing trip,” “charter vessel guide,” and “charter vessel operator” at § 300.61 for added clarity and consistency among definitions. These changes are described in detail in Section 2.7 of the RIR/IRFA and in the proposed rule for this action.

The revision to the definition of “sport fishing guide services” removes the requirement that a charter vessel guide be on board the same vessel as the charter vessel angler. This final rule also revises the definition to clarify that services provided by a crew member working directly under the supervision of, and on the same vessel as, a charter vessel guide are not sport fishing guide services for purposes of CHLAP and CSP regulations. This revision clarifies the Council’s and NMFS’ intent that crew member services will continue to be excluded from the definition of sport fishing guide services for purposes of CHLAP and CSP regulations, to clearly identify that the charter vessel guide, and not a crew member, is the person responsible for complying with the regulations.

The definition of sport fishing guide services in this final rule includes the phrase “accompanying or physically directing the sport fisherman in sport fishing activities during any part of a charter vessel fishing trip.” This phrase is consistent with the State definition for sport

fishing guide services. The Federal definition of charter vessel fishing trip at § 300.61 specifies that a charter vessel fishing trip begins when fishing gear is first deployed into the water and ends when one or more charter vessel anglers or any halibut are offloaded from that vessel. The proposed rule and Section 1.3.6 of the RIR/IRFA provides additional detail on this revision to the definition of sport fishing guide services.

This final rule adds a definition for “compensation” to § 300.61 that matches the State’s definition (5 AAC 75.995(b)). The Council and NMFS intend for sport fishing for halibut to be considered charter fishing for halibut only if a person providing assistance to a sport angler is receiving compensation. This final rule defines compensation as, “direct or indirect payment, remuneration, or other benefits received in return for services, regardless of the source ... ‘benefits’ includes wages or other employment benefits given directly or indirectly to an individual or organization, and any dues, payments, fees, or other remuneration given directly or indirectly to a fishing club, business, organization, or individual who provides sport fishing guide services; and does not include reimbursement for the actual daily expenses for fuel, food, or bait.” This definition of compensation also means that payments made by a third party, and non-monetary exchanges of goods and services for taking someone halibut fishing, may also be considered compensation, as well as payments or non-monetary exchanges from a person aboard the charter vessel. The Federal definition does not consider reimbursement for “actual” daily expenses (e.g., bait, fuel, food) to be compensation as explained in the proposed rule and Section 1.3.6.2 of the RIR/IRFA.

This final rule adds a definition for “charter vessel” to Federal regulations at § 300.61. A charter vessel is defined as “a vessel used while providing or receiving sport fishing guide services for halibut.” Under this definition, a charter vessel guide will not be required to be on

board the same vessel as the charter vessel angler to be providing sport fishing guide services. If an angler receives sport fishing guide services during a charter vessel fishing trip (i.e., the time between when gear is deployed and when one or more charter anglers or any harvested halibut are offloaded), even if it is from an adjacent or nearby vessel, that angler would be considered to be fishing from a charter vessel.

Under State of Alaska regulations (5 AAC 75.075), charter vessels are required to be registered with the State and are issued identification decals and logbooks. Under this final rule, all charter vessels, including those that will not have charter vessel guides on board, will need to register with the State, display the charter vessel decal while operating as a charter vessel, and have the logbook on board during all charter vessel fishing trips. Each charter vessel from which an angler may catch and retain halibut will also need to have an original CHP on board during charter vessel fishing trips.

#### *Revisions to CHLAP and CSP Regulations*

The primary responsibility for compliance with charter halibut fishery CHLAP and CSP regulations will continue to be with the charter vessel guide. However, some Federal regulations governing the charter halibut fishery put the burden of compliance on the charter vessel operator. Under this final rule, if no charter vessel guide is on board the vessel with the charter anglers, the charter vessel operator could also be a charter vessel angler. To facilitate compliance in these instances, this final rule implements regulations at § 300.66(s) and (v) to hold the charter vessel operator and the charter vessel guide jointly or severally responsible for compliance with the requirement to have a valid CHP and a logbook on board the charter vessel with the charter vessel anglers if no charter vessel guide is on board the vessel with the charter anglers. If the charter vessel guide is on a separate vessel, or on the shore, the charter vessel operator will be the

person on board the charter vessel with the angler (hereafter, “angler vessel”) that could be held jointly responsible with the charter vessel guide to ensure that a valid CHP and the logbook are on the angler vessel. An authorized officer will evaluate the specific circumstances of a fishing trip to determine whether to hold the charter vessel operator and the charter vessel guide jointly or severally responsible for compliance with the requirement to have a valid CHP and a logbook on board the vessel.

Charter vessel guides will remain responsible for complying with the CHLAP and CSP reporting requirements at § 300.65(d), and the person whose business was assigned a logbook will remain responsible for ensuring that the charter vessel guide complies with those requirements. This final rule also implements regulations at § 300.65(d) to require that the logbook remain on the charter vessel with the anglers during the charter vessel fishing trip, even if the guide is on a separate vessel or on shore.

When halibut are retained by charter vessel anglers, the charter vessel guide will remain responsible under regulations at § 300.65(d) for completing the remainder of the logbook data fields by the end of the calendar day, or by the end of the charter vessel fishing trip, whichever comes first. The charter vessel guide is also responsible for ensuring that charter vessel anglers who retained halibut sign the logbook.

Under this final rule, charter vessel guides will remain responsible for complying with the provisions of the GAF program at § 300.65. A GAF permit authorizes a charter vessel angler to retain GAF, and GAF permits are assigned to a single CHP. This final rule implements regulations at § 300.65(c)(5)(iii)(A)(5), to require the guide maintain control of a legible copy of the GAF permit to enable an authorized officer to verify that any GAF retained on the charter

vessel were authorized by a valid GAF permit. As described above, regulations at § 300.65(d) require that the CHP and logbook remain on the same charter vessel as the charter vessel anglers.

Regulations at § 300.65(c)(5)(iv)(G) require that upon retention of a GAF halibut, the guide must immediately remove the upper and lower tips of the tail fin lobes to mark and identify that fish as a GAF halibut. This final rule adds a requirement that the guide must be physically present when the GAF is harvested to mark the fish. NMFS anticipates that charter vessel anglers without a guide on board will need to summon the guide (e.g., by cell phone or radio) to be in proximity of the charter vessel before any GAF are harvested. Regulations at § 300.65(d)(4)(iii)(A)(I) require the charter vessel guide to immediately measure and record the total length of the GAF halibut in the GAF permit log on the back of the GAF permit. This final rule does not change this requirement, but adds a reference at § 300.65(d)(4)(iii)(A)(I) to an additional requirement at § 300.65(d)(4)(iii)(A)(5) that the charter vessel guide must immediately record in the logbook the GAF permit number under which the GAF was caught and retained, and the number of GAF retained by the charter vessel angler who caught and retained GAF, if GAF are retained on a charter vessel without a guide on board. The term “immediately,” for enforcement purposes, means that the stated activity (e.g., marking the fish or recording the GAF in the logbook) must occur before the guide or angler moves on to another activity or resume fishing. For example, if a charter vessel angler harvests a GAF, the guide will need to mark and record it before the angler could continue fishing, or transit to another location. If the guide cannot be physically present at the time the GAF is caught, the charter vessel angler will not be authorized to retain that fish.

Regulations at § 300.65(d)(4)(iii)(B) through (E) require a charter vessel guide to electronically report GAF harvests at the end of a charter vessel fishing trip in which GAF is

retained. This rule does not revise these regulations and the charter vessel guide will continue to be responsible for electronically reporting GAF harvests.

Regulations at § 300.65(c)(5)(iv)(G) require that if GAF halibut are filleted on board a charter vessel, the carcasses of those GAF halibut must be retained until the end of the charter vessel fishing trip to enable an authorized officer to verify the recorded lengths. This final rule revises CSP regulations at § 300.65(c)(5)(iv)(G) to specify that if any GAF are harvested and filleted on board the charter vessel, those carcasses will also need to be retained on the charter vessel on which the GAF halibut were harvested until the end of the charter vessel fishing trip. In other words, if GAF halibut were harvested on a charter vessel without a guide on board, it will need to stay on the vessel with the angler who harvested it until the end of the fishing trip; it may not be transferred to the vessel that the guide is on for filleting, storage, or otherwise. Similarly, the 2015 IPHC annual management measures at section 28(2)(d) and 28(3)(d) require that the carcasses of size-restricted halibut harvested in the charter fishery in Areas 2C and 3A be retained, if those size-restricted halibut are filleted on board the charter vessel. This final rule adds the same carcass retention requirement to Federal regulations at § 300.65(d)(5) and, once implemented, could be removed from the IPHC annual management measures in future years.

#### *Other Regulatory Changes*

Charter vessel guides, operators, and crew are prohibited from harvesting halibut in Areas 2C and 3A during charter vessel fishing trips under regulations at § 300.65(d)(3). Under this final rule, the charter vessel operator could potentially be a charter vessel angler who is operating a vessel without a charter vessel guide onboard (e.g., the charter vessel guide is on a separate vessel). The Council and NMFS do not intend to prohibit charter vessel anglers who are operating charter vessels without a charter vessel guide on board from harvesting halibut.

Therefore, this final rule revises § 300.65(d)(3) to specify that “a charter vessel guide, charter vessel operator, or crew member may not catch and retain halibut during a charter vessel fishing trip in Commission regulatory area 2C or 3A, except that charter vessel operators who are charter vessel anglers may catch and retain halibut during a charter vessel fishing trip if the charter vessel guide is on a separate charter vessel.”

This final rule makes minor additional changes to regulations at §§ 300.61, 300.65, 300.66, and 300.67 to maintain existing regulatory responsibilities applicable to specific persons and ensure consistency in the charter halibut regulations to meet the intent of this final rule. These changes and the rationale for them are outlined in detail in the proposed rule and in Section 2.7 of the RIR/IRFA for this action and are briefly summarized here.

On January 1, 2015, several Alaska Statutes (A.S. 16.40.260 through 16.40.299) pertaining to sport fishing business and guide licensing and reporting through ADF&G expired. For 2015, there is no ADF&G guide license, fee, or insurance requirement; however, guides are still required to register with ADF&G and to hold an Alaska business license. State of Alaska vessel registration and logbook requirements still apply in 2015. This final rule implements revisions to Federal regulations at § 300.65(d)(4)(ii)(B)(1) and (d)(4)(ii)(D)(4), the definition of “charter vessel guide” at § 300.61, and § 300.67(a)(1) to refer to ADF&G sport fishing guide “licenses or registrations.” NMFS is retaining the word “licenses” in regulations because draft legislation has been submitted to the Alaska State Legislature to reinstate the sport fishing business and guide licensing statutes for future years.

Regulations at § 300.66(h) prohibit subsistence fishing for halibut while commercial fishing or sport fishing. The regulation was intended to prohibit only subsistence fishing for halibut and commercial or sport fishing for halibut from the same vessel on the same day. This

final rule revises the prohibition at § 300.66(h) to clarify that it only prohibits subsistence fishing for halibut while commercial or sport fishing for halibut.

#### *IPHC Annual Management Measures*

The proposed rule (79 FR 71729, December 3, 2014) and Section 2.7 of the RIR/IRFA (see **ADDRESSES**) for this action described several changes to the IPHC Annual Management Measures that NMFS recommended for consistency among regulations, to improve compliance, and to facilitate enforcement. The IPHC convened in January 2015 and approved NMFS' recommendations. The 2015 IPHC Annual Management Measures were published on March 17, 2015 (80 FR 13771) and reflect the following changes for consistency with this final rule:

- 1) Minor technical revisions to management measures at sections 3(1)(c), 28(2)(c), and 28(3)(e) to maintain consistency with revisions to the Federal definition of “charter vessel” and with State of Alaska sport fishing regulations.
- 2) Revised section 25(7) to clarify that the charter vessel guide shall be held liable for any violations of annual management measures committed by an angler on a charter vessel, whether the guide is on board the vessel with the angler or on a separate vessel.
- 3) Added management measures to section 28(1) to require that all halibut retained by a charter vessel angler remain on the vessel on which they were caught until the end of the charter vessel fishing trip. This revision will facilitate enforcement of daily bag and possession limits by prohibiting anglers on a charter vessel without a guide on board from transferring their harvested halibut to the guide's vessel for processing.

#### **Changes from the Proposed Rule**

Four minor changes were made to paragraphs (c)(5)(iii)(A)(5) and (c)(5)(iv)(A) of § 300.65 for consistency in wording. These paragraphs describe on which vessel the GAF permit

and CHP must be held, depending on whether or not a guide is on board. In the proposed rule, the language referring to the GAF permit was inconsistent. In one instance it referred to “a legible copy of a GAF permit,” in another it referred to simply “the GAF permit,” and in paragraph (c)(5)(iv)(A) it referred to a “valid GAF permit.” This language has been standardized for consistency in all instances to read “a legible copy of a valid GAF permit.”

### **Comments and Responses**

The proposed rule for this action was published on December 3, 2014 (79 FR 71729), and public comments on it were accepted until January 2, 2015. NMFS received 8 comment submissions containing 10 unique comments. No comment resulted in a change to the regulatory text from the proposed rule. NMFS summarized and responded to the comments as follows:

*Comment 1:* The commenter disagrees with the proposed regulations at § 300.66(s) and (v) to hold the charter vessel operator and the charter vessel guide jointly or severally responsible for ensuring that a valid CHP and a logbook are on board the charter vessel with the charter vessel anglers if no charter vessel guide is on board the vessel with the charter anglers. The commenter recommends that, similar to charter halibut operations in which the guide is on board the charter vessel, only the charter vessel guide is responsible for ensuring that the CHP and logbook are on the charter vessel. Considering that enforcement staff would still need to find the charter vessel guide in the case of a violation if he or she is jointly responsible, making the charter vessel angler responsible seems both infeasible and unnecessary.

*Response:* In the proposed rule for this action, NMFS discussed the rationale for holding the guide, the operator, or both parties responsible for compliance with certain regulations when charter fishing without a guide onboard. In most instances the primary responsibility for compliance with charter halibut fishery regulations is with the charter vessel guide. However,

the Federal regulations at § 300.66(s) and (v) put the burden of compliance on the charter vessel operator to have a valid CHP and logbook on board the vessel with the anglers.

The CHP and logbook are critical enforcement tools used by an authorized officer to verify when anglers are on a charter vessel fishing trip and subject to CHLAP, CSP, and other restrictions applicable to charter vessel anglers. If the charter vessel guide is on a separate charter vessel or on the shore, or is not in the vicinity of the charter vessel with anglers aboard (i.e., “angler vessel”), an authorized officer must be able to identify a person on board the angler vessel that is responsible for ensuring that a valid CHP and the logbook are on the vessel to authorize that charter vessel fishing trip. If the charter vessel guide is on a separate vessel, or on the shore, the charter vessel operator should be the person on board the angler vessel that could be held jointly responsible with the charter vessel guide to ensure that a valid CHP and the logbook are on the angler vessel. NMFS notes that enforcement of this provision will depend on the circumstances of a fishing trip. Authorized officers will evaluate the specific circumstances to determine whether to hold the charter vessel operator and the charter vessel guide jointly or severally responsible for compliance with the requirement to have a valid CHP and a logbook on board the vessel.

Charter vessel guides will remain responsible for complying with the CHLAP and CSP reporting requirements at § 300.65(d), and the person whose business was assigned a logbook remains responsible for ensuring that the charter vessel guide complies with those requirements. Before a charter vessel fishing trip begins, the charter vessel guide is required to record in the logbook the first and last names and license numbers of each charter vessel angler who will fish for halibut (exceptions apply for youth, senior, and disabled charter vessel anglers); ensure that the cover of the logbook lists the person named on the CHP(s) and the CHP number(s) being

used during that charter vessel fishing trip; and ensure the name and State-issued vessel registration (AK number) or U.S. Coast Guard documentation number of the charter vessel is listed. This final rule implements regulations at § 300.65(d) to require that the logbook remain on the charter vessel with the anglers during the charter vessel fishing trip, even if the guide is on a separate vessel or on shore. With this change, an authorized officer will be able to verify that all anglers are licensed and listed in the logbook, and that the angler endorsement on the CHP has not been exceeded.

NMFS notes that the regulations at § 300.66(s) and (v) are consistent with the IPHC annual management measure at section 25(7) which states, “The operator of a charter vessel shall be liable for any violations of these Regulations committed by an angler on board said vessel. In Alaska, the charter vessel guide, as defined in § 300.61 and referred to in §§ 300.65, 300.66, and 300.67, shall be liable for any violation of these Regulations committed by an angler on board a charter vessel.”

*Comment 2:* NMFS proposed to define sport fishing guide services as “accompanying or physically directing the sport fisherman in sport fishing activities during any part of a charter vessel fishing trip.” The term “physically directing” is not defined and may be difficult to interpret by both charter guides and NOAA Office of Law Enforcement staff. For example, it is unclear whether providing a chart or GPS coordinates identifying specific fishing locations or contacting a guide or lodge owner for instructions via cell phone or UHF radio would be considered “physically directing.”

*Response:* Section 1.3.6 of the RIR/IRFA describes that the Council and NMFS contemplated identifying a list of activities that would qualify as “physically directing” under this action. The Council concluded, and NMFS agrees, that defining assistance as

“accompanying or physically directing the sport fisherman in sport fishing activities” eliminates the need to list all potential activities that could be considered as providing assistance to an angler. This is consistent with the State of Alaska’s definition that does not specifically define “physically directing” as it is used in the definition for “sport fishing guide service” (5 AAC 75.995(a)(42)). One goal of this final rule is to align State and Federal regulations for consistency and improved compliance.

The commenter notes that it is unclear whether providing a chart or GPS coordinates or contacting a guide or lodge owner for instructions via cell phone or UHF radio would be considered “physically directing.” While “physically directing” could imply that the guide must be in proximity to the angler, certain technologies, such as cellular video calls, could allow a person to physically direct an angler to fish without being in proximity to the angler. Therefore, the nature of the activity will be evaluated as needed to determine if it is “physically directing.” We describe this in greater detail in the following paragraphs. The definition of sport fishing guide services implemented by this final rule applies only to assistance provided during any part of a charter vessel fishing trip.

A charter vessel fishing trip is defined as “the time period between the first deployment of fishing gear into the water from a charter vessel by a charter vessel angler and the offloading of one or more charter vessel anglers or any halibut from that vessel.” Assistance, under the definition of sport fishing guide services implemented by this final rule, will therefore be restricted to activities that occur after gear has been deployed. Assistance provided before gear is deployed would not be considered sport fishing guide services.

NMFS notes that determination of assistance for purposes of Federal regulations likely would depend on a combination of factors that, taken together, would indicate that a charter

vessel guide was compensated for assisting an angler in a manner intended to result in the taking of halibut. Providing a description, or even a map or GPS coordinates of a fishing location, before a charter vessel fishing trip begins, would not in itself be considered as providing sport fishing guide services because it was not assistance during a charter vessel fishing trip.

According to a recent decision in *United States v. Dutton*, assistance includes, but is not limited to the following activities: anchoring and drifting the vessel on the fishing spots, rigging gear, baiting hooks, changing lures, suggesting use of a different lure and providing it, explaining how to operate the manual downrigger and cranking it up, identifying bottom fish caught, helping land halibut, and netting and bringing fish on board. According to the decision, these activities could reasonably be expected to result in the catching or taking of halibut, and that by performing these activities for compensation, the respondent was providing sport fishing guide services.

*Comment 3:* The definition of charter vessel fishing trip should be broadened to encompass the initial trip period when clients and fishing gear are aboard the vessel and the vessel is underway to the fishing grounds. A “charter vessel fishing trip” does not begin until an angler deploys gear into the water and ends when one or more charter vessel anglers or any halibut are offloaded from the vessel. Under this definition, a guide could still legally tow or direct clients out to specific, productive fishing locations and show them when, where, or how to fish because the trip would not technically start until the angler deployed his or her gear. These activities should be considered part of a charter vessel fishing trip.

*Response:* This final rule does not restrict a person from directing clients to fishing grounds or instructing them in how to fish before the clients deploy fishing gear. Once an angler deploys fishing gear, however, the guide may not assist, accompany, or physically direct the

angler for that trip to be considered unguided. Determining which activities might be considered fishing before gear is deployed is difficult. The Council determined, and NMFS agrees, that the activity of fishing (i.e., deploying fishing gear) is what defines a charter vessel fishing trip. Therefore, the current definition is consistent with the Council's intent to manage charter halibut fishing in Areas 2C and Area 3A.

*Comment 4:* The summary section of the preamble of the proposed rule states that "sport fishing for halibut in which anglers receive assistance from a compensated guide would be managed under charter fishery regulations, and all harvest would accrue toward charter allocations" (79 FR 71729). However, GAF do not accrue toward charter allocations. The final rule should clarify that GAF do not accrue toward charter allocations.

*Response:* NMFS agrees and notes the clarification to the preamble to the proposed rule in this response. The Catch Sharing Plan authorizes transfers of commercial halibut individual fishing quota (IFQ) as guided angler fish (GAF) to qualified charter halibut permit holders for harvest by charter vessel anglers in Areas 2C and 3A. Using GAF, qualified charter halibut permit holders may offer charter vessel anglers the opportunity to retain halibut up to the limit for unguided anglers when the charter management measure in place limits charter vessel anglers to a more restrictive harvest limit. GAF is an alternative use of commercial halibut IFQ and all harvests of GAF accrue toward the commercial catch limit. NMFS has modified the preamble to this final rule to clarify that all charter harvests, except GAF, will accrue toward the charter sectors' allocations.

*Comment 5:* The proposed definition of sport fishing guide services excludes services provided by a crew member working on a charter vessel. If vessel crew are not covered by these

regulations, charter businesses could continue to avoid the charter fishing regulations by placing a crew member on board the angler vessel and a licensed guide on a separate vessel.

*Response:* NMFS disagrees. A charter vessel guide is defined at §300.61 as follows: “Charter vessel guide, for purposes of §§ 300.65, 300.66 and 300.67, means a person who holds an annual sport guide license or registration issued by the Alaska Department of Fish and Game, or a person who provides sport fishing guide services.” A crew member is defined at §300.61 as follows: “Crew member, for purposes of §§ 300.65 and 300.67, means an assistant, deckhand, or similar person who works directly under the supervision of, and on the same vessel as, a charter vessel guide or operator of a vessel with one or more charter vessel anglers on board.” According to these definitions, a crew member must be on the same vessel as the charter vessel guide to be considered a crew member. If an assistant or deckhand is not on the vessel with the charter vessel guide, that person does not meet the definition of crew member at § 300.61. If the assistant or deckhand is providing assistance for compensation, or with the intent to receive compensation, to a person who is sport fishing, to take or attempt to take halibut by accompanying or physically directing the sport fisherman in sport fishing activities during any part of a charter vessel fishing trip, that person would be considered a charter vessel guide, not a crew member, and charter fishing regulations would apply.

The Council and NMFS do not intend for an assistant, deckhand, or other crew member that works directly under the supervision of a charter vessel guide to be the person responsible for compliance with CHLAP and CSP regulations. This final rule maintains current requirements specifying that a person providing sport fishing guide services from a charter vessel is responsible for complying with CHLAP and CSP regulations, whether or not that person has an ADF&G sport fishing guide license or registration on board that vessel. Therefore, this final

rule revises the final sentence of the definition of sport fishing guide services to specify that “sport fishing guide services do not include services provided by a crew member, as defined at § 300.61.” The revision implemented by this final rule cites the definition of a crew member for added clarity.

*Comment 6:* NMFS should consider carefully defining what will be considered “private” (i.e., unguided) sport fishing and what will be “charter” sport fishing and prohibit any practices that do not fit these two descriptions.

*Response:* This final rule clarifies specific types of fishing activities that are defined and managed as unguided sport fishing and those that are considered to be charter fishing. This final rule is intended to clarify that all sport fishing for halibut in which anglers receive assistance from a compensated guide will be managed under charter fishery regulations. To do that, this final rule aligns State of Alaska and Federal definitions pertaining to sport fishing guide services for Pacific halibut. This final rule requires businesses that currently provide sport fishing services in which a charter vessel guide is not on board the vessel with the anglers to either obtain CHPs and comply with regulations for the charter halibut fishery, or refrain from accompanying or physically directing anglers during a fishing trip, thereby creating a clearer distinction between guided (i.e., charter) and unguided anglers. See also response to Comment 7.

*Comment 7:* Data from the “self-guided” commercial sport anglers are not distinguished from data from private anglers in the statewide harvest survey (SWHS). The SWHS is mailed in the fall to a sample of sport fishing license holders. The SWHS is not a reliable method to collect data from such a large sector of the harvest. NMFS and ADF&G need to improve data

collection to distinguish between anglers who use commercial sport fishing operations and anglers who do not.

*Response:* The Council and NMFS manage two categories of sport halibut anglers: guided (charter) and unguided (self-guided). The Council and NMFS do not distinguish between unguided anglers who fish using their own boats and gear (what the commenter refers to as “private” anglers) and those who may rent boats and gear from a lodge or outfitter but do not use the services of a charter vessel guide (what the commenter refers to as “self-guided commercial sport” anglers). Both of these types of anglers are considered by NMFS to be unguided. As described in the proposed rule and Section 1.2 of the RIR/IRFA, this final rule is intended only to address fishing activities for the charter halibut sector; no action is proposed to further regulate businesses that do not provide sport fishing guide services.

Sport halibut harvests are estimated from logbooks for the charter sector, and from the SWHS for unguided anglers. In developing and recommending this final rule, the Council did not identify a conservation concern with regard to sport halibut harvest accounting because all harvests are estimated based on information submitted in the logbooks and SWHS. NMFS anticipates this final rule will improve harvest estimates between the charter sector and unguided anglers by clarifying logbook reporting requirements and aligning the Federal and State definitions of sport fishing guide services so that halibut harvested by an angler who receives compensated assistance are required to be recorded in the logbook, whether the person providing the assistance is on board the vessel or not. The Council and NMFS have determined that the recordkeeping and reporting regulations currently in place provide for effective monitoring and enforcement of halibut harvested by charter vessel anglers in Area 2C and Area 3A.

*Comment 8:* The proposed action will not curtail angling that occurs when a charter vessel guide is not onboard the vessel with the anglers. There are several modes of angling that could develop or expand including 1) allowing clients to run boats themselves after a day or two of fishing with a guide to learn the ropes; 2) sending anglers out in skiffs with GPS coordinates and other guidance; 3) charter businesses or lodges converting from guided to “self-guided” operations; and 4) offering catch and release halibut fishing trips.

*Response:* The Council recommended this final rule to clarify that all sport fishing for halibut in which anglers receive assistance from a compensated guide will be managed under the CHLAP and the CSP. This final rule is not intended to curtail businesses that provide equipment for unguided sport fishing (e.g., self-guided fishing or bare boat rentals) (see also response to Comment 7). The Council and NMFS recognized and considered the alternative fishing scenarios listed by the commenter in developing Federal regulations for the charter halibut fisheries in Areas 2C and 3A and this final rule. Anglers who feel confident to fish without a guide after fishing with a guide for one or more trips may do so under charter halibut fishing regulations. Anglers may receive advice on where and how to fish before a fishing trip begins (see also response to Comment 2). The proposed rule and Section 1.3.7 of the RIR/IRFA describe that businesses currently providing sport fishing services where the charter vessel guide is not on board a vessel with the anglers may modify those services so that they comply with regulations for guided and unguided anglers. Finally, while catch and release fishing for halibut does not require a charter halibut permit, IPHC regulations at section 25(3) (80 CFR 13771, March 17, 2015) specify that any halibut brought aboard a vessel and not immediately returned to the sea with a minimum of injury will be included in the daily bag limit of the person catching the halibut.

*Comment 9:* The guideline harvest level regulations that preceded the CSP, the CSP, and this proposed rule are all based on the false premise that charter fishing is a commercial harvesting activity. This proposed rule should be addressing the definition of what constitutes commercial uses of halibut, not what constitutes guiding services.

*Response:* This final rule is intended to clarify that all sport fishing for halibut in which anglers receive assistance from a compensated guide will be managed under charter fishery regulations and to align State of Alaska and Federal definitions pertaining to sport fishing guide services for Pacific halibut. The Council did not recommend, and NMFS is not implementing changes to commercial halibut fishing regulations as part of this action. Therefore, changing the definition of commercial uses of halibut is beyond the scope of this final rule.

*Comment 10:* NMFS should insist that charter businesses establish business models that enable managers to establish allocations instead of “guidelines” for the charter sector and that provide for verifiable landing statistics.

*Response:* The primary objective of this final rule is to clarify the sport fishing activities defined as charter fishing, not to modify the allocations that are assigned to the charter fishery under the CSP. As described in the proposed rule and Section 1.3.3 of the RIR/IRFA, the Council approved and NMFS implemented the CSP in 2014. The CSP established a method by which allocations are set for the charter and commercial halibut fisheries in Areas 2C and 3A. This final rule clarifies that all sport fishing for halibut in which anglers receive assistance from a compensated guide would be managed under charter fishery regulations, and all harvest (except halibut harvested under the GAF Program) would accrue toward charter allocations under the CSP. As described in the response to Comment 7, the Council and NMFS have determined that the recordkeeping and reporting regulations currently in place for sport halibut fisheries provide

for effective monitoring of the charter fishery allocation and enforcement of regulations applicable to the charter fishery in Area 2C and Area 3A.

### **OMB Revisions to Paperwork Reduction Act References in 15 CFR 902.1(b)**

Section 3507(c)(B)(i) of the PRA requires that agencies inventory and display a current control number assigned by the Director, OMB, for each agency information collection. Section 902.1(b) identifies the location of NOAA regulations for which OMB approval numbers have been issued. Because this final rule revises and adds data elements within a collection-of-information for recordkeeping and reporting requirements, 15 CFR 902.1(b) is revised to reference correctly the sections resulting from this final rule.

### **Classification**

Regulations governing the U.S. fisheries for Pacific halibut are developed by the IPHC, the Pacific Fishery Management Council, the North Pacific Fishery Management Council, and the Secretary of Commerce. Section 5 of the Halibut Act (16 U.S.C. 773c) allows the Regional Council having authority for a particular geographical area to develop regulations governing fishing for halibut in U.S. Convention waters as long as those regulations do not conflict with IPHC regulations. The Halibut Act at section 773c(a) and (b) provides the Secretary of Commerce with the general responsibility to carry out the Convention with the authority to, in consultation with the Secretary of the department in which the U.S. Coast Guard is operating, adopt such regulations as may be necessary to carry out the purposes and objectives of the Convention and the Halibut Act. This final rule is consistent with the Halibut Act and other applicable laws.

*Executive Order 12866*

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

*Regulatory Flexibility Act (RFA)*

A final regulatory flexibility analysis (FRFA) is required by the Regulatory Flexibility Act. This FRFA incorporates the initial regulatory flexibility analysis (IRFA) prepared for the proposed rule and addresses the applicable requirements of section 604(a) of the RFA. A statement of the need for and objectives of, this final rule has already been provided in the preamble to this final rule (see **Purpose of this Final Rule**) and is not repeated here.

The proposed rule was published in the **Federal Register** on December 3, 2014 (79 FR 71729). An initial regulatory flexibility analysis (IRFA) was prepared and described in the Classification section of the proposed rule. The comment period ended on January 2, 2015. NMFS received 8 comment submissions containing 10 unique comments. No comments were received on the IRFA or on the small entity impacts of this action. No comments on the proposed rule were filed with NMFS by the Chief Counsel for Advocacy of the Small Business Administration.

*Number and Description of Small Entities Regulated by the Proposed Rule*

On June 12, 2014, the Small Business Administration (SBA) issued a final rule revising the small business size standards for several industries effective July 14, 2014 (79 FR 33647, June 12, 2014). The new size standards were used to prepare the FRFA for this final rule.

The Small Business Administration (SBA) specifies that for charter fishing vessel operations, a small business is one with annual receipts less than \$7.5 million. The largest of these charter vessel operations, which are lodges, may be considered large entities under SBA

standards, but that cannot be confirmed because NMFS does not have or collect economic data on lodges necessary to definitively determine total annual receipts. Thus, all charter vessel operations are considered small entities, based on SBA criteria, because NMFS cannot confirm if any entities have gross revenues greater than \$7.5 million on an annual basis.

This final rule would directly regulate all CHP holders, and businesses offering sport fishing guide services that the regulations require to have CHPs. As of July 7, 2014, the date of the most recent information available, there were 975 CHPs issued to 580 permit holders in Areas 2C and 3A. Data on business affiliations among permit holders are not available; therefore, the number of CHP holders that are directly regulated cannot be accurately determined, but would not exceed 580. NMFS notes that because there is little incentive for a business that already holds one or more CHPs to offer sport fishing guide services without a guide on board to anglers, the number of current CHP holders (i.e., small entities) affected by this proposed regulation is likely to be very small. The final rule is not expected to adversely impact small entities that possess CHPs.

The final rule, however, may adversely impact those entities that do not hold CHPs and who provide sport fishing guide services using guides that are not on board the vessel with the anglers. A review of logbook data suggests that only a few such entities can be documented. For Area 2C, a minimum of one to three businesses are estimated from logbook data to have routinely offered sport fishing services for halibut that did not meet the Federal definition of sport fishing guide services between 2009 and 2013. Logbook data for Area 3A did not clearly identify any businesses that routinely reported trips in which halibut were harvested and no CHP was recorded as used for the charter vessel fishing trip. It is difficult to estimate how many businesses may be providing sport fishing services where the guide is not on board the vessel

with the anglers because some of these businesses may not be registered as charter businesses with the State and may not be completing logbooks. Under the final rule, businesses that provide sport fishing services where the guide is not on board the vessel with the anglers, but do not hold CHPs, would have to either purchase CHPs or change the services they provide so that they refrain from having guides accompany or physically assist anglers in the taking of halibut during any part of a charter vessel fishing trip. Information on availability and price of CHPs is presented in Section 1.3.1.2 of the RIR/IRFA. NMFS does not have or collect data to determine the exact number of businesses offering sport fishing services where the guide is not on board the vessel with the anglers or total annual receipts for these entities. NMFS considers all sport fishing services as small entities, based on SBA criteria, because NMFS cannot confirm if any of these entities have gross revenues greater than \$7.5 million on an annual basis.

Community quota entities may apply for and receive community CHPs; therefore, this final rule may directly regulate entities representing small, remote communities in Areas 2C and 3A. There are 20 communities in Area 2C and 14 in Area 3A eligible to receive community CHPs. Of these 34 communities, 21 hold community CHPs. The action is not expected to adversely impact communities that hold CHPs.

#### *Description of Significant Alternatives That Minimize Adverse Impacts on Small Entities*

A FRFA must describe the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of the Halibut Act and other applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency that affect the impact on small entities was rejected.

The status quo alternative (Alternative 1) would continue to require that a guide be on board a charter vessel with a charter vessel angler to be providing sport fishing guide services. Maintaining these regulations is believed to result in an unknown, but relatively small number of anglers fishing under unguided sport fishing regulations, rather than the more restrictive charter fishing regulations. The status quo may result in potential inaccuracies in accounting of sport removals by sector and continued confusion by the angling public as to how to report their halibut harvest. The status quo alternative would not accomplish the Council's objective that receiving compensated assistance while fishing for halibut be managed under charter halibut fishery regulations, whether or not the person providing the compensated assistance is on the same vessel as the person fishing for halibut.

The Council considered one alternative with three options to the status quo. The first option under Alternative 2 would change the definition of "sport fishing guide services" to remove the requirement that a guide be on board the charter vessel with the charter vessel angler to be providing those services. The second option would add a Federal definition for "compensation" and contained two suboptions. The first suboption would add a Federal definition for compensation that matches the State definition. The second suboption would add a Federal definition that substitutes the word "reasonable" for "actual" expenses from the State definition. These suboptions are described in more detail in Section 1.3.6.2 of the RIR/IRFA. The third option under Alternative 2 would add a Federal definition for "assistance" to describe which types of activities fall under sport fishing guide services. Alternative 2 would better align Federal regulations regarding sport fishing guide services for Pacific halibut with State regulations, would incorporate sport fishing services whether or not the person providing the compensated assistance is on the same vessel as the person fishing for halibut under the umbrella

of charter regulations, and would improve the accuracy of unguided sport and charter halibut harvest estimates.

The Council recommended a preferred alternative (i.e., this final rule) that would better align the State and Federal definitions of “sport fishing guide services” (Alternative 2, Option 1), and add a definition for “compensation” (Alternative 2, Option 2) to Federal regulations. Instead of separately defining “assistance” as described in Alternative 2, Option 3, the preferred alternative would add language to the definition of sport fishing guide services to define assistance as “accompanying or physically directing the sport fisherman in sport fishing activities.” The preferred alternative incorporates the recommendations developed cooperatively by State and NMFS enforcement and management staff and supported by the discussion of the effects of Alternative 2, Options 1, 2, and 3 in Section 1.3.6 of the RIR/IRFA. The preferred alternative incorporates a description of assistance consistent with State regulations without specifying a list of fishing activities. Broadly defining assistance in this way would eliminate the need to identify all potential activities that could be considered as providing assistance to an angler and the risk that a relevant activity would be inadvertently excluded from the list.

NMFS proposed the Council’s preferred alternative, with one exception. Instead of proposing the suboption to Alternative 2, Option 2 that would have added a Federal definition for “compensation” that differs from the State’s definition by referring to “reasonable” expenses rather than “actual” expenses, NMFS proposed the suboption that would add a Federal definition that matches the State’s definition. The preferred alternative for this option initially incorporated the recommendations developed cooperatively by State and NMFS enforcement and management staff, but upon further discussion, these entities determined that matching the State and Federal definitions for compensation would be more enforceable. Additionally, adopting

matching definitions would further the Council's objectives of aligning Federal and State of Alaska regulations.

The entities directly regulated under this action are assumed to be small under the SBA definition. Because the rule serves to benefit the small entities that are directly regulated under the rule by clarifying Federal fishery regulations to better align with Council intent and State fishery regulations, no significant negative economic impacts are expected on directly regulated entities who are CHP holders; however, charter vessel guides who provide sport fishing guide services and are not on board the same charter vessel as the charter vessel angler will be required to change their fishing practices under this final rule. These directly regulated entities are also assumed to be small entities. Thus, NMFS is not aware of any alternatives, in addition to the alternatives considered, that would more effectively meet these Regulatory Flexibility Act criteria at a lower economic cost to directly regulated small entities.

#### *Reporting, Recordkeeping Requirements, and Other Compliance Requirements*

This action does not impose any additional reporting requirements on the participants of the charter halibut fishery. Although the public reporting burden will not change, additional participants would be required to comply with existing requirements. The new participants would be subject to the same recordkeeping and reporting requirements as existing participants.

#### *Duplicate, Overlapping, or Conflicting Federal Rules*

NMFS has not identified other Federal rules that may duplicate, overlap, or conflict with this final rule.

#### **Paperwork Reduction Act Collection-of-Information Requirements**

This final rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA), which have been approved by the Office of Management and Budget (OMB). The collections are presented below by OMB control number.

*OMB Control No. 0648–0575*

The ADF&G Saltwater Sport Fishing Charter Trip Logbook, GAF Electronic Landing Report, and GAF Permit Log are mentioned in this final rule. This final rule may require a few more businesses that currently do not complete reports and logbooks to do so; however, the public reporting burden for these items in this collection-of-information are not directly affected by this final rule.

*OMB Control No. 0648–0592*

Applications for CHPs and applications for GAF transfers are mentioned in this final rule. This final rule may result in a few more businesses that currently do not have CHPs and GAF transfers to purchase and apply for them, respectively; however, the public reporting burden for these applications in this collection-of-information are not directly affected by this final rule.

Public reporting burden includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding these burden estimates or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and by email to *OIRA\_Submission@omb.eop.gov*, or fax to 202–395–5806.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information

subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number. All currently approved NOAA collections of information may be viewed at: [http://www.cio.noaa.gov/services\\_programs/prasubs.html](http://www.cio.noaa.gov/services_programs/prasubs.html).

This final rule is consistent with Executive Order 12962 as amended September, 26, 2008, which required Federal agencies to ensure that recreational fishing is managed as a sustainable activity and is consistent with existing law.

### **List of Subjects**

#### *15 CFR Part 902*

Reporting and recordkeeping requirements.

#### *50 CFR Part 300*

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

Dated: June 10, 2015

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**Samuel D. Rauch III,**

**Deputy Assistant Administrator for Regulatory Programs,**

**National Marine Fisheries Service.**

For the reasons set out in the preamble, NMFS amends 15 CFR part 902 and 50 CFR part 300 as follows:

### **Title 15—Commerce and Foreign Trade**

**PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS**

1. The authority citation for part 902 continues to read as follows:

**Authority:** 44 U.S.C. 3501 *et seq.*

2. In § 902.1, in the table in paragraph (b), under the entry “50 CFR”:

a. Remove the entries for “300.65 introductory text; (h)(1)(ii) and (iii); and (i)”;

“300.65(h)(1)(i)”;

b. Add entries in alphanumeric order for “300.65(h) through (l)”;

and “300.67(a) through (j)”.

c. Revise the entry for “300.65(c)(5)”;

The additions and revision read as follows:

**§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.**

\* \* \* \* \*

(b) \* \* \*

CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648-)
* * * * *	
50 CFR:	
* * * * *	
300.65(c)(5)	-0575, -0592, -0665
* * * * *	
300.65(h) through (l)	-0512

*****	
300.67(a) through (j)	-0592
*****	

**Title 50—Wildlife and Fisheries**

**PART 300—INTERNATIONAL FISHERIES REGULATIONS**

**Subpart E—Pacific Halibut Fisheries**

3. The authority citation for part 300, subpart E, continues to read as follows:

**Authority:** 16 U.S.C. 773-773k.

4. In § 300.61:

a. Add a definition for “Charter vessel” in alphabetical order;

b. Revise the definitions of “Charter vessel angler”, “Charter vessel fishing trip”, “Charter vessel guide”, “Charter vessel operator”;

c. Add a definition for “Compensation” in alphabetical order; and

d. Revise the definition of “Sport fishing guide services”.

The additions and revisions read as follows:

**§ 300.61 Definitions.**

\*\*\*\*\*

*Charter vessel*, for purposes of §§ 300.65, 300.66, and 300.67, means a vessel used while providing or receiving sport fishing guide services for halibut.

*Charter vessel angler*, for purposes of §§ 300.65, 300.66, and 300.67, means a person, paying or non-paying, receiving sport fishing guide services for halibut.

*Charter vessel fishing trip*, for purposes of §§ 300.65, 300.66, and 300.67, means the time period between the first deployment of fishing gear into the water from a charter vessel by a charter vessel angler and the offloading of one or more charter vessel anglers or any halibut from that vessel.

*Charter vessel guide*, for purposes of §§ 300.65, 300.66 and 300.67, means a person who holds an annual sport fishing guide license or registration 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, means the person in control of the charter vessel during a charter vessel fishing trip.

\* \* \* \* \*

*Compensation*, for purposes of sport fishing for Pacific halibut in Commission regulatory areas 2C and 3A, means direct or indirect payment, remuneration, or other benefits received in return for services, regardless of the source; for this definition, “benefits” includes wages or other employment benefits given directly or indirectly to an individual or organization, and any dues, payments, fees, or other remuneration given directly or indirectly to a fishing club, business, organization, or individual who provides sport fishing guide services; and does not include reimbursement for the actual daily expenses for fuel, food, or bait.

\* \* \* \* \*

*Sport fishing guide services*, for purposes of §§ 300.65(d) and 300.67, means assistance, for compensation or with the intent to receive compensation, to a person who is sport fishing, to take or attempt to take halibut by accompanying or physically directing the sport fisherman in sport fishing activities during any part of a charter vessel fishing trip. Sport fishing guide services do not include services provided by a crew member, as defined at § 300.61.

\* \* \* \* \*

5. In § 300.65,

a. Revise paragraphs (c)(5)(iii)(A)(5); (c)(5)(iv)(A) and (G); (d)(3); (d)(4)(i); (d)(4)(ii)(B) introductory text; (d)(4)(ii)(B)(I) through (4); and (d)(4)(iii)(A)(I);

b. Add paragraph (d)(4)(iii)(A)(5);

c. Revise paragraph (d)(4)(iii)(D)(4); and

d. Add paragraph (d)(5).

The revisions and additions read as follows:

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

\* \* \* \* \*

(c) \* \* \*

(5) \* \* \*

(iii) \* \* \*

(A) \* \* \*

(5) If a charter vessel angler harvests GAF from a charter vessel with a charter vessel guide on board, a legible copy of a valid GAF permit and the assigned charter halibut permit, community charter halibut permit, or military charter halibut permit appropriate for the Commission regulatory area (2C or 3A) must be carried by the charter vessel operator on board the charter vessel used to harvest GAF at all times that such fish are retained on board and must be presented for inspection on request of any authorized officer. If a charter vessel angler harvests GAF from a charter vessel without a charter vessel guide on board, the charter vessel guide must retain the legible copy of the GAF permit and the assigned charter halibut permit,

community charter halibut permit, or military charter halibut permit must be on the charter vessel with the charter vessel angler.

\* \* \* \* \*

(iv) \* \* \*

(A) If a charter vessel angler harvests GAF from a charter vessel with a charter vessel guide on board, the charter vessel guide must have on board a legible copy of a valid GAF permit and the valid charter halibut permit, community charter halibut permit, or military charter halibut permit assigned to the GAF permit for the area of harvest. If a charter vessel angler harvests GAF from a charter vessel without a charter vessel guide on board, the legible copy of the valid GAF permit must be on board the same vessel as the charter vessel guide, and the original charter halibut permit, community charter halibut permit, or military charter halibut permit assigned to the GAF permit for the area of harvest must be on the charter vessel with the charter vessel angler.

\* \* \* \* \*

(G) The charter vessel guide must be physically present when the GAF halibut is harvested and must immediately remove the tips of the upper and lower lobes of the caudal (tail) fin to mark all halibut caught and retained as GAF. If the GAF halibut is filleted, the entire carcass, with head and tail connected as a single piece, must be retained on board the charter vessel on which the halibut was caught until all fillets are offloaded.

\* \* \* \* \*

(d) \* \* \*

(3) *Charter vessel guide and crew restriction in Commission regulatory areas 2C and 3A.* A charter vessel guide, charter vessel operator, or crew member may not catch and retain

halibut during a charter vessel fishing trip in Commission regulatory area 2C or 3A, except that charter vessel operators who are charter vessel anglers may catch and retain halibut during a charter vessel fishing trip if the charter vessel guide is on a separate charter vessel.

(4) \* \* \*

(i) *General requirements.* Each charter vessel angler and charter vessel guide in Commission regulatory area 2C or 3A must comply with the following recordkeeping and reporting requirements, except as specified in paragraph (d)(4)(iii)(C) of this section, by the end of the calendar day or by the end of the charter vessel fishing trip, whichever comes first, unless otherwise specified.

(ii) \* \* \*

(B) *Charter vessel guide requirements.* If halibut were caught and retained in Commission regulatory area 2C or 3A, the charter vessel guide must record the following information (see paragraphs (d)(4)(ii)(B)(1) through (10) of this section) in the Alaska Department of Fish and Game Saltwater Charter Logbook:

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

(2) *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 are 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. A separate logbook sheet is required if more than one charter halibut permit is used on a trip.

(3) *Charter halibut permit (CHP) number.* The NMFS CHP number(s) authorizing charter vessel anglers on that charter vessel fishing trip to catch and retain halibut.

(4) *Guided Angler Fish (GAF) permit number.* The NMFS GAF permit number(s) authorizing charter vessel anglers on that charter vessel fishing trip to harvest GAF.

\* \* \* \* \*

(iii) \* \* \*

(A) \* \* \*

(1) Upon retention of a GAF halibut, the charter vessel guide must immediately record on the GAF permit log (on the back of the GAF permit) the date that the fish was caught and retained and the total length of that fish as described in paragraphs (d)(4)(iii)(D)(5) and (7) of this section. If GAF halibut are retained on a charter vessel without a charter vessel guide on board, the charter vessel guide must also comply with the reporting requirements in paragraph (d)(4)(iii)(A)(5) of this section.

\* \* \* \* \*

(5) If a GAF is retained on a charter vessel without a charter vessel guide on board, the charter vessel guide must immediately record in the ADF&G Saltwater Charter Logbook the GAF permit number under which GAF were caught and retained, and the number of GAF kept under the corresponding charter vessel angler's name.

\* \* \* \* \*

(D) \* \* \*

(4) Alaska Department of Fish and Game sport fishing guide license or registration number held by the charter vessel guide who certified the logbook data sheet.

\* \* \* \* \*

(5) *Carcass retention requirement for size-restricted halibut.* If a size-restricted halibut is filleted on board the charter vessel, the entire carcass, with head and tail connected as a single piece, must be retained on board the charter vessel on which it was caught until all fillets are offloaded.

\* \* \* \* \*

6. In § 300.66:

- a. Revise paragraph (h) introductory text and paragraphs (s) and (t);
- b. Remove paragraph (u);
- c. Redesignate paragraphs (v) and (w) as (u) and (v), respectively; and
- d. Revise newly redesignated paragraphs (u) and (v).

The revisions read as follows:

**§ 300.66 Prohibitions.**

\* \* \* \* \*

(h) Conduct subsistence fishing for halibut while commercial fishing or sport fishing for halibut, as defined in § 300.61, from the same vessel on the same calendar day, or possess on board a vessel halibut harvested while subsistence fishing with halibut harvested while commercial fishing or sport fishing, except that persons authorized to conduct subsistence fishing under § 300.65(g), and who land their total annual harvest of halibut:

\* \* \* \* \*

(s) Be a charter vessel guide with charter vessel anglers on board, or a charter vessel operator if the charter vessel guide is not on board, in Commission regulatory area 2C or 3A without an original valid charter halibut permit for the regulatory area in which the charter vessel is operating during a charter vessel fishing trip.

(t) Be a charter vessel guide in Commission regulatory area 2C or 3A with more charter vessel anglers catching and retaining halibut during a charter vessel fishing trip than the total angler endorsement number specified on the charter halibut permit(s) or community charter halibut permit(s) in use for that trip.

(u) Be a charter vessel guide of a charter vessel on which one or more charter vessel anglers are catching and retaining halibut in both Commission regulatory areas 2C and 3A during one charter vessel fishing trip.

(v) Be a charter vessel guide or a charter vessel operator during a charter vessel fishing trip in Commission regulatory area 2C or 3A with one or more charter vessel anglers that are catching and retaining halibut without having on board the vessel with the charter vessel anglers a State of Alaska Department of Fish and Game Saltwater Charter Logbook in which the charter vessel guide has specified the following:

(1) The person named on the charter halibut permit or permits being used during that charter vessel fishing trip;

(2) The charter halibut permit or permits number(s) being used during that charter vessel fishing trip; and

(3) The name and State-issued vessel registration (AK number) or U.S. Coast Guard documentation number of the charter vessel.

7. In § 300.67, revise paragraphs (a)(1) and (3) to read as follows:

**§ 300.67 Charter halibut limited access program.**

\* \* \* \* \*

(a) \* \* \*

(1) In addition to other applicable permit, licensing, or registration requirements, any charter vessel guide of a charter vessel during a charter vessel fishing trip with one or more charter vessel anglers catching and retaining Pacific halibut on board must have on board the vessel an original valid charter halibut permit or permits endorsed for the regulatory area in which the charter vessel is operating and endorsed for at least the number of charter vessel anglers who are catching and retaining Pacific halibut. Each charter halibut permit holder must ensure that the charter vessel operator and charter vessel guide of the charter vessel comply with all requirements of §§ 300.65, 300.66, and 300.67.

\* \* \* \* \*

(3) *Charter vessel angler endorsement.* A charter halibut permit is valid for up to the maximum number of charter vessel anglers on a single charter vessel for which the charter halibut permit is endorsed.

\* \* \* \* \*

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