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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 161223999-7143-01]

RIN 0648-BG61

Pacific Halibut Fisheries; Catch Sharing Plan

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to approve changes to the Pacific Halibut Catch Sharing Plan (Plan) and codified regulations for the International Pacific Halibut Commission's (IPHC or Commission) regulatory Area 2A off Washington, Oregon, and California (Area 2A). In addition, NMFS proposes to implement the portions of the Plan and management measures that are not implemented through the IPHC. These measures include the sport fishery allocations and management measures for Area 2A. These actions are intended to conserve Pacific halibut, provide angler opportunity where available, and minimize bycatch of overfished groundfish species.

DATES: Comments on the proposed changes to the Plan and the codified regulations, and on the proposed domestic Area 2A Pacific halibut management measures must be received by *[insert date 20 days after date of publication in the Federal Register]*.

ADDRESSES: Submit your comments, identified by NOAA-NMFS-2016-0144, by either of the following methods:

- *Federal e-Rulemaking Portal*: Go to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2016-0144, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.
- *Mail*: Submit written comments to Barry A. Thom, Regional Administrator, West Coast Region, NMFS, 7600 Sand Point Way NE., Seattle, WA 98115–0070.

Instructions: NMFS may not consider comments if they are sent by any other method, to any other address or individual, or received after the comment period ends. All comments received are a part of the public record and NMFS will post for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender is publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Gretchen Hanshew, phone: 206-526-6147, fax: 206-526-6736, or e-mail: gretchen.hanshew@noaa.gov.

SUPPLEMENTARY INFORMATION:

Electronic Access

This rule is accessible via the Internet at the Office of the Federal Register Web site at www.access.gpo.gov/su_docs/aces/aces140.html. Background information and documents are available at the NMFS West Coast Region Web site at

www.westcoast.fisheries.noaa.gov/fisheries/management/pacific_halibut_management.html and at the Council's Web site at *www.pcouncil.org*.

Background

The Northern Pacific Halibut Act (Halibut Act) of 1982, 16 U.S.C. 773-773K, gives the Secretary of Commerce (Secretary) general responsibility for implementing the provisions of the Halibut Convention between the United States and Canada (Halibut Convention) (16 U.S.C. 773c). It requires the Secretary to adopt regulations as may be necessary to carry out the purposes and objectives of the Halibut Convention and the Halibut Act. Section 773c of the Halibut Act also authorizes the regional fishery management councils to develop regulations in addition to, but not in conflict with, regulations of the IPHC to govern the Pacific halibut catch in their corresponding U.S. Convention waters.

Each year between 1988 and 1995, the Pacific Fishery Management Council (Council) developed and NMFS implemented a catch sharing plan in accordance with the Halibut Act to allocate the total allowable catch (TAC) of Pacific halibut between treaty Indian and non-Indian harvesters and among non-Indian commercial and sport fisheries in Area 2A. In 1995, NMFS implemented the Council-recommended long-term Plan (60 FR 14651; March 20, 1995). Every year since then, minor revisions to the Plan have been made to adjust for the changing needs of the fisheries.

For 2017, the Council recommendation includes minor modifications to sport fisheries to better match the needs of the fisheries and changes to the inseason procedures to allow flexibility to address bycatch concerns. NMFS is also proposing to make changes to the codified regulations to make them consistent with the Council's

recommended changes to the inseason provisions of the Plan. This rule does contain some dates for the sport fisheries based on the 2017 Plan as recommended by the Council. However, some dates have yet to be determined by the affected states; those will be included in the final rule. This rule does account for the final 2A TAC recommended by the IPHC at its annual meeting January 23-27, 2017. The IPHC recommended an Area 2A TAC of 1,330,000 lbs.

Incidental Halibut Retention in the Sablefish Primary Fishery North of Pt. Chehalis, WA

The Plan provides that incidental halibut retention in the sablefish primary fishery north of Pt. Chehalis, WA, will be allowed when the Area 2A TAC is greater than 900,000 lb (408.2 metric ton (mt)), provided that a minimum of 10,000 lb (4.5 mt) is available above a Washington recreational TAC of 214,100 lb (97.1 mt). The Area 2A TAC for 2017 is high enough to allow incidental retention. The Council will recommend specific Pacific halibut landing restrictions for the sablefish primary fishery at its March 2017 meeting. Following this meeting, NMFS will publish the restrictions in the **Federal Register**.

Opportunity for Public Comment

Through this proposed rule, NMFS requests public comments on the Council's recommended modifications to the Plan and the resulting proposed domestic fishing regulations by *[insert date 20 days after date of publication in the Federal Register]*. A 20-day comment period is necessary to allow adequate time for the final rule to be effective by April 1, 2017, when the incidental fisheries begin. The states of Oregon and California will conduct public workshops in February to obtain input on the sport season dates. The state of Washington has already determined season dates following input from

its public. Following the proposed rule comment period, NMFS will review public comments and comments from the states, and issue a final rule. Either that final rule or an additional rule will include the IPHC regulations and regulations for the West Coast and Alaska.

Proposed Changes to the Plan

Each year, the Washington Department of Fish and Wildlife (WDFW), Oregon Department of Fish and Wildlife (ODFW), California Department of Fish and Game (CDFG), and the tribes with treaty fishing rights for halibut consider whether to pursue changes to the Plan to meet the needs of the fishery. In determining whether changes are needed, the state agencies hold public meetings prior to the Council's September meeting. Subsequently, they recommend changes to the Council at its September meeting. In 2016, fishery managers from all three state agencies held public meetings on the Plan prior to the Council's September meeting. At the September 2016 Council meeting, WDFW and ODFW recommended changes to the Plan and codified state regulations. NMFS, the tribes, and CDFW did not recommend changes to the Plan or state regulations. The Council voted to solicit public input on all of the changes recommended by the state agencies, several of which were presented in the form of alternatives. WDFW and ODFW subsequently held public workshops on the recommended changes.

At its November 13-21, 2016, meeting the Council considered the results of state-sponsored workshops on the recommended changes to the Plan and public input provided at the September and November Council meetings, and made its final recommendations for modifications to the Plan. NMFS proposes to adopt all of the Council's

recommended changes to the Plan as further discussed below. NMFS also proposed to make changes to the codified regulations at § 300.63.

Proposed Changes to the Plan

1. In section (f)(1)(i), Washington inside waters (Puget Sound) subarea, language regarding structuring goals for the fishery and subarea-specific season dates is deleted. To replace this, language is added describing WDFW's proposed process for developing coastwide season dates each year and criteria for those season dates; specifically: the fishery will open in early May and be open up to two days per week, including one weekday and one weekend day. Season structure will include periodic closures to allow assessment of catch relative to subarea quota, and additional openings may be allowed subsequently if sufficient quota remains. Language stating that WDFW is unable to monitor catch inseason and manage for quota inseason are deleted. Beginning in 2017, WDFW intends to implement inseason monitoring.
2. In section (f)(1)(ii), Washington North Coast subarea, language regarding structuring goals for the fishery and subarea-specific season dates is deleted. New language is added describing WDFW's proposed process for developing coastwide season dates each year, specifically: the fishery will open in early May and be open up to two days per week, including one weekday and one weekend day. Season structure will include periodic closures to allow assessment of catch relative to subarea quota, and additional openings may be allowed subsequently if sufficient quota remains.

3. In section (f)(1)(iii), Washington South Coast subarea, language regarding a structuring objective for the subarea is deleted. For the primary fishery, season dates will be developed according to the process and criteria described above for Puget Sound and the North Coast subareas. For the nearshore fishery, fishing will be allowed following the primary fishery, seven days per week, until the remaining quota is taken.
4. In section (f)(1)(iv), Columbia River subarea, retention of lingcod will be allowed north of the Washington-Oregon border during May, as allowed by the groundfish regulations.
5. In section (f)(1)(v), Oregon Central Coast subarea, the Plan is changed to allow retention of groundfish during days open to all-depth halibut fishing and open to all-depth groundfish fishing, as allowed by the groundfish regulations. During days open to nearshore halibut fishing, flatfish may be retained seaward of seasonal groundfish depth restrictions.
6. In section (f)(5)(i), flexible inseason management provisions, a new subsection (E) is added allowing inseason modification of the halibut regulations to address significant bycatch of yelloweye rockfish in the Oregon subareas.
7. In section (f)(5)(ii), flexible inseason management provisions, a new subsection (F) is added stating that regulations pertaining to the Stonewall Bank Yelloweye Rockfish Conservation Area may be modified inseason.

NMFS proposes to approve the Council's recommendations and to implement the changes described above. A version of the Plan including these changes can be found at

http://www.westcoast.fisheries.noaa.gov/fisheries/management/pacific_halibut_management.html

Proposed Changes to the Regulations

1. In § 300.63, at the description of the flexible management of sport fisheries in Area 2A, paragraph (c)(1)(v) is added to describe a situation where inseason management action may be taken in Oregon sport halibut fisheries if yelloweye rockfish impacts are greater than 22 percent of Oregon's recreational yelloweye rockfish harvest guideline. This allows management of Oregon sport fisheries that harvest yelloweye rockfish incidentally, including halibut fisheries, flexibility to keep harvest of yelloweye rockfish within the harvest guideline while also allowing fishing opportunities for co-occurring stocks like halibut and bottomfish.
2. For the same reasons, in § 300.63, at the description of the flexible management of sport fisheries in Area 2A, paragraph (c)(2)(vi) is added to specify that modifications to the boundaries of the Stonewall Bank Yelloweye Rockfish Conservation Area off Oregon to the list of changes that may be considered inseason.

Subarea Allocations

At its January 22-27 annual meeting, the IPHC recommended a 2017 Area 2A total allowable catch (TAC) of 1,330,000 pounds (lb) and a coastwide total constant exploitation yield (TCEY) of 40,740,000 lb. The table below shows the fishery and subarea allocations obtained by applying the allocation framework described in the Area 2A CSP to the 2017 TAC.

Table 1. Coastwide TCEY, Area 2A TAC, and Area 2A Fishery and Subarea Allocations for 2017.

Coastwide TCEY and Area 2A TAC for 2017 (all values in pounds)	
	40.74 million pounds: 1,330,000
Tribal Ceremonial and Subsistence	29,600
Tribal Commercial	435,900
Non-Tribal Commercial Directed	225,591
Non-Tribal Incidental Salmon Troll	39,810
Non-Tribal Incidental Sablefish Primary	70,000
Sport Puget Sound	64,962
Sport WA North Coast	115,599
Sport WA South Coast	50,307
Sport Columbia River	12,799
Sport OR Central Coast	240,812
Sport Southern Oregon	10,039
Sport California	34,580

Proposed 2017 Sport Fishery Management Measures

NMFS also proposes sport fishery management measures, including season dates and bag limits that are necessary to implement the Plan in 2017. The Plan is published in the Federal Register but is not codified in the Code of Federal Regulations. The annual domestic management measures are published each year through a final rule. For the 2016 fishing season, the final rule for Area 2A sport fisheries was published on April 1,

2016 (81 FR 18789) and the final rule for the commercial fisheries was published on March 16, 2016 (81 FR 14000) along with the IPHC regulations. Therefore, the section numbers for the commercial fisheries below refer to sections in the March 16 final rule, and the section numbers for the recreational fisheries refer to sections in the April 1 final rule. Where season dates are not indicated, those dates will be provided in the final rule, following consultation with the states and the public.

In section 26 of the annual domestic management measures, “Sport Fishing for Halibut” paragraph (8) is proposed to read as follows:

* * * * *

(8) * * *

(a) The quota for the area in Puget Sound and the U.S. waters in the Strait of Juan de Fuca, east of a line extending from 48°17.30' N. lat., 124°23.70' W. long. north to 48°24.10' N. lat., 124°23.70' W. long. is 64,962 lb (29.47 mt).

(i) The fishing seasons are:

(A) Fishing is open May 4, 6, and 11. Any openings after May 11 will be based on available quota and announced on the NMFS hotline.

(B) If sufficient quota remains, the fishery will reopen on May 21 and/or May 25; June 1, and/or June 4, or until there is not sufficient quota for another full day of fishing and the area is closed by the Commission. After May 11, any fishery opening will be announced on the NMFS hotline at 800-662-9825. No halibut fishing will be allowed after May 11 unless the date is announced on the NMFS hotline.

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

(b) The quota for landings into ports in the area off the north Washington coast, west of the line described in paragraph (2)(a) of section 26 and north of the Queets River (47°31.70' N. lat.) (North Coast subarea), is 115,599 lb (52.43 mt).

(i) The fishing seasons are:

(A) Fishing is open May 4, 6, and 11. Any openings after May 11 will be based on available quota and announced on the NMFS hotline.

(B) If sufficient quota remains, the fishery will reopen on May 21 and/or May 25; June 1, and/or June 4, or until there is not sufficient quota for another full day of fishing and the area is closed by the Commission. After May 11, any fishery opening will be announced on the NMFS hotline at 800-662-9825. No halibut fishing will be allowed after May 11 unless the date is announced on the NMFS hotline.

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

(iii) Recreational fishing for groundfish and halibut is prohibited within the North Coast Recreational Yelloweye Rockfish Conservation Area (YRCA). It is unlawful for recreational fishing vessels to take and retain, possess, or land halibut taken with recreational gear within the North Coast Recreational YRCA. A vessel fishing with recreational gear in the North Coast Recreational YRCA may not be in possession of any halibut. Recreational vessels may transit through the North Coast Recreational YRCA with or without halibut on board. The North Coast Recreational YRCA is a C-shaped area off the northern Washington coast intended to protect yelloweye rockfish. The North Coast Recreational YRCA is defined in groundfish regulations at 50 CFR 660.70(a).

(c) The quota for landings into ports in the area between the Queets River, WA (47°31.70' N. lat.), and Leadbetter Point, WA (46°38.17' N. lat.) (South Coast subarea), is 50,307 lb (22.82 mt).

(i) This subarea is divided between the all-waters fishery (the Washington South coast primary fishery), and the incidental nearshore fishery in the area from 47°31.70' N. lat. south to 46°58.00' N. lat. and east of a boundary line approximating the 30 fm depth contour. This area is defined by straight lines connecting all of the following points in the order stated as described by the following coordinates (the Washington South coast, northern nearshore area):

- (1) 47°31.70' N. lat., 124°37.03' W. long.;
- (2) 47°25.67' N. lat., 124°34.79' W. long.;
- (3) 47°12.82' N. lat., 124°29.12' W. long.; and
- (4) 46°58.00' N. lat., 124°24.24' W. long.

The south coast subarea quota will be allocated as follows: 48,307 lb (21.91 mt) for the primary fishery and 2,000 lb (0.91 mt) for the nearshore fishery. The primary fishery season dates are May 4, 6, and 11. If the primary quota is projected to be obtained sooner than expected, the management closure may occur earlier. If sufficient quota remains the primary fishery will reopen on May 21 and/or May 25; June 1, and/or June 4 until the quota for the south coast subarea primary fishery is taken and the season is closed by the Commission, or until September 30, whichever is earlier. The fishing season in the nearshore area commences on the first Saturday subsequent to closure of the primary fishery, and is open 7 days per week, until 50,307 lb (22.82 mt) is projected to be taken by the two fisheries combined and the fishery is closed by the Commission or

September 30, whichever is earlier. If the fishery is closed prior to September 30, and there is insufficient quota remaining to reopen the northern nearshore area for another fishing day, then any remaining quota may be transferred in-season to another Washington coastal subarea by NMFS via an update to the recreational halibut hotline.

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

(iii) Seaward of the boundary line approximating the 30-fm depth contour and during days open to the primary fishery, lingcod may be taken, retained and possessed when allowed by groundfish regulations at 50 CFR 660.360, subpart G.

(iv) Recreational fishing for groundfish and halibut is prohibited within the South Coast Recreational YRCA and Westport Offshore YRCA. It is unlawful for recreational fishing vessels to take and retain, possess, or land halibut taken with recreational gear within the South Coast Recreational YRCA and Westport Offshore YRCA. A vessel fishing in the South Coast Recreational YRCA and/or Westport Offshore YRCA may not be in possession of any halibut. Recreational vessels may transit through the South Coast Recreational YRCA and Westport Offshore YRCA with or without halibut on board. The South Coast Recreational YRCA and Westport Offshore YRCA are areas off the southern Washington coast established to protect yelloweye rockfish. The South Coast Recreational YRCA is defined at 50 CFR 660.70(d). The Westport Offshore YRCA is defined at 50 CFR 660.70(e).

(d) The quota for landings into ports in the area between Leadbetter Point, WA (46°38.17' N. lat.), and Cape Falcon, OR (45°46.00' N. lat.) (Columbia River subarea), is 12,799 lb (5.81 mt).

(i) This subarea is divided into an all-depth fishery and a nearshore fishery. The nearshore fishery is allocated 500 pounds of the subarea allocation. The nearshore fishery extends from Leadbetter Point ($46^{\circ}38.17'$ N. lat., $124^{\circ}15.88'$ W. long.) to the Columbia River ($46^{\circ}16.00'$ N. lat., $124^{\circ}15.88'$ W. long.) by connecting the following coordinates in Washington $46^{\circ}38.17'$ N. lat., $124^{\circ}15.88'$ W. long., $46^{\circ}16.00'$ N. lat., $124^{\circ}15.88'$ W. long. and connecting to the boundary line approximating the 40 fm (73 m) depth contour in Oregon. The nearshore fishery opens May 2, and continues 3 days per week (Monday – Wednesday) until the nearshore allocation is taken, or September 30, whichever is earlier. The all-depth fishing season commences on May 1, and continues 4 days a week (Thursday – Sunday) until 12,799 lb (5.81 mt) are estimated to have been taken and the season is closed by the Commission, or September 30, whichever is earlier. Subsequent to this closure, if there is insufficient quota remaining in the Columbia River subarea for another fishing day, then any remaining quota may be transferred inseason to another Washington and/or Oregon subarea by NMFS via an update to the recreational halibut hotline. Any remaining quota would be transferred to each state in proportion to its contribution.

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

(iii) Pacific Coast groundfish may not be taken and retained, possessed or landed when halibut are on board the vessel, except sablefish, Pacific cod, flatfish species, and lingcod caught north of the Washington-Oregon border during the month of May, when allowed by Pacific Coast groundfish regulations, during days open to the all-depth fishery only.

(iv) Taking, retaining, possessing, or landing halibut on groundfish trips is only allowed in the nearshore area on days not open to all-depth Pacific halibut fisheries.

(e) The quota for landings into ports in the area off Oregon between Cape Falcon (45°46.00' N. lat.) and Humbug Mountain (42°40.50' N. lat.) (Oregon Central Coast subarea), is 240,812 lb (109.23 mt).

(i) The fishing seasons are:

(A) The first season (the “inside 40-fm” fishery) commences June 1, and continues 7 days a week, in the area shoreward of a boundary line approximating the 40-fm (73-m) depth contour, until the sub-quota for the central Oregon “inside 40-fm” fishery of 28,897 lb (13.11 mt) or any in-season revised subquota, is estimated to have been taken and the season is closed by the Commission, or October 31, whichever is earlier. The boundary line approximating the 40-fm (73-m) depth contour between 45°46.00' N. lat. and 42°40.50' N. lat. is defined at 50 CFR 660.71(k).

(B) The second season (spring season), which is for the “all-depth” fishery, is open May 11, 12, 13; 18, 19, 20; June 1, 2, 3; 8, 9, 10; and 15, 16, 17. The allocation to the spring season all-depth fishery is 151,172 lb (68.57 mt). If sufficient unharvested quota remains for additional fishing days, the season will re-open. Possible re-opening dates are June 29, 30, July 1; 13, 14, 15; and 27, 28, 29. Notice of the re-opening will be announced on the NMFS hotline (206) 526-6667 or (800) 662-9825. No halibut fishing will be allowed on the re-opening dates unless the date is announced on the NMFS hotline.

(C) The third season (summer season), which is for the “all-depth” fishery, will be open August 4, 5; 18, 19; September 1, 2; 15, 16; 29, 30; October 13, 14; 27 and 28, and

will continue until the combined spring season and summer season quotas in the area between Cape Falcon and Humbug Mountain, OR, are estimated to have been taken and the area is closed by the Commission, or October 31, whichever is earlier. The allocation to the summer season all-depth fishery is 60,203 lb (27.31 mt). NMFS will announce on the NMFS hotline in July whether the fishery will re-open for the summer season in August. No halibut fishing will be allowed in the summer season fishery unless the dates are announced on the NMFS hotline. Additional fishing days may be opened if sufficient quota remains after the last day of the first scheduled open period. If, after this date, an amount greater than or equal to 60,000 lb (27.2 mt) remains in the combined all-depth and inside 40-fm (73-m) quota, the fishery may re-open every Friday and Saturday, beginning August 18 and ending October 31 or when there is insufficient quota remaining, whichever is earlier. If, after September 4, an amount greater than or equal to 30,000 lb (13.6 mt) remains in the combined all-depth and inside 40-fm (73-m) quota, and the fishery is not already open every Friday and Saturday, the fishery may re-open every Friday and Saturday, beginning September 8 and 9, and ending October 31 or upon quota attainment, whichever is earlier. After September 4, the bag limit may be increased to two fish of any size per person, per day. NMFS will announce on the NMFS hotline whether the summer all-depth fishery will be open on such additional fishing days, what days the fishery will be open and what the bag limit is.

(ii) The daily bag limit is one halibut of any size per day per person, unless otherwise specified. NMFS will announce on the NMFS hotline any bag limit changes.

(iii) During days open to all-depth halibut fishing when the groundfish fishery is restricted by depth, no groundfish may be taken and retained, possessed or landed, except

sablefish, Pacific cod and flatfish species when allowed by groundfish regulations, if halibut are on board the vessel. During days open to all-depth halibut fishing when the groundfish fishery is open to all depths, any groundfish species permitted under the groundfish regulations may be retained, possessed or landed if halibut are on aboard the vessel. During days open to nearshore halibut fishing, flatfish species may be taken and retained seaward of the seasonal groundfish depths restrictions, if halibut are on board the vessel.

(iv) When the all-depth halibut fishery is closed and halibut fishing is permitted only shoreward of a boundary line approximating the 40-fm (73-m) depth contour, halibut possession and retention by vessels operating seaward of a boundary line approximating the 40-fm (73-m) depth contour is prohibited.

(v) Recreational fishing for groundfish and halibut is prohibited within the Stonewall Bank YRCA. It is unlawful for recreational fishing vessels to take and retain, possess, or land halibut taken with recreational gear within the Stonewall Bank YRCA. A vessel fishing in the Stonewall Bank YRCA may not possess any halibut. Recreational vessels may transit through the Stonewall Bank YRCA with or without halibut on board. The Stonewall Bank YRCA is an area off central Oregon, near Stonewall Bank, intended to protect yelloweye rockfish. The Stonewall Bank YRCA is defined at 50 CFR 660.70(f).

(f) The quota for landings into ports in the area south of Humbug Mountain, OR (42° 40.50' N. lat.) to the Oregon/California Border (42° 00.00' N. lat.) (Southern Oregon subarea) is 10,039 lb (4.55 mt).

(i) The fishing season commences on May 1, and continues 7 days per week until the subquota is taken, or October 31, whichever is earlier.

(ii) The daily bag limit is one halibut per person with no size limit.

(iii) No Pacific Coast groundfish may be taken and retained, possessed or landed, except sablefish, Pacific cod, and flatfish species, in areas closed to groundfish, if halibut are on board the vessel.

(g) The quota for landings into ports south of the Oregon/California Border (42°00.00' N. lat.) and along the California coast is 34,580 lb (15.69 mt).

(i) The fishing season will be open (season dates will be inserted in the final rule), or until the subarea quota is estimated to have been taken and the season is closed by the Commission, or October 31, whichever is earlier. NMFS will announce any closure by the Commission on the NMFS hotline (206) 526-6667 or (800) 662-9825.

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

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 Northern Pacific Halibut Act of 1982 (Halibut Act, 16 U.S.C. 773c) provides the Secretary of Commerce with the general responsibility to carry out the Convention between Canada and the United States for the management of Pacific halibut, including the authority to adopt regulations as may be necessary to carry out the purposes and objectives of the Convention and Halibut Act. This proposed rule is consistent with the Secretary of Commerce's authority under the Halibut Act.

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

An initial regulatory flexibility analysis (IRFA) was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the SUMMARY section of the preamble. A summary of the analysis follows.

The RFA, 5 U.S.C. 603 *et seq.*, requires government agencies to assess the effects that regulatory alternatives would have on small entities, defined as any business/organization independently owned and operated, not dominant in its field of operation (including its affiliates) and:

- A “small” harvesting business has combined annual receipts of \$11 million or less for all affiliated operations worldwide.
- A small fish-processing business is one that employs 750 or fewer persons for all affiliated operations worldwide. NMFS is applying this standard to catcher/processors for the purposes of rulemaking, because these vessels earn the majority of their revenue from selling processed fish.
- For marinas and charter/party boats, annual receipts not in excess of \$7.5 million.
- A wholesale business servicing the fishing industry is a small business if it employs 100 or fewer persons on a full time, part time, temporary, or other basis, at all its affiliated operations worldwide.

- For the purposes of this rulemaking, a nonprofit organization is determined to be “not dominant in its field of operation” if it is considered “small” under SBA size standards:

Environmental, conservation, or professional organizations: Combined annual receipts of \$15 million or less. Other organizations: Combined annual receipts of \$7.5 million or less.

The RFA defines small governmental jurisdictions as governments of cities, counties, towns, townships, villages, school districts, or special districts with populations of less than 50,000.

On December 29, 2015, the National Marine Fisheries Service (NMFS) issued a final rule establishing a small business size standard of \$11 million in annual gross receipts for all businesses primarily engaged in the commercial fishing industry (NAICS 11411) for Regulatory Flexibility Act (RFA) compliance purposes only (80 FR 81194, December 29, 2015). The \$11 million standard became effective on July 1, 2016, and is to be used in place of the U.S. Small Business Administration’s (SBA) current standards of \$20.5 million, \$5.5 million, and \$7.5 million for the finfish (NAICS 114111), shellfish (NAICS 114112), and other marine fishing (NAICS 114119) sectors of the U.S. commercial fishing industry in all NMFS rules subject to the RFA after July 1, 2016. *Id.* at 81194.

When an agency proposes regulations, the RFA requires the agency to prepare and make available for public comment an IRFA that describes the impact on small businesses, non-profit enterprises, local governments, and other small entities. The IRFA

is to aid the agency in considering all reasonable regulatory alternatives that would minimize the economic impact on affected small entities.

Description and estimate of the number of small entities to which the rule applies

In determining the potential universe of entities subject to this rule, we must consider those entities to which this rule applies. Although many small and large nonprofit enterprises track fisheries management issues on the West Coast, the proposed changes to the Plan, codified regulations, and annual management measures will not directly affect those enterprises. Similarly, although many fishing communities are small governmental jurisdictions, no direct regulations for those governmental jurisdictions will result from this proposed rule. However, this rule directly affects charterboat operations, and participants in the non-treaty directed commercial fishery off the coast of Washington, Oregon, and California.

Specific data on the economics of halibut charter operations is unavailable. However, in January 2004, the Pacific States Marine Fisheries Commission (PSMFC) completed a report on the overall West Coast charterboat fleet. In surveying charterboat vessels concerning their operations in 2000, the PSMFC estimated that there were about 315 charterboat vessels in operation off Washington and Oregon. In 2000, IPHC licensed 130 vessels to fish in the halibut sport charter fishery. Comparing the total charterboat fleet to the 130 and 142 IPHC licenses in 2000 and 2007, respectively, approximately 41 to 45 percent of the charterboat fleet could participate in the halibut fishery. The PSMFC has developed preliminary estimates of the annual revenues earned by this fleet and they vary by size class of the vessels and home state. Small charterboat vessels range from 15 to 30 feet and typically carry 5 to 6 passengers. Medium charterboat vessels range from

31 to 49 feet in length and typically carry 19 to 20 passengers. (Neither state has large vessels of greater than 49 feet in their fleet.) Average annual revenues from all types of recreational fishing, whale watching and other activities ranged from \$7,000 for small Oregon vessels to \$131,000 for medium Washington vessels. These data confirm that charterboat vessels qualify as small entities under the Regulatory Flexibility Act.

Commercial harvest vessels in West Coast fisheries are generally considered “small vessels” unless they are associated with a catcher-processor company or affiliated with a large shorebased processing company. Catcher-processors cannot target halibut or keep halibut as bycatch. NOAA is unaware that any “large” seafood processing companies are affiliated with any of the IPHC permit holders.

Charterboats and the non-treaty directed commercial fishing vessels are considered small businesses. In 2015, 512 vessels were issued IPHC licenses to retain halibut. IPHC issues licenses for: the directed commercial fishery and the incidental fishery in the sablefish primary fishery in Area 2A (22 licenses in 2015); incidental halibut caught in the salmon troll fishery (363 licenses in 2015); and the charterboat fleet (127 licenses in 2013, the most recent year available). No vessel may participate in more than one of these three fisheries per year. These license estimates indicate the maximum number of vessels that participate in the fishery, and may be an overestimate because some vessels that obtain a license do not always participate in the halibut fishery. IPHC estimates that 60 vessels participated in the directed commercial fishery, 100 vessels in the incidental commercial (salmon) fishery, and 13 vessels in the incidental commercial (sablefish) fishery. Recent information on charterboat activity is not available; prior

analysis indicated that 60 percent of the IPHC charterboat license holders may be affected by these regulations.

Estimate of economic impacts on small entities, by entity size and industry

The major effect of halibut management on small entities will be from the internationally set TAC decisions made by the IPHC. Based on the recommendations of the states, the Council and NMFS are proposing minor changes to the Plan to provide increased recreational and commercial opportunities under the allocations that result from the TAC. There are no large entities involved in the halibut fisheries; therefore, none of these changes will have a disproportionate negative effect on small entities versus large entities. These minor proposed changes to the Plan are not expected to have a significant economic impact on a substantial number of small entities.

A description of any significant alternatives to the proposed rule that accomplish the stated objectives of applicable statutes and that minimize any significant economic impact of the proposed rule on small entities.

There were no significant alternatives to the propose rule that would minimize any significant impact on small entities.

RFA-determination of a significant impact

The proposed changes to the Plan and codified regulations are authorized under the Pacific Halibut Act, implementing regulations at 50 CFR 300.60-65, and the Council process of annually evaluating the utility and effectiveness of Area 2A halibut management under the Plan. The proposed sport and commercial management measures implement the Plan by managing the fisheries to meet the differing fishery needs of the various areas along the coast according to the Plans objectives. The proposed changes to

the Plan and domestic management measures do not include any new reporting or recordkeeping requirements. These changes will also not duplicate, overlap or conflict with other laws or regulations. Consequently, these changes are not expected to meet any of the RFA tests of having a "significant" economic impact on a "substantial number" of small entities. Nonetheless, NMFS has prepared this IRFA. Through the rulemaking process associated with this action, we are requesting comments on this conclusion.

A copy of this analysis is available from the Council or NMFS (see **ADDRESSES**).

This proposed rule does not contain a collection of information requirement subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA).

There are no projected reporting or recordkeeping requirements associated with this action.

There are no relevant Federal rules that may duplicate, overlap, or conflict with this action.

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

The U.S. Government formally recognizes that the 13 Washington Tribes have treaty rights to fish for Pacific halibut. In general terms, the quantification of those rights is 50 percent of the harvestable surplus of Pacific halibut available in the tribes' usual and

accustomed fishing areas (described at 50 CFR 300.64). Each of the treaty tribes has the discretion to administer their fisheries and to establish their own policies to achieve program objectives. Accordingly, tribal allocations and regulations, including the proposed changes to the Plan, have been developed in consultation with the affected tribe(s) and, insofar as possible, with tribal consensus.

List of Subjects in 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.

Authority: 16 U.S.C. 951 *et seq.*, 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 5501 *et seq.*, 16 U.S.C. 2431 *et seq.*, 31 U.S.C. 9701 *et seq.*

Dated: February 17, 2017

Alan D. Risenhoover,
Director, Office of Sustainable Fisheries,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 300, subpart E, is proposed to be amended as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

Subpart E – Pacific Halibut Fisheries

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

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

2. In § 300.63 revise paragraphs (c)(2)(iv) and (c)(2)(v) and add paragraphs (c)(1)(v) and (c)(2)(vi) to read as follows:

§ 300.63 Catch sharing plan and domestic management measures in area 2A.

* * * * *

(c) * * *

(1) * * *

(v) Notwithstanding regulations at (c)(1)(i) of this section, if the total estimated yelloweye rockfish bycatch mortality from recreational halibut trips in all Oregon subareas is projected to exceed 22 percent of the annual Oregon recreational yelloweye rockfish harvest guideline, NMFS may take inseason action to reduce yelloweye rockfish bycatch mortality in the halibut fishery while allowing allocation objectives to be met to the extent possible.

(2) * * *

(iv) Modification of sport fishing days per calendar week;

(v) Modification of subarea quotas; and

(vi) Modification of Stonewall Bank YRCA restrictions off Oregon.

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