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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 190925-0038]

RIN 0648-BH91

Pacific Halibut Fisheries; Revisions to Catch Sharing Plan and Domestic Management Measures in Alaska

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

ACTION: Final rule.

SUMMARY: Currently, sport fishing activities for halibut in International Pacific Halibut Commission Regulatory Areas 2C (Southeast Alaska) and 3A (Southcentral Alaska) are subject to different regulations, depending on whether those activities are guided or unguided. In this final rule, NMFS issues regulations that apply the daily bag limits, possession limits, size restrictions, and carcass retention requirements for guided fishing to all Pacific halibut on board a fishing vessel when Pacific halibut caught and retained by both guided anglers and unguided anglers are on the same vessel. This final rule is intended to aid enforcement and to ensure the proper accounting of halibut taken when sport fishing in Areas 2C and 3A.

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 (collectively, Analysis) prepared for this action are available at <https://www.regulations.gov> or from the NMFS Alaska Region's website at <https://www.fisheries.noaa.gov/region/alaska>.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this rule may be submitted to NMFS, Alaska Region, P.O. Box 21668, Juneau, AK 99082-1668, Attn: James Bruschi, Records Officer, in person at NMFS, Alaska Region, 709 West 9th Street, Room 420A, Juneau, AK; by email to OIRA_Submission@omb.eop.gov; or by fax to 202-395-5806.

FOR FURTHER INFORMATION CONTACT: Kurt Iverson, 907-586-7228.

SUPPLEMENTARY INFORMATION: This final rule implements regulatory amendments for Pacific halibut charter fishing in International Pacific Halibut Commission (IPHC) Regulatory Areas 2C (Southeast Alaska) and 3A (Southcentral Alaska). When Pacific halibut are simultaneously retained on a fishing vessel from both guided and unguided fishing, the daily bag limits, possession limits, size restrictions, and carcass retention requirements for guided fishing will apply to all Pacific halibut on board.

NMFS published the proposed rule for these regulatory amendments on February 12, 2019 (84 FR 3403). The comment period on the proposed rule ended on March 14, 2019. NMFS received seven comment letters on the proposed rule. From these letters, NMFS identified and considered seven unique, relevant comments. A summary of the comments and NMFS' responses are provided in the Comments and Responses section of this preamble.

A detailed review of this rule and the rationale for these regulations is provided in the preamble to the proposed rule (84 FR 3403, February 12, 2019). Electronic copies of the proposed rule and the Analysis may be obtained from www.regulations.gov or from the NMFS Alaska Region website at <https://www.fisheries.noaa.gov/region/alaska>. All public comment letters submitted during the comment period may be obtained from www.regulations.gov.

Background

Authority for Action

The 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 Northern Pacific Ocean and Bering Sea (Convention), signed in Ottawa, Ontario, on March 2, 1953, as amended by the Protocol Amending the Convention (signed in 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 concurrence by the Secretary of Commerce, NMFS publishes the IPHC regulations in the **Federal Register** as annual management measures pursuant to 50 CFR 300.62.

The Halibut Act, at 16 U.S.C. 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, which is currently the Department of Homeland Security.

The Halibut Act, at section 16 U.S.C. 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, the limited access program for charter operators in the charter halibut fishery, and the catch sharing plan and domestic management measures in waters in and off Alaska, codified at 50 CFR 300.61, 300.65, 300.66, and 300.67. The Council also developed the Individual Fishing Quota (IFQ) Program for the commercial halibut and sablefish fisheries, codified at 50 CFR part 679, under the authority of section 5 of the Halibut Act (16 U.S.C. 773c(c)) and section 303(b) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1853(b)).

Summary Background on Management of the Charter Halibut Fishery

In addition to this summary, the preamble to the proposed rule and Section 2.7 of the Regulatory Impact Review (RIR) for this rule provide detail on charter halibut management programs that have been implemented in Areas 2C and 3A.

Throughout the proposed rule and this preamble, regulatory areas established by the IPHC are referred to as “IPHC Regulatory Areas” for the IFQ program regulations at 50 CFR part 679 and as “Commission regulatory areas” for the halibut management

regulations at 50 CFR 300.61, 300.65, 300.66, and 300.67. This preamble uses the terms “Area 2C” and “Area 3A” to refer to IPHC Regulatory Areas 2C and 3A, respectively.

The harvest of halibut in Alaska occurs in three fisheries—the commercial, sport, and subsistence fisheries. The commercial halibut fishery is managed under the IFQ Program. The sport fishery includes guided and unguided anglers. Guided anglers are “charter vessel anglers” as defined at 50 CFR 300.61, and means persons, paying or non-paying, receiving sport fishing guide services for halibut. Throughout this preamble, the term “charter halibut fishery” is used to refer to the sport fishery prosecuted by charter operators who hold Charter Halibut Permits (CHPs) and offer sport fishing guide services for halibut. This preamble uses the terms “guided fishing” to refer to sport fishing by an angler who receives sport fishing guide services for halibut, and “guided angler” to an angler receiving those sport fishing guide services. This preamble uses the terms “unguided fishing” to refer to sport fishing by an angler who does not receive sport fishing guide services for halibut sport fishing, and “unguided angler” to an angler who does not receive those sport fishing guide services.

Essential background on the charter halibut fishery was presented in the proposed rule for this action, and in the Analysis. Among the topics described in the proposed rule is a summary of management of the charter halibut fishery and the development of the Charter Halibut Limited Access Program (CHLAP) that established a limited number of CHPs in the sport fishing sector in Areas 2C and 3A. The proposed rule also provides details on the Catch Sharing Plan (CSP) that annually allocates Pacific halibut harvests between the charter fishery and the commercial fisheries in Areas 2C and 3A. A component of the CSP describes the public process for determining annual management

measures to limit charter harvest to the allocations in each management area. As part of this process, the Council develops recommendations that are forwarded to the IPHC.

The effect of the CSP and the annual charter fishing management measures result in distinct halibut sport fishing regulations in Areas 2C and 3A, depending upon whether anglers are guided (charter) or unguided. In general, to keep the charter fishery within its annual allocation, guided fishing regulations are more stringent than unguided fishing. Guided angling restrictions have become more pronounced in recent years, as halibut abundance has dropped and charter catch limits have been reduced.

Currently, unguided anglers are managed under a two-fish of any size daily bag limit in Alaska; however, since 2008, guided anglers in Area 2C have been managed under more restrictive limits. In Area 3A, guided anglers have been managed under more restrictive limits since 2014. For example, in 2019, guided anglers in Area 2C are limited to a daily bag limit of one fish and size limits that prohibit retention of halibut greater than 38 inches and less than 80 inches. In Area 3A in 2019, guided anglers may retain two halibut per day; however, one fish must be 28 inches or less, and guided anglers are allowed to retain a maximum of four fish in a calendar year. Additionally, guided anglers in Area 3A in 2019 are prohibited from retaining halibut on any Wednesday, and on five Tuesdays from July 16 through August 13. To enforce the halibut size limit restrictions in Areas 2C and 3A, if the fish are filleted on board the charter vessel, guided anglers are required to retain the carcasses of fish until all fillets are offloaded from Convention waters.

The maximum number of halibut an angler may possess at any one time in Areas 2C and 3A is two daily bag limits. Those possession limits correspond to the respective

daily bag limits for guided or unguided anglers. For example, the 2019 daily bag limit for unguided anglers in Area 2C is two halibut, so the possession limit for unguided anglers is four halibut; however, for guided anglers in Area 2C in 2019, the daily bag limit is one halibut (within the size limit), so the possession limit for that sector is two halibut (within the size limit).

The CSP also authorizes limited annual leases of commercial IFQ for use in the charter fishery as guided angler fish (GAF). Charter vessel anglers can use GAF to retain halibut up to the limits provided for unguided halibut anglers.

Summary of this Action

This final rule changes regulations for the management of the charter halibut fishery in IPHC Regulatory Areas 2C and 3A. It implements a regulatory amendment that applies to situations in Areas 2C and 3A where Pacific halibut are caught and retained by guided and unguided anglers, and those halibut are on board a fishing vessel at the same time. In these situations, where halibut are comingled from both guided and unguided fishing, the bag limits, possession limits, size limits, and carcass retention requirements for guided fishing will apply to all halibut on board the vessel.

Purpose and Need

The preamble to the proposed rule provided a detailed description of the purpose and need for this final rule. A brief summary is provided here.

This final rule is intended to aid the enforcement and to ensure the proper accounting of halibut taken when sport fishing in Areas 2C and 3A. This final rule provides uniform halibut retention regulations, provides clearer regulatory standards for the public, reduces the amount of time needed by enforcement officers when boarding

fishing vessels, and improves overall compliance with daily bag limits, possession limits, size limits, and carcass retention requirements.

When halibut are caught and retained by both guided and unguided anglers and those halibut are on the same fishing vessel, it presents enforcement challenges due to the different regulations for guided versus unguided anglers. The greatest challenge is for accountability under the bag and possession limits and halibut size restrictions. Under the current regulations, when halibut are caught and retained by guided and unguided anglers and those halibut are on the same fishing vessel, enforcement officers have no effective means to verify which angler harvested a particular fish, or whether that angler harvested the fish while fishing unguided or while being guided. It is important to note these enforcement challenges occur when the halibut from guided and unguided anglers is on board a fishing vessel in Convention waters. Therefore, this rule will not apply to Pacific halibut that is not on a fishing vessel. Section 2.3 of the RIR provides additional information on the history of this action.

Provisions of the Final Rule

This final rule adds a new paragraph at 50 CFR 300.65(d)(6). This paragraph applies to Areas 2C and 3A under circumstances when Pacific halibut are retained by both guided and unguided anglers, and those halibut are on the same fishing vessel.

The new paragraph at § 300.65(d)(6) requires all Pacific halibut on board a fishing vessel to be subject to the daily bag limit, the possession limit, size restrictions, and carcass retention requirements for guided anglers for that IPHC Area if any halibut caught and retained by a guided angler is on board that vessel. If sport fishing guide services are performed at any point during a charter fishing trip, then all anglers on board,

for the full extent of the fishing trip, will be subject to the daily bag limit, possession limits, size restrictions, and carcass retention requirements for guided charter vessel anglers, as specified for the applicable IPHC regulatory area, and determined by the annual management measures recommended by the IPHC and NMFS and published by NMFS in the **Federal Register**.

Attention to both the IPHC and NMFS regulations is critical because there may be differences between the IPHC management measures and NMFS regulations. For example, in 2018, the IPHC adopted management measures for halibut size restrictions in Area 2C that were initially accepted by the Secretary of State and published by NMFS (83 FR 10390, March 9, 2018), but those regulations were eventually superseded by a subsequent action implemented by NMFS in an interim final rule (83 FR 12133, March 20, 2018).

This final rule does not modify regulations related to the management of GAF. Regulations for GAF are principally found in § 300.65(c)(5). These regulations allow transfers of commercial halibut IFQ to a charter operator, where the IFQ is translated to fish that individual anglers can use to increase their harvests up to the limits of unguided anglers, which is currently two fish of any size per day, with no annual limit. Under this rule, guided anglers will be able to continue to use GAF on charter vessel fishing trips. Regulations applicable to GAF permitting, transfer, use, and reporting requirements in § 300.65 will still apply.

Changes from Proposed to Final Rule

NMFS did not make changes to the final rule from the proposed rule.

Comments and Responses

NMFS received seven comment letters on the proposed rule. Among the letters, NMFS identified and considered 7 unique, relevant comments, which are grouped, summarized, and responded to below. Three of the individual commenters identified themselves as either operators in the charter sector or representing charter fishing interests.

Comment 1: Several comments expressed support for the proposed regulations by recognizing the difficulty of adequately enforcing bag and possession limits when halibut from guided and unguided angling are comingled on a common fishing vessel.

Response: NMFS acknowledges the comments.

Comment 2: Some comments expressed support for the proposed rule by citing conservation concerns for halibut, and mentioned the more restrictive bag limits associated with guided halibut fishing.

Response: NMFS acknowledges that sport fishing bag limits are an important component in halibut conservation. NMFS also acknowledges the primary consideration of this final rule is the effective enforcement of those bag limits, which in turn supports the proper monitoring of catch necessary for conservation.

Comment 3: Halibut conservation and a decline in the resource are rationales to implement regulations that are different from the regulatory amendment suggested in the proposed rule. Halibut size limits that apply to guided fishing result in catch and release mortality by anglers who release many fish that fall outside of the allowable size restrictions. A simple solution is to establish the same regulations for both guided and unguided anglers, where all anglers are allowed one halibut of any size, per day.

Response: Establishing a one-fish daily bag limit for both guided and unguided anglers would require coordinated action by both the Council and IPHC and is outside of the scope of this rule. Catch and release mortality for sport caught halibut is estimated on an annual basis and is factored into the IPHC decisions on the combined commercial and charter catch limits in Areas 2C and 3A.

Comment 4: Some charter guides rent boats to clients so the clients can retain two halibut per day under the unguided fishing regulations. Regulations should allow only one halibut per day for all guests statewide, whether they fish from a charter vessel or from a lodge. This would be more equitable. Guides seem to always find a way to work around the rules. No person needs more than one halibut per day.

Response: Although this rule does not establish a bag limit of one halibut per day for all guests statewide, NMFS acknowledges the comment and points to the enforcement concerns that resulted in this final rule. NMFS also notes this rule applies to circumstances where halibut from both guided and unguided fishing are comingled on a fishing vessel, as defined by the Halibut Act, and operating in Convention waters.

Comment 5: The issue of the proposed regulation is an unquantified problem in a very minute segment of the sport fishery. The ratio of bad actors in guided fishing is likely the same as among unguided anglers; therefore, the burden of enforcement efforts should be on the agency to find ways to discover illicit activity while preserving the rights of the majority of people who act in compliance.

Response: NMFS agrees that the number of charter fishing vessels that offer mixed guided and unguided fishing is likely to be relatively small, compared to the total number of active charter vessels in any given year. NMFS agrees there is not currently

information that can precisely identify the number of charter fishing vessels and the number of charter fishing trips where mixed guided and unguided halibut fishing occurs. However, the Council expressed its intent, and NMFS agrees, that the enforcement concerns are significant for those operations where mixed guided and unguided halibut fishing occurs, and that this issue warrants the regulatory amendment implemented by this final rule. NMFS also notes the enforcement issue, if left unaddressed, could continue to grow as more charter operations decide to offer the option of mixed guided and unguided fishing on their vessels.

NMFS also notes this final rule does not prevent charter fishing vessels from continuing to offer mixed guided and unguided fishing. As mentioned in the proposed rule, public testimony to the Council suggests that—in addition to the bag, possession, and size limits addressed by this rule—pricing, convenience, and the personal preferences of the client anglers can also be reasons for sport fishing businesses to offer unguided fishing along with guided fishing.

Comment 6: GAF is still allowed under the proposed regulations; therefore, the number and size of halibut that are onboard the fishing vessel may already exceed the guided fishing limits, although GAF must be accounted for on GAF permits. A similar requirement could be implemented for unguided fish, rather than alter size and bag limits.

Response: NMFS acknowledges that the regulatory amendment implemented under this rule allows the continued and unchanged use of GAF. When halibut regulations place size or harvest restrictions on anglers, qualified charter halibut permit holders may offer GAF to their clients as a means to retain halibut of any size, and up to the limits allowed for unguided anglers, which is currently two fish of any size per day,

with four fish in possession. Under this final rule, when fishing vessels employ a mix of guided and unguided fishing, all anglers will be subject to the guided angler harvest restrictions; therefore, all anglers on the vessel will be eligible to use GAF.

As stated in the comment, regulations require that GAF harvests must be recorded on a GAF permit log. GAF must also be physically identified by removing the tips of the upper and lower lobes of the halibut tail fin. A marking and logging system similar to GAF that would be used to account for halibut retained by unguided anglers was not an alternative that was analyzed or recommended by the Council for this action.

Comment 7: Typical enforcement happens by boarding vessels engaged in fishing or by conducting dockside interviews at the termination of a trip. Nothing prohibits enforcement officers from boarding guided or unguided vessels associated with a mother ship during fishing activity or upon return to the mother vessel to determine compliance with existing regulation. There is no current or proposed requirement that anglers remain on board a mother vessel with their processed catch, so investigation of preserved fish after transfer from other fishing vessels, or fish harvested and processed on the same vessel, becomes an independent issue.

Response: NMFS acknowledges the comment, and agrees that enforcement boardings and interviews will continue on all fishing vessels, whether those vessels fish independently or whether they are associated with a mothership. NMFS also notes the primary enforcement issue that is addressed by this final rule, which is the proper determination of regulatory compliance after halibut are brought back to a common fishing vessel (i.e., a mothership), and those halibut come from a mix of guided and unguided fishing. Under these circumstances, enforcement officers currently have no effective means to properly account for the retained catch. The Council indicated, and

NMFS agrees, that uniform regulations in these situations will enhance compliance and eliminate confusion among both anglers and enforcement officers.

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 fishery management 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 16 U.S.C. 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. This final rule is also consistent with the Secretary of Commerce's authority under the Halibut Act to implement management measures for the halibut fishery.

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

Regulatory Impact Review

A Regulatory Impact Review was prepared to assess the costs and benefits of available regulatory alternatives. A copy of this final analysis is available from NMFS (see **ADDRESSES**). The Council recommended the regulatory revisions in this final rule

based on those measures that maximized net benefits to the Nation. Specific aspects of the economic analysis related to the impact of this final rule on small entities are discussed below in the Final Regulatory Flexibility Analysis section.

Final Regulatory Flexibility Analysis (FRFA)

This FRFA incorporates the initial regulatory flexibility analysis (IRFA), a summary of the significant issues raised by the public comments in response to the IRFA, if any, and NMFS' responses to those comments, and a summary of the analyses completed to support this action.

Section 604 of the Regulatory Flexibility Act (RFA) (5 U.S.C. 604) requires that, when an agency promulgates a final rule under section 553 of Title 5 of the U.S. Code, after being required by that section or any other law to publish a general notice of proposed rulemaking, the agency shall prepare a FRFA. Section 604 describes the required contents of a FRFA: 1) a statement of the need for and objectives of the rule; 2) a statement of the significant issues raised by the public comments in response to the IRFA, a statement of the assessment of the agency of such issues, and a statement of any changes made to the proposed rule as a result of such comments; 3) the response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA) in response to the proposed rule, and a detailed statement of any change made to the proposed rule in the final rule as a result of the comments; 4) a description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available; 5) a description of the projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities that will be subject to the requirement and the

type of professional skills necessary for preparation of the report or record; and 6) a description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in this final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

A description of this final rule, along with the need for and objectives of the rule, are contained in the preamble to this final rule and the preamble to the proposed rule (84 FR 3403, February 12, 2019), and are not repeated here.

Public and Chief Counsel for Advocacy Comments on the IRFA

NMFS published the proposed rule on February 12, 2019 (84 FR 3403). An IRFA was prepared and included in the Classification section of the preamble to the proposed rule. The comment period on the proposed rule ended on March 14, 2019. One of the comments indirectly referenced the IRFA and has been addressed in the Comments and Responses section of the preamble (Comment 5; number of entities affected by this rule). The Chief Counsel for Advocacy of the SBA did not file any comments on the proposed rule.

Number and Description of Small Entities Regulated by This Final Rule

This final rule directly regulates 1) sport fishing businesses that currently offer, or would offer, both guided and unguided halibut fishing opportunities, and the sport fishing guides that work for those businesses (“charter operations”); and 2) unguided anglers who retain halibut on board vessels at the same time as guided anglers who have also retained halibut.

NMFS does not collect information on the number of entities that offer mixed guided and unguided halibut fishing, and there appears to be no systematic means to determine an accurate number of those entities. An informal survey by enforcement officers, combined with testimony and comments from the public, indicates the practice of mixing guided and unguided fishing primarily occurs on larger charter vessels that provide multi-day fishing trips. This analysis indicates that approximately 30 fishing vessel businesses in Area 2C and 14 similar businesses in Area 3A currently offer multi-day fishing trips for their clients. This should be considered an upper-bound estimate of the number of businesses directly regulated by this action at this time because the number of those operations that offer mixed guided and unguided fishing is unknown. Public comment also indicates that on relatively rare occasions, anglers will mix guided and unguided fishing when they are based out of a shoreside lodge or facility that provides rental boats.

For Regulatory Flexibility Act (RFA) purposes only, the SBA has established a small business size standard for businesses, including their affiliates, whose primary industry is scenic and sightseeing transportation on water, or all other amusement and recreation (NAICS codes 487210, and 713990, respectively).

On July 18, 2019, the Small Business Administration (SBA) issued an interim final rule (84 FR 34261) effective August 19, 2019, that adjusted the monetary-based industry size standards (i.e., receipts- and assets-based) for inflation for many industries. For fisheries for-hire businesses and marinas, the rule changes the small business size standard from \$7.5 million in annual gross receipts to \$8 million. See 84 Fed.Reg. at

34273 (adjusting NAICS 487990 (Scenic and Sightseeing Transportation, Other) and 713930 (Marinas)).

Pursuant to the Regulatory Flexibility Act, and prior to SBA's July 18, 2019 interim final rule, a final regulatory flexibility analysis was developed for this action using SBA's former size standards. NMFS has reviewed the analyses prepared for this action in light of the new size standards. Under the former SBA size standards, all entities subject to this action were considered small entities, and they all would continue to be considered small under the new standards.

NMFS has determined that the new size standards do not affect analyses prepared for this action. It is unlikely that the largest of the affected charter vessel operations would be considered large entities under either the former or current SBA standards; however, that cannot be confirmed because NMFS does not have or collect economic data on lodges or charter vessels 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 annual gross revenues greater than either the former \$7.5 million or current \$8.0 million standards.

Community quota entities (CQEs) may apply for and receive community CHPs and some of those charter operations could potentially offer mixed guided and unguided halibut fishing; therefore, this final rule may directly regulate CQEs, and the CQEs are non-profit entities that represent 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, 20 hold community CHPs. Again, the number of these CHP holders who offer, or would offer, mixed guided and unguided fishing is unknown,

This final rule applies more restrictive halibut bag and possession limits on clients that take multi-day charters with mixed guided and unguided halibut fishing activity. These individuals are not considered directly regulated small entities under the RFA. However, this action will also apply these more restrictive catch and possession limits on vessel crew and guides who choose to fish for halibut in any time off they may have during a guided trip. It is possible that these crew and guides may operate as subcontractors to the primary vessel and, as such, may be defined as small entities. However, the applicability of the more restrictive limits to any of these potential small entities is as an indirect consequence of their being aboard the vessel on a mixed guided and unguided trip. Thus, they are not considered to be directly regulated small entities for RFA purposes.

Based on this analysis, NMFS has determined that there are directly regulated small entities affected by this action. The RIR notes that the action could increase costs for multi-day vessels that continue to offer both guided and unguided fishing due to transporting halibut to shore to prevent mixing. However, the analysts were unable to determine if these costs would occur or, if they did, the magnitude of these costs. NMFS indicated in the proposed rule that it may consider certifying that this action will not have a significant economic impact on a substantial number of small entities prior to publication of the final rule. However, due to the assumptions necessary to establish the factual basis for certification and the lack of information available to conduct this analysis, NMFS decided to prepare a FRFA for this action.

Recordkeeping, Reporting, and other Compliance Requirements

This final rule does not change the recordkeeping and reporting requirements for charter halibut fishing or unguided halibut fishing in the affected Areas 2C and 3A. In terms of other compliance requirements, the final rule applies the daily bag limits, possession limits, size restrictions, and carcass retention requirements for guided fishing to all Pacific halibut on board a fishing vessel when Pacific halibut caught and retained by both guided anglers and unguided anglers are on the same vessel.

Description of Significant Alternatives Considered to the Final Action That Minimize Adverse Impacts on Small Entities

NMFS and the Council considered three alternatives for this rule. Alternative 1 was the no action alternative. This alternative would have continued to maintain different daily bag limits, possession limits, size restrictions, and carcass retention requirements for guided anglers and unguided anglers even if halibut caught and retained by both guided and unguided anglers are on the same fishing vessel simultaneously. The benefit of status quo is the flexibility and business advantages for operators seeking to accommodate the desires of a broad range of clients, and their anglers can choose guided fishing, unguided fishing, or alternating between guided and unguided fishing at different times.

The concerns about status quo are expressed in the Council's purpose and need statement and in the RIR analysis. In Areas 2C or 3A, guided anglers are frequently subject to greater harvest restrictions than unguided anglers. When halibut from guided and unguided fishing are commingled on a vessel in these management areas, it is difficult for enforcement officers to determine whether the halibut were caught by guided

or unguided anglers. When vessels are boarded by enforcement officers, establishing each person's catch and whether that person was guided or unguided can become a lengthy and complicated process for both officers and charter operators.

Alternative 2 was also considered by NMFS and the Council. It would have prevented the commingling of halibut catches from guided and unguided anglers on fishing vessels by prohibiting the possession of halibut retained by guided anglers with halibut retained by unguided anglers on the same fishing vessel simultaneously. The primary advantage of this alternative is that it would have maximized compliance of the regulations and likely reduced the duration of at-sea boardings by enforcement officers.

The RIR describes the disadvantages of Alternative 2, which are primarily the reduced flexibility and potential lost revenue for multi-day fishing vessels that currently provide, or would seek to provide, the option of mixed guided and unguided fishing. If charter operations wanted to switch from guided to unguided fishing, the vessels would need to assume the time and cost of returning to port, offloading the fish, and then beginning a new trip to prevent comingling of halibut.

Alternative 3 is the adopted alternative and is also described in detail in the RIR. Alternative 3 is intended to balance the enforcement concerns that result from commingling of halibut from guided and unguided fishing with an allowance for charter operations to maintain the flexibility of offering a mix of guided and unguided fishing, as they do now. Moreover, Alternative 3 allows other operations to assume the practice of offering both guided and unguided fishing in the future. The Council's enforcement concerns are addressed by establishing uniform bag limits, possession limits, size

restrictions, and carcass retention requirements for all halibut retained by anglers on a fishing vessel, irrespective of whether the angler was guided or unguided.

Under Alternative 3, some of the requirements for guided anglers would not be imposed on unguided anglers, largely because the proposed alignment of bag and possession limits, size restrictions, and carcass retention requirements effectively serve to mitigate the compliance risks associated with the commingling of halibut on a fishing vessel that were caught and retained by both guided and unguided anglers. For example, this final rule will not require unguided anglers to individually record their daily catch and accrue it toward guided angler annual limits, which is currently a maximum of four fish in Area 3A. Additionally, day of the week closures for guided anglers, which is a restriction to catching and retaining Pacific halibut on specific days and is currently used in Area 3A, will not apply to unguided anglers.

The RIR examines the potential negative effects of this final rule, which largely relates to reduced harvest limits for unguided anglers who have their halibut on the same fishing vessel as guided anglers. One of the advantages of fishing unguided is that anglers are allowed to keep two fish of any size per day and keep a possession limit of four fish. Relative to the status quo, it is possible that this final rule which would reduce the number and size of halibut that can be retained by unguided anglers in some situations, could also reduce the incentive to purchase charter halibut trips.

As noted above, the entities directly regulated under this final rule are assumed to be small, by the SBA definition. Overall, however, this action is likely to have a limited effect on net benefits to the Nation. The majority of Area 2C and 3A halibut charter operations, which includes business owners, guides and crew members, would not be

subject to significant negative economic impacts by this final rule. Thus, NMFS is not aware of any alternatives, in addition to the alternatives considered, that would more effectively meet the RFA criteria, the objectives of the Halibut Act and other applicable statutes at a lower economic cost to directly regulated small entities.

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) under OMB control number 0648-0575 (Alaska Pacific Halibut Fisheries: Charter Recordkeeping). Public reporting burden per response is estimated to average 4 minutes for the ADF&G Saltwater Sport Fishing Charter Trip Logbook, 5 minutes for the GAF Landing Report, and 2 minutes for the GAF Permit Log. The response time includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The ADF&G Saltwater Sport Fishing Charter Trip Logbook, GAF Electronic Landing Report, and GAF Permit Log are mentioned in this final rule. Each of these are reporting requirements specified by NMFS regulations. The requirements apply only to the harvest accounting of charter vessel anglers by charter vessel guides. Under this final rule, the harvests of unguided charter vessel anglers will not be subject to these requirements; therefore, this rulemaking imposes no additional burden or cost on the regulated community.

Send comments regarding this burden estimate, 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:

https://www.cio.noaa.gov/services_programs/prasubs.html.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a final regulatory flexibility analysis, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as “small entity compliance guides.” The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. The preambles to the proposed rule and this final rule serve as the small entity compliance guide. Copies of the proposed rule and this final rule are available from the NMFS Web site at

<https://fisheries.noaa.gov/region/alaska>.

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.

Dated: September 25, 2019.

Samuel D. Rauch III,
Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.

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

PART 300—INTERNATIONAL FISHERIES REGULATIONS

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 § 300.65, add paragraph (d)(6) to read as follows:

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

* * * * *

(d) * * *

(6) If a charter vessel angler catches and retains halibut, and that halibut is on board a fishing vessel with halibut caught and retained by persons who are not charter vessel anglers, then the daily bag limit, possession limit, size limit, and carcass retention regulations applicable to charter vessel anglers shall apply to all halibut on board the fishing vessel.

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