

provisions of the Administrative Procedure Act do not apply pursuant to 5 U.S.C. 553(b)(B).

#### Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion under 10 CFR 51.22(c)(2). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

#### Paperwork Reduction Act Statement

The final rule does not contain information collection requirements subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

#### Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information of an information collection requirement unless the requesting document displays a currently valid OMB control number.

#### Congressional Review Act

In accordance with the Congressional Review Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

#### List of Subjects for 10 CFR Part 50

Antitrust, Classified information, Criminal penalties, Fire protection, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR Part 50.

#### PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

■ 1. The authority citation for part 50 continues to read as follows:

**Authority:** Secs. 102, 103, 104, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); sec. 651(e), Pub. L.

109–58, 119 Stat. 806–810 (42 U.S.C. 2014, 2021, 2021b, 2111).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5841). Section 50.10 also issued under secs. 101, 185, 68 Stat. 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

#### § 50.36 [Amended]

■ 2. Section 50.36 is amended by redesignating paragraph (a) as paragraph (a)(1), redesignating paragraph (c) as paragraph (a)(2), and redesignating paragraphs (d), (e), and (f) as paragraphs (c), (d), and (e), respectively.

Dated at Rockville, Maryland, this 5th day of September, 2008.

For the Nuclear Regulatory Commission.

**Bruce S. Mallett,**

*Acting Executive Director for Operations.*

[FR Doc. E8–22355 Filed 9–23–08; 8:45 am]

BILLING CODE 7590–01–P

#### DEPARTMENT OF COMMERCE

#### National Oceanic and Atmospheric Administration

#### 15 CFR Part 902

#### 50 CFR Part 300

[Docket No. 080310411–8949–02]

RIN 0648–AU14

#### Pacific Halibut Fisheries; Subsistence Fishing

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues a final rule to amend the subsistence fishery rules for Pacific halibut in waters in and off Alaska. These regulations are necessary to address subsistence halibut management concerns, particularly in densely populated areas. This action is intended to support the conservation

and management provisions of the Northern Pacific Halibut Act of 1982.

**DATES:** Effective October 24, 2008.

**ADDRESSES:** Copies of the Categorical Exclusion (CE), Regulatory Impact Review (RIR), and Final Regulatory Flexibility Analysis (FRFA) prepared for this action, as well as the environmental assessment (EA) prepared for the original subsistence halibut action (68 FR 18145; April 15, 2003) are available by mail from NMFS, Alaska Region, P. O. Box 21668, Juneau, AK 99802–1668, Attn: Ellen Sebastian, Records Officer; in person at NMFS, Alaska Region, 709 West 9th Street, Room 420A, Juneau, Alaska; or via the Internet at the NMFS Alaska Region website at <http://www.alaskafisheries.noaa.gov>.

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

**FOR FURTHER INFORMATION CONTACT:** Becky Carls, 907–586–7228.

#### SUPPLEMENTARY INFORMATION:

Management of the Pacific halibut (hereafter halibut) fishery in and off Alaska is based on an international agreement between Canada and the United States. This agreement, entitled the “Convention between the United States of America and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea” (Convention), was signed at Ottawa, Canada, on March 2, 1953, and amended by the “Protocol Amending the Convention,” signed at Washington, D.C., March 29, 1979. The Convention, administered by the International Pacific Halibut Commission (IPHC), is given effect in the United States by the Northern Pacific Halibut Act of 1982 (Halibut Act).

The IPHC promulgates regulations pursuant to the Convention. The IPHC’s regulations are subject to approval by the Secretary of State with concurrence from the Secretary of Commerce (Secretary). After approval by the Secretary of State and the Secretary, the IPHC regulations are published in the **Federal Register** as annual management measures pursuant to 50 CFR 300.62. NMFS published the IPHC’s current annual management measures on March 7, 2008 (73 FR 12280).

The Halibut Act authorizes the North Pacific Fishery Management Council (Council) to develop halibut fishery regulations, including limited access regulations, in its geographic area of concern that would apply to nationals

or vessels of the United States (Halibut Act, section 773c (c)). Such an action by the Council is limited to only those regulations that are in addition to, and not in conflict with, IPHC regulations. Council-developed regulations must be approved and implemented by the Secretary. Any allocation of halibut fishing privileges must be fair and equitable and consistent with other applicable Federal law.

The Council used its authority under the Halibut Act to recommend a subsistence halibut program in October 2000 to recognize and manage the subsistence fishery for halibut. The Secretary approved the Council's recommended subsistence halibut program and published implementing regulations on April 15, 2003 (68 FR 18145), and codified the program in 50 CFR part 300—subpart E, authorizing a subsistence fishery for halibut in Convention waters off Alaska. Like the original subsistence halibut program and subsequent amendments to it, this action was developed by the Council under the authority of the Halibut Act.

The Halibut Act at sections 773c (a) and (b) provides the Secretary 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 (currently the Secretary of Homeland Security), adopt such regulations as may be necessary to carry out the purposes and objectives of the Convention and the Halibut Act. The Secretary has delegated authority to NMFS to implement the Halibut Act.

#### Background and Need for Action

The background and need for this action were described in detail in the preamble to the proposed rule for this action (73 FR 20008; April 14, 2008). The proposed rule is available via the Internet and from NMFS (see **ADDRESSES**). None of the actions are intended to change the amount of halibut harvested for subsistence. Information on alternatives considered and rejected may be found in the RIR and FRFA prepared for this action (see **ADDRESSES**). The following provides a list and brief review of the regulatory amendments to the management of the subsistence halibut fishery and are the regulatory changes made by this final rule.

This action implements regulations that will make six changes to the subsistence halibut program that will:

- Revise the subsistence gear restrictions in Chiniak Bay off Kodiak Island and add seasonal gear and vessel limits in Sitka Sound;

- Add the village of Naukati to the list of eligible subsistence halibut communities;

- Implement a possession limit to enhance enforcement;

- Revise the definition of charter vessel;

- Revise regulations to allow cash reimbursement for expenses related to the harvest of subsistence resources; and

- Allow the use of special permits within non-subsistence use areas by tribes eligible for the permits.

Additional administrative revisions to regulations include converting the gear and harvest restrictions from text to table format to further clarify any ambiguity and revising language to consistently refer to Sitka Sound, rather than Sitka Local Area Management Plan (LAMP), and its defined area.

#### Subsistence Halibut Gear Restrictions

This action increases subsistence halibut gear restrictions in Chiniak Bay off Kodiak Island and in Sitka Sound to address localized depletion concerns. This action reduces the allowable hook limit in Chiniak Bay to no more than two times the per person limit of 30, except that when fishing under a Ceremonial, Educational, or Community Harvest Permit the limit will be 90 hooks per vessel. Under this action, NMFS defines Chiniak Bay based on the State of Alaska's definition of the Kodiak Road Zone. In Sitka Sound, this action reduces the allowable gear from 30 hooks to 15 hooks per vessel and prohibits power hauling during the summer months from June 1 through August 31. From September 1 through May 31 gear restrictions will remain at 30 hooks per vessel and power hauling will be allowed.

The gear restrictions in this rule apply only to gear in use by eligible subsistence fishermen. By applying the gear restrictions to gear "set or retrieved" from a vessel, the gear restrictions apply only to gear actively engaged in subsistence fishing for halibut. A subsistence fisherman may possess any amount of gear onboard the vessel as long as that amount of gear actively being used does not exceed the prescribed limits.

#### Eligible Subsistence Halibut Communities

Persons eligible to conduct subsistence halibut fishing include (1) residents of rural places with customary and traditional uses of halibut, and (2) all identified members of federally recognized Alaska Native tribes with a finding of customary and traditional uses of halibut. The Council and Secretary retain exclusive authority to

recommend changes to the list of rural places at § 300.65(g)(1). In December 2004, the Council affirmed the Alaska State Board of Fisheries' determination that Naukati is a rural community with customary and traditional use of halibut and recommended adding Naukati to the list of rural communities for subsistence halibut purposes. NMFS agrees with this determination and, therefore, adopts the recommendation of the Council and adds Naukati to the list of eligible communities found at § 300.65(g)(1).

#### Subsistence Halibut Harvest Restrictions

Prior to this rule, enforcement officers had no means to verify the amount of time spent on the water for subsistence halibut fishermen who possess more than one daily bag limit, thereby hampering accurate accounting of halibut removals. This rule implements a possession limit to restrict potential abuses of the daily bag limit and enhance enforcement of daily harvest limits. Because of increased fishing effort due to higher population density, this action implements a possession limit of one daily bag limit for Areas 3A, 3B, and 2C. The possession limit within Sitka Sound, part of Area 2C, is 10 halibut per day per vessel from September 1 to May 31 and 5 halibut per day per vessel from June 1 through August 31. No possession limit is necessary for Areas 4A and 4B because those areas are not experiencing corresponding increases in fishing effort and population density. This action has no effect in Areas 4C, 4D, or 4E because no daily bag limits exist in those areas.

#### Charter Vessel Prohibition

Regulations in effect prior to this rule prohibited the retention of subsistence halibut harvested using a charter vessel. The NOAA Office for Law Enforcement expressed difficulty enforcing the prohibition under the previous charter vessel definition, which was "a vessel used for hire in sport fishing for halibut, but not including a vessel without a hired operator," because of problems associated with determining whether a vessel operator is "for hire." The Council subsequently clarified that the prohibition was meant only to prohibit subsistence fishers from hiring someone to take them subsistence fishing, but not to prohibit the use of vessels registered as charter vessels from being used for subsistence fishing.

This action uses the term "sport fishing guide vessel" in the regulatory definition for a charter vessel to match the term used in State of Alaska regulations at 05 AAC 75.077. This

action also allows a charter vessel to be used for subsistence halibut fishing, but restricts such use to the owner of record on the State of Alaska vessel registration, provided the owner is eligible to fish for subsistence halibut, and the owner's immediate family. This action prohibits the use of a charter vessel for subsistence halibut fishing while charter clients are onboard the vessel and prohibits the transfer of subsistence halibut to charter clients at all times. This precludes the use of any gear not classified as sport fishing gear or retaining any halibut in excess of the sport limits while charter clients are onboard any vessel.

#### Cash Reimbursement for Expenses

The previous regulations at § 300.66(j) specified that it is unlawful for any person to retain or possess subsistence halibut for commercial purposes; cause subsistence halibut to be sold, bartered, or otherwise entered into commerce; or solicit the exchange of subsistence halibut for commercial purposes, except that a qualified subsistence fisherman may engage in the customary trade of subsistence halibut through monetary exchange of no more than \$400 per year.

In June 2003, the Council's Enforcement Committee reviewed issues related to customary trade and determined that (1) despite the Council's intent to avoid creation of a new commercial fishery, current regulations essentially allow the sale of subsistence halibut up to the \$400 annual limit; (2) the \$400 annual limit lacks enforceability because enforcement officers cannot easily distinguish between sale and customary and traditional exchange for cash; and (3) current regulations do not clearly prohibit advertising and solicitation for commercial sale.

This action eliminates the \$400 monetary exchange limit and restricts any monetary exchange for subsistence halibut specifically to reimbursement of actual trip expenses directly related to the harvest of subsistence halibut. Actual trip expenses are limited to ice, bait, food, or fuel only. Under this action, persons qualified as rural residents under § 300.65(g)(1) and holding a subsistence halibut registration certificate (SHARC) in their name under § 300.65(i), may be reimbursed only by residents of the same rural community listed on their SHARC. However, under this action, persons qualified as Alaska Native tribal members under § 300.65(g)(2) and holding a SHARC in their name under § 300.65(i), are eligible for reimbursement only from an Alaska Native tribe, or its members, or members

of the same rural community. Therefore, if the tribal member lives in a non-rural Alaska community, they can participate in compensated exchanges only with a member of an Alaska native tribe.

#### Special Permits in Non-subsistence Areas

Generally, eligible persons may harvest subsistence halibut in all Convention waters in and off Alaska except in non-subsistence marine waters areas. This action allows the use of Ceremonial Permits and Educational Permits in non-subsistence marine waters areas by the 12 tribes whose traditional fishing grounds are located within Areas 2C and 3A. Use of Ceremonial Permits and Educational Permits within non-subsistence marine waters areas will remain subject to gear and harvest restrictions for those permits consistent with the IPHC regulatory area in which they are used. The use of Community Harvest Permits (CHPs) will not be allowed in non-subsistence marine waters areas.

The twelve tribes include five in Area 2C and seven in Area 3A. The tribes in Area 2C are as follows: Central Council of Tlingit/Haida Indians, Douglas Indian Association, Aukquan Traditional Council, Ketchikan Indian Corporation, and Organized Village of Saxman. In Area 3A the tribes are as follows: Native Village of Tatitlek, Kenaitze Indian Tribe, Seldovia Village Tribe, Ninilchik Village, Native Village of Port Graham, Native Village of Nanwalek, and Village of Salamatoff. The RIR/FRFA mentions 13 tribes several times, because the table it used lists the tribes by the four areas that currently are closed to subsistence halibut fishing. However, one tribe has traditional fishing grounds in both the Juneau and Ketchikan areas, so the correct total number of tribes is 12.

#### Response to Comments

The proposed rule published in the **Federal Register** on April 14, 2008 (73 FR 20008). The 30-day comment period on the proposed rule ended May 14, 2008. NMFS received a total of five letters on the proposed rule that contained 15 unique comments. One letter was received from a tribal organization, one letter was received from two private individuals, and three letters were received from the fishing industry. A summary of these comments and NMFS's responses follows.

*Comment 1:* The proposed changes regarding customary trade, and its definition, effectively eliminates it from subsistence uses. Although the Alaska National Interest Lands Conservation Act (ANILCA) did not define this term, the need to narrow the definition of

"customary trade" by NMFS is not justified in light of the economic hardship and needs of Alaska Native villages. Leave customary trade as an option for those who have no alternative and do not place any monetary restrictions on the trade amount.

*Response:* The original subsistence halibut fishing regulations at § 300.61 defined customary trade as "the non-commercial exchange of subsistence halibut for anything other than items of significant value" and this definition remains unchanged by this rule. NMFS disagrees that the proposed changes eliminate customary trade for subsistence purposes. The new regulations specifically allow subsistence fishers to conduct limited trade of subsistence halibut. The regulations continue to prohibit subsistence halibut from being sold or otherwise entered into commerce; however, an exception provides for limited monetary exchange to reimburse qualified subsistence fishers for the actual expenses for ice, bait, food, and fuel directly related to subsistence fishing for halibut.

In recognizing the subsistence halibut fishery in regulations in 2003, NMFS did not intend to create an alternative commercial fishery. The former regulation, however, allowed "sales" of subsistence halibut of up to \$400 per year as nominal reimbursement for harvesting costs when subsistence halibut was shared. Previous regulations at § 300.66(j) allowed a "customary trade of subsistence halibut through monetary exchange of no more than \$400 per year." Some subsistence fishers regarded the monetary limit of \$400 per year as a monetary target that allowed the commercial sale of subsistence halibut up to \$400 per year per subsistence fisher. Thus, some subsistence halibut were illegally entering the commercial market for halibut. The new regulation clarifies that while the sale of subsistence halibut is prohibited, subsistence halibut fishers may be reimbursed for certain subsistence fishing expenses. This is consistent with customary trade practices.

The previous customary trade allowance of \$400 was never intended to be used for commercial revenue producing purposes. The objective of the customary trade allowance was to prevent commercial sale while allowing reimbursement of subsistence halibut harvesting expenses by those with whom the halibut was shared. In a careful review of the subsistence halibut program, the Council and NMFS determined the regulatory language implementing the objectives could be

confusing. Also, the NOAA Office for Law Enforcement found enforcement of the \$400 customary trade limit difficult because no reporting and recordkeeping was required for customary trade transactions.

This rule continues to prohibit the commercial sale of subsistence halibut. It does not prohibit customary trade, in terms of the economy of rural communities and Alaska Native tribes.

*Comment 2:* Defraying expenses is not the same as customary trade.

*Response:* Subsistence halibut fishing was the original fishery for halibut. Early Alaska Native fishers likely used the halibut resource not only as a food source for themselves, but also in trade with other Alaska and Canadian Natives living further inland. Over time, the commercial and sport fisheries for halibut developed as more non-natives populated the area. The Council and NMFS have been attempting to balance these three uses of the halibut resource. Prohibiting the sale of subsistence halibut protects commercial interests in the resource. This rule does not purport to define the term "customary trade." Instead, it prohibits the commercial sale of subsistence halibut while providing for the sharing of subsistence halibut with an opportunity to reimburse the subsistence fisher for certain actual subsistence fishing costs.

*Comment 3:* The rule does not provide for the subsistence needs of tribal members and is detrimental to subsistence uses.

*Response:* NMFS disagrees. Nothing in this rule prevents subsistence halibut fishing by qualified Alaska Natives. Moreover, the rule provides for expanded Alaska Native subsistence halibut fishing inside four non-subsistence areas currently closed to all subsistence fishing. This rule implements a more liberal policy of allowing subsistence halibut fishing under ceremonial permits and educational permits inside the current non-subsistence areas by Alaska Native tribes whose traditional fishing grounds fall within these areas.

*Comment 4:* Only enforcement problems are considered in the changes to customary trade. There is no concern about the dire economic needs of rural Alaska.

*Response:* NMFS disagrees. As explained above, the purpose of this regulatory change is to make a clear distinction between the subsistence and commercial fisheries and to continue to prohibit halibut caught in the subsistence fishery from entering commercial markets. The NOAA Office for Law Enforcement staff suggested that a regulatory change that identified the

specific expenses (i.e., ice, bait, foot, and fuel) for which a cash exchange would be permitted, would enhance public understanding of permissible compensation and provide an enforcement tool for a cash limit.

Providing regulatory language that can be effectively enforced is a concern in the development of all regulations by NMFS. The principal concern in this case, however, is to ensure the regulatory language clearly implements the policy that no subsistence halibut shall be sold or entered into commerce. The Council and NMFS have not changed the policy.

The potential benefits from revising the regulations include (1) increased clarity within the regulations to better reflect the intent of the Council, thus reducing (or eliminating) confusion among subsistence users as to the bounds of authorized cash reimbursement; (2) reduced competition for commercial users from subsistence-caught halibut that would have entered the commercial marketplace; and (3) continuation of social and cultural benefits by allowing subsistence trade. The alternative that became the Council's preferred alternative was selected because it balanced enforcement with customary practices. This rule recognizes the social, cultural, educational, and community benefits that derive from participating in the customary and traditional practices of sharing subsistence halibut, and seeks to accommodate these practices while attempting to provide additional tools for enforcing the prohibition on the sale of subsistence halibut.

*Comment 5:* Rural residents should have a meaningful role in the management of fisheries.

*Response:* The Council has authority under the Halibut Act to develop halibut fishery regulations to achieve allocation goals. Under the fishery management council process set forth in the Magnuson-Stevens Act, everyone has the opportunity to have a meaningful role and may participate in the decision-making process leading to new fishery management policies and regulations. All members of the public are invited to participate in the public process of the Council. Several weeks before each meeting, a notice is published in the **Federal Register** that announces when and where the meetings for the Council and its advisory committees will be held and the agenda items that may be discussed at the meeting. These meetings are open to the public. The Council's proposed revisions to the subsistence program were discussed at Council meetings held in October 2003, October 2004, and

December 2004, and a discussion paper was reviewed in June 2004. The public is specifically invited to speak at the Council and its advisory committee meetings. Writing letters or e-mails to the Council expressing concerns or joining or forming an association are other ways to become involved in the fisheries management process.

In response to one of the management objectives in the Final Alaska Groundfish Fisheries Programmatic Supplemental Environmental Impact Statement (August 26, 2004), the Council reviewed a discussion paper in February 2008 that proposed several approaches for increasing Alaska Native and community participation and consultation in the fishery management process. In June 2008, the Council reviewed a revised discussion paper and initiated a small committee of Council members and community and Alaska Native representatives to review the discussion paper and recommend to the Council ways to create a policy to improve outreach and participation. Further information on this issue and other fisheries management issues is available at the Council website <http://www.alaskafisheries.noaa.gov/npfmc> and information is available through the mail by writing to the Council at 605 W. 4th, Suite 306, Anchorage, AK 99501.

*Comment 6:* The analysis expresses concern that any exchange for cash of subsistence harvested food may establish an "undesirable precedent," but states that "[a] regulation restricting customary trade to Alaska Native tribal members might prevent the development of new subsistence harvest patterns for customary trade." Congress needs to fulfill the policies and purposes of the Alaska Native Claims Settlement Act (ANCSA) and must invoke its constitutional authority over Native affairs under the property clause and the commerce clause to protect and provide the opportunity for continued subsistence uses. This distinguishes Alaska Natives from rural residents.

*Response:* NMFS cannot amend ANCSA with a regulatory amendment. It is the role of Congress to amend ANCSA. This comment should, therefore, be directed to Congress.

*Comment 7:* The Federal government should look to the tribes for a solution to enforcement of customary trade and authorize the tribes to enforce regulations on tribal members.

*Response:* NMFS is responsible for enforcing the regulations it develops and promulgates. Changing the role of the tribes to include enforcement of NMFS's subsistence regulations is beyond the scope of this rule.

*Comment 8:* Where does it say in ANILCA that customary trade shall not constitute a significant commercial enterprise? By what authority is this further restriction of subsistence use being undertaken when it is for enforcement and not conservation? If the subsistence use called customary trade must be further restricted, what commensurate restriction is applied to commercial and sport fishing? Where is the priority or preference?

*Response:* According to the 9th Circuit Court, as stated in its decision of *United States v. Alexander*, 938 F.2d 942, 948 (9th Cr. 1991) concerning customary and traditional trade, "...trade must be conducted in a manner consistent with a subsistence lifestyle; ANILCA does not permit the establishment of significant commercial enterprises under the guise of subsistence uses." Commercial fishing for halibut is strictly regulated within an overall catch limit set by the IPHC and with individual fishing quotas for each person. Sport fishing for halibut is limited by prohibitions on the sale of halibut and by daily catch limits. Subsistence fishing for halibut is afforded some preference in that no annual catch limits, area catch limits, or allocations apply to the subsistence harvest.

*Comment 9:* We support the recommendation to implement a possession limit of one daily bag limit. We agree this will help enforcement efforts regarding subsistence halibut and address IPHC's concerns about accounting.

*Response:* Comment noted.

*Comment 10:* We support the recommended definition of a charter vessel. Subsistence caught halibut cannot be given, transferred, or fed to charter clients. We also support not allowing charter vessels with clients on board to set or retrieve gear, and we support not giving halibut that was caught on subsistence gear to charter clients. This section with the recommended clarifications will significantly help with the NOAA Office for Law Enforcement's ability to determine whether they are in violation or not.

*Response:* Comment noted.

*Comment 11:* We believe the recommended changes to the monetary exchange regulations are critical to prevent abuses of the Council's intent from occurring. We believe that the recommendation is a good balance of meeting NPFMC original intent while tightening up the regulations to preventing abuse from occurring.

*Response:* Comment noted.

*Comment 12:* We support the change in the format of the regulations by using tables where appropriate.

*Response:* Comment noted.

*Comment 13:* We urge approval and implementation of the proposed regulatory amendments to further restrict gear and harvest of subsistence halibut in Sitka Sound. Sitka residents discovered that existing subsistence regulations for Sitka Sound allow an over-harvest of halibut for subsistence purposes, resulting in localized depletion and reduced subsistence opportunities for local residents. These amendments are the result of a collaborative process by stakeholders in Sitka. The proposed amendments will encourage larger and higher capacity vessels to harvest subsistence halibut outside Sitka Sound while allowing residents with small boats to subsistence fish effectively in the protected waters of Sitka Sound. Reducing pressure on locally depleted halibut will also relieve pressure on sensitive rockfish and lingcod stocks.

*Response:* Comment noted.

*Comment 14:* We support increasing gear restrictions in Chiniak Bay and Sitka Sound. We appreciate the clarification that the allowable gear is what is being "set and retrieved" and having spare gear on board, such as a box of hooks, is not a violation.

*Response:* Comment noted.

*Comment 15:* We would like an additional consideration implemented regarding the length of time that gear may remain in the water unattended. We have received reports from fishermen who have witnessed gear being set in Sitka Sound and left unattended for weeks at a time.

*Response:* This action is not intended to address the length of time that gear may remain in the water. Concerns about the length of time that subsistence halibut gear may remain in the water would need to be addressed in a separate regulatory action developed through the Council process.

#### Changes from the Proposed Rule

Eight changes were made in regulatory language from the proposed rule to this final rule. The first change was to the charter vessel definition. Concern was expressed by the NOAA Office for Law Enforcement about the ability to prosecute a person who violates Federal regulations but who was also in violation of State of Alaska regulations by not registering a vessel used for charter fishing. Therefore, to enable enforcement of Federal regulations, the definition was revised to include vessels that should have been registered with the State of Alaska as

charter vessels. Additionally, the definition is intended to apply only to Alaska halibut regulatory areas 2C through 4E, so the phrase "for purposes of § 300.65" was added to the definition.

The second regulatory change revises the table at § 300.65(h) to add the limitations concerning the use of Ceremonial and Educational Permits in the non-subsistence marine waters areas of 2C and 3A.

The third regulatory change revises regulatory language at § 300.65(j)(3)(i)(B). It was the intent of the Council to allow the use of only Ceremonial Permits and Educational Permits and to not allow the use of CHPs in non-subsistence marine waters areas. This restriction was discussed in the RIR and in the preamble to the proposed rule but not clearly reflected in the proposed regulatory text. This change corrects that oversight and adds the Valdez and Anchorage-Matsu-Kenai non-subsistence marine waters areas to the existing list of non-subsistence marine waters areas in which the use of CHPs is prohibited.

The fourth regulatory change revises regulatory language at § 300.65(k)(3) to specify the tribes that are qualified to use a Ceremonial or Educational Permit in each non-subsistence marine waters area in areas 3A and 2C.

The fifth regulatory change clarifies proposed language at § 300.66(i) but does not change the substance of the regulatory language. Rather than requiring that a person "abides by" certain gear and harvest restrictions, the revised regulations require that a person "complies with" those same restrictions.

The sixth regulatory change revises § 300.66(j)(1) to indicate that the person's rural community is listed on the application for a SHARC. It is not listed on the SHARC itself.

The seventh regulatory change modifies the prohibitions at § 300.66(j)(2) regarding who may reimburse an Alaska Native tribal member for the expense of fishing for subsistence halibut. The proposed rule would have prevented an Alaska Native tribal member from being reimbursed by a non-native resident if they both lived within the same rural community. However, on further consideration, NMFS realized that proposal failed to recognize the dynamics within a rural Alaska community that consists of native and non-native individuals wherein subsistence halibut may be shared among them. Therefore, under the Secretary's authority in the Halibut Act at 773c (a) and (b), the regulations have been changed to allow Alaska Native tribal members holding a SHARC

to be reimbursed for certain actual expenses by any Alaska Native tribe, or its members, or residents of the same rural community listed on the person's SHARC application.

The eighth regulatory change revises the sentence structure in § 300.66(j)(1) and (2), by more clearly stating the limitation on what actual expenses may be reimbursed, but the substance of the regulations is not changed.

Changes also were made in the instructions for the proposed amendments to § 300.66. A court order filed June 20, 2008, that concerned § 300.66(m), reversed a charter halibut final rule published May 28, 2008 (73 FR 30504). The proposed redesignation of paragraph (m) under this subsistence halibut rule could add confusion to the court order. Therefore, paragraphs (j) through (m) will not be redesignated. Rather than revising a newly redesignated paragraph (k) as stated in the proposed rule, paragraph (j) will be revised, and rather than adding a new paragraph (j), the new paragraph is designated as (n).

#### Classification

Regulations governing the U.S. fisheries for Pacific halibut are developed by the IPHC, the Pacific Fishery Management Council, the Council, and the Secretary. 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 the allocation and catch of halibut in U.S. Convention waters as long as those regulations do not conflict with IPHC regulations. The proposed action is consistent with the Council's authority and the Secretary's authority to allocate halibut catches among fishery participants in the waters in and off Alaska.

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

A final regulatory flexibility analysis (FRFA) was prepared. The FRFA incorporates the initial regulatory flexibility analysis (IRFA), a summary of the significant issues raised by the public comments in response to the IRFA, NMFS's responses to those comments, and a summary of the analyses completed to support the action. A copy of this analysis is available from NMFS (see **ADDRESSES**). A description of this action, why it is

being considered, and the legal basis for this action are presented above in the preamble to this rule. A summary of the FRFA follows.

This rule implements six actions to amend the subsistence halibut regulations: (1) revise the subsistence gear restrictions in Chiniak Bay off Kodiak Island and add seasonal gear and vessel limits in the Sitka Sound area; (2) add the village of Naukati to the list of eligible subsistence halibut communities; (3) implement a possession limit equal to one daily bag limit to enhance enforcement; (4) revise the definition of charter vessel; (5) revise regulations to allow cash reimbursement for expenses related to the harvest of subsistence resources; and (6) allow the use of special permits within non-subsistence use areas by tribes eligible for the permits. Only actions 1 and 6 directly regulate "small entities," as defined by the Regulatory Flexibility Act (RFA). The remaining four actions are not addressed because they affect individuals, rather than "entities," as defined by the RFA. All attributable impacts on directly regulated small entities, accruing from either action, appear to be beneficial.

Actions 1 and 6 aim to enhance management of the subsistence halibut fishery as it pertains to use by Alaska Native tribes for the purpose of recognizing and appropriately accommodating subsistence practices. These actions are taken under the authority of the Halibut Act.

The principal decisions in the preferred alternatives for actions 1 and 6 address changes to gear limits and the use of CHPs by Alaska Native tribes in Kodiak and Chiniak Bay, and seasonal gear and vessel limits in Sitka Sound; and fishing in non-subsistence use areas. The preferred alternatives to implement CHPs for Alaska Native tribes in Kodiak and Chiniak Bay (CHPs are not allowed in Sitka Sound) under action 1, and to allow Ceremonial and Educational Permits to be used by Alaska Native tribes in non-subsistence use areas under action 6, directly regulate small entities.

#### Significant Issues Raised by Public Comments on the IRFA

The proposed rule for the subsistence halibut amendments was published in the **Federal Register** on April 14, 2008 (73 FR 20008). An IRFA was prepared for the proposed rule, and described in the classification section of the preamble to the rule. The public comment period ended on May 14, 2008. NMFS received five letters of comment on the proposed rule, including one with a comment on the

IRFA. The comment concerned the lack of information in the IRFA regarding action 5. Action 5 revises regulations regarding cash reimbursement for expenses related to the harvest of subsistence resources. However, action 5 applies only to individuals and not to small entities as defined by the RFA, therefore, no changes were made to the FRFA based on that comment. A detailed discussion of the effects of action 5 is provided in section 6.0 of the RIR. Four additional comments were received related to the possible economic effects of the proposed regulations to allow cash reimbursement for certain subsistence harvest related expenses, however these comments were not directed to the IRFA. For a summary of the comments received, including those on action 5, refer to the section of this final rule titled "Response to Comments."

#### Description and Estimate of Number of Small Entities to Which the Rule Will Apply

Action 1 directly regulates nine Alaska Native tribes, or governmental entities in the absence of a tribe, that are eligible to participate in the subsistence halibut program off Kodiak and Chiniak Bay. Action 6 affects twelve Alaska Native tribes, but no governmental entities.

#### Description of Recordkeeping, Reporting, and Other Compliance Requirements

No additional recordkeeping, reporting requirements, or other compliance requirements are anticipated as a result of either action 1 or 6.

#### Description of Significant Alternatives and Steps Taken to Minimize the Significant Economic Impact on Small Entities

Multiple alternatives were addressed for each action under the RFA. Under action 1, three alternatives were analyzed: (1) no action; (2) change gear restrictions and annual limits in Kodiak, Prince William Sound, Cook Inlet, and the Sitka LAMP; and (3) change gear restrictions and annual limits only in Kodiak and the Sitka LAMP. Alternative 3 was selected as the preferred alternative for action 1. For action 6, three alternatives were analyzed: (1) no action; (2) allow the use of CHPs, educational permits, and ceremonial permits in non-subsistence use areas by tribes whose traditional fishing grounds are located within IPHC Areas 2C and 3A, with the associated daily bag limit; and (3) allow the use of educational permits and ceremonial permits, but not

CHPs, in non-subsistence use areas by tribes whose traditional fishing grounds are located within IPHC Areas 2C and 3A, with the associated daily bag limit. Alternative 3 was selected as the preferred alternative for action 6.

Alternative 1 for action 1 was rejected because it did not address the localized depletion concerns in the areas under consideration. Alternative 2 for action 1 was rejected because it includes restrictions in the Prince William Sound and Cook Inlet areas. Measures for Prince William Sound and Cook Inlet were found to be unwarranted, therefore, Alternative 2 would be more restrictive than the preferred alternative.

Alternative 1 for action 6 was rejected because it would have continued the prohibition on subsistence halibut fishing under all circumstances in designated non-subsistence fishing areas and would not provide social, cultural, educational, and "communal" benefits to the 12 affected tribes. Alternative 2 for action 6 was rejected because it allows the use of CHPs in non-subsistence fishing areas, but the preferred alternative prohibits such use. CHP use was rejected in non-subsistence fishing areas because of potential unintended negative consequences for groundfish stocks.

Based on the best available scientific data and information, the FRFA (including the RIR) reveals that none of the significant alternatives, other than the preferred alternatives, have the potential to accomplish the objectives of the actions consistent with the Halibut Act, the RFA, and other applicable statutes, and minimize the adverse economic impacts of the rule on directly regulated small entities. That is, in both actions considered here, the preferred alternative was the least burdensome among all available alternatives, consistent with the objectives of each respective action.

#### *RFA Conclusion*

"Small entities," as defined by the Regulatory Flexibility Act, would be directly regulated only by action 1 and by action 6. All attributable impacts on directly regulated small entities, accruing from either action, appear to be "beneficial."

It is NMFS's policy to consider only "adverse" impacts, when preparing a FRFA, consistent with Congress' direction to "minimize effects on small entities." Based upon the foregoing analysis, no such adverse impacts appear to be associated with the proposed actions. Nonetheless, detailed information and empirical data about the operational structures, strategies, and fiscal conditions of the various

tribes, which are likely to be directly regulated by the proposed actions, are not presently available to the analysts to support preparation of a "factual basis" upon which to "certify," under RFA provisions. Therefore, the FRFA was prepared to fulfill the requirements of the RFA, despite the high probability that the actions will not have a significant adverse effect on a substantial number of small entities.

#### *Small Entity Compliance Guide*

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides." In that guide, the agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. NMFS will post a small entity compliance guide on the Internet at <http://alaskafisheries.noaa.gov/ram/subsistence/halibut.htm>. The guide and this final rule will be available upon request (see ADDRESSES).

This final rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA) and which have been approved by OMB. These collections are listed by control number.

#### *OMB Control Number 0648-0460*

Public reporting burden is estimated to average ten minutes for a subsistence halibut registration certificate (SHARC) for rural or individual use and ten minutes for a SHARC for tribal use per response.

#### *OMB Control Number 0648-0512*

Public reporting burden for a Subsistence Halibut Special Permit Application for ceremonial harvest, educational harvest, or community harvest is estimated to average ten minutes per response.

These estimates include 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 these data collections, including suggestions for reducing the burden, to NMFS (see ADDRESSES) and by e-mail to [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov), or fax to 202-395-7285.

Notwithstanding any other provision of the law, no person is required to

respond to, and no person shall be subject to 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.

NMFS is not aware of any other Federal rules that would duplicate, overlap, or conflict with these actions.

Executive Order 13175 of November 6, 2000 (25 U.S.C. 450 note), the Executive Memorandum of April 29, 1994 (25 U.S.C. 450 note), and the American Indian and Alaska Native Policy of the U.S. Department of Commerce (March 30, 1995) outline the responsibilities of the National Marine Fisheries Service in matters affecting tribal interests. Section 161 of Public Law 108-199 (118 Stat 452), as amended by section 518 of Public Law 108-447 (118 Stat 3267), extends the consultation requirements of Executive Order 13175 to Alaska Native corporations.

Consultations with the Alaska Native Subsistence Halibut Working Group, under Executive Order 13175, resulted in recommendations to allow the use of special permits in non-subsistence use areas. NMFS contacted tribal governments and Alaska Native corporations which may be affected by the action, provided them with a copy of the proposed rule, and offered them an opportunity to consult. One request for a tribal consultation was received. NMFS staff spoke via telephone with members of the tribal organization and their associates to listen to and address their specific questions and their specific needs. Many of their specific questions also were raised in comments received during the public comment period and are responded to in the Response to Comments section of this final rule, except for two comments listed below. NMFS staff clarified points in the proposed regulations, described the role of the Alaska Native Subsistence Halibut Working Group, and provided contact information for the working group.

Two comments raised during the tribal consultation were not included in the Response to Comments section. The first comment is that the specific items allowed for reimbursement do not encompass all costs associated with harvest and trade of subsistence halibut and that only enforcement concerns were considered. NMFS notes that not all costs were expected to be encompassed in the amount that could be reimbursed. As stated in the RIR:

Examples of costs that would not be allowed to be compensated are the cost of the boat, repairs, or hydraulic gear that would be

used for a duration longer than the fishing trip that produced the halibut that is being shared. Enforcement staff advised the Council that this approach still would be extremely difficult to enforce. Enforcement may occur through investigations, whereby receipts could be examined to verify expenses. Staff reported that, while this preferred alternative does not facilitate enforcement directly, it facilitates public understanding of Council intent and may enhance enforcement of egregious violations.

The Council determined that its preferred alternative best recognized the social, cultural, educational, and communal benefits that derive from sharing halibut, while providing additional tools for enforcing the prohibition on commercial sale of subsistence halibut. Therefore, the Council rejected the most readily enforceable alternative, which would have prohibited any cash exchange, in favor of the preferred alternative based on the extensive administrative record.

The second comment is that the 30 hooks per vessel limit is a hardship and should be increased to the 30 hooks per person and 90 hooks per vessel limit allowed in other areas; the limit of 20 fish per vessel per day should be a sufficient limit. This change was initiated in specific regulatory areas for the halibut fishery because of increased fishing effort due to higher population density. NMFS suggests that if a tribal organization wants its local area within the larger halibut regulatory area to be exempt from this limit, the idea could be further developed by the tribal organization. The tribal organization could then bring the idea to the attention of the Alaska Native Subsistence Halibut Working Group.

**List of Subjects**

15 CFR Part 902

Recordkeeping and reporting requirements.

50 CFR Part 300

Alaska, Alaska Natives, Fisheries, Pacific halibut fisheries, Recordkeeping and reporting requirements.

Dated: September 18, 2008.

**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 chapter IX and 50 CFR chapter III as follows:

**TITLE 15—COMMERCE AND FOREIGN TRADE**

**CHAPTER IX—NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, DEPARTMENT OF COMMERCE**

**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”, add entries for “300.65 introductory text; (h)(1)(ii) and (iii); and (i)”, “300.65(h)(1)(i)”, and “300.65(j), (k), and (l)” in alphanumeric order to read as follows:

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

\*\*\*\*\*  
(b) \*\*\*

3. Table 2a to part 679 is revised to read as follows:

CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648-)
*****	
50 CFR	
*****	
300.65 introductory text; (h)(1)(ii) and (iii); and (i)	-0460
300.65(h)(1)(i)	-0460 and -0512
300.65(j), (k), and (l)	-0512
*****	

**TITLE 50—Wildlife and Fisheries**

**CHAPTER III—INTERNATIONAL FISHING AND RELATED ACTIVITIES**

**PART 300—INTERNATIONAL FISHERIES REGULATIONS**

**Subpart E—Pacific Halibut Fisheries**

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

Authority: 16 U.S.C. 773–773k.

■ 4. In § 300.61, add definitions of “Chiniak Bay” and “Power hauling” in alphabetical order and revise the definition of “Charter vessel” to read as follows:

**§ 300.61 Definitions.**

\*\*\*\*\*

Charter vessel, for purposes of § 300.65, means a vessel that is

registered, or that should be registered, as a sport fishing guide vessel with the Alaska Department of Fish and Game.

Chiniak Bay means all waters bounded by the shoreline and straight lines connecting the coordinates in the order listed:

- (1) North from Cape Chiniak (57°37.22' N. lat., 152°9.36' W. long.);
- (2) To Buoy #1 at Williams Reef (57°50.36' N. lat., 152°8.82' W. long.);
- (3) To East Cape on Spruce Island (57°54.89' N. lat., 152°19.45' W. long.);
- (4) To Termination Point on Kodiak Island (57°51.31' N. lat., 152°24.01' W. long.); and
- (5) Connecting to a line running counterclockwise along the shoreline of Kodiak Island to Cape Chiniak (57°37.22' N. lat., 152°9.36' W. long.).

\* \* \* \* \*

Power hauling means using electrically, hydraulically, or mechanically powered devices or attachments or other assisting devices or attachments to deploy and retrieve fishing gear. Power hauling does not include the use of hand power, a hand powered crank, a fishing rod, a downrigger, or a hand troll gurdy.

\* \* \* \* \*

■ 5. In § 300.65:

A. Revise paragraphs (e)(1)(ii) introductory text, (h)(1)(i), (h)(2), (j) introductory text, (j)(1)(ii), (j)(1)(iii), (j)(3)(i) introductory text, (j)(3)(i)(A), (j)(3)(i)(B), (k)(3)(i), and (k)(3)(ii).

B. Add paragraph (e)(5).

C. In paragraph (g)(1) in the table entitled “Halibut Regulatory Area 2C” an entry for “Naukati” is added in alphabetical order.

The additions and revisions read as follows:

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

\*\*\*\*\*

(e) \*\*\*

(1) \*\*\*

(ii) With respect to paragraphs (e)(3), (e)(4), and (e)(5) of this section, that part of the Commission Regulatory Area 2C that is enclosed on the north and east:

\* \* \* \* \*

(5) Setline gear may not be used in a 4 nm radius extending south from Low Island at 57°00.70' N. lat., 135°36.57' W. long. within Sitka Sound, as defined in paragraph (e)(1)(ii) of this section, from June 1 through August 31.

\* \* \* \* \*

(g) \*\*\*

(1) \*\*\*



HALIBUT REGULATORY AREA 2C

\* \* \* \* \*

(h) \* \* \*

(1) \* \* \*

(i) Subsistence fishing gear set or retrieved from a vessel while engaged in subsistence fishing for halibut must not have more than the allowable number of hooks per vessel, or per person registered in accordance with paragraph

(i) of this section and aboard the vessel, whichever is less, according to the regulatory area and permit type indicated in the following table:

Rural Community	Organized Entity
*****	
Naukati	Municipality
*****	

Regulatory Area	Permit Type	Retention Limits
2C--Except Sitka Sound, and Ketchikan and Juneau non-subsistence marine waters areas	SHARC	30 hooks per vessel
	Ceremonial Permit	30 hooks per vessel
	Educational Permit	30 hooks per vessel
	Community Harvest Permit	30 hooks per person onboard up to 90 hooks per vessel
2C--Sitka Sound	SHARC	September 1 through May 31: 30 hooks per vessel
		June 1 through August 31: 15 hooks per vessel; no power hauling
	Ceremonial Permit	September 1 through May 31: 30 hooks per vessel
		June 1 through August 31: fishing under Ceremonial Permit not allowed
	Educational Permit	30 hooks per vessel
	Community Harvest Permit	fishing under Community Harvest Permit not allowed
2C--Ketchikan and Juneau non-subsistence marine waters areas	SHARC	general subsistence halibut fishing not allowed
	Ceremonial Permit	30 hooks per vessel
	Educational Permit	30 hooks per vessel
	Community Harvest Permit	fishing under Community Harvest Permit not allowed
3A--Except Chiniak Bay, and Anchorage-Matsu-Kenai and Valdez non-subsistence marine waters areas	SHARC	30 hooks per person onboard up to 90 hooks per vessel
	Ceremonial Permit	30 hooks per person onboard up to 90 hooks per vessel
	Educational Permit	30 hooks per person onboard up to 90 hooks per vessel
	Community Harvest Permit	30 hooks per person onboard up to 90 hooks per vessel
3A--Chiniak Bay	SHARC	30 hooks per person onboard up to 60 hooks per vessel
	Ceremonial Permit	30 hooks per person onboard up to 90 hooks per vessel
	Educational Permit	30 hooks per person onboard up to 90 hooks per vessel
	Community Harvest Permit	30 hooks per person onboard up to 90 hooks per vessel
3A--Anchorage-Matsu-Kenai and Valdez non-subsistence marine waters areas	SHARC	general subsistence halibut fishing not allowed

Regulatory Area	Permit Type	Retention Limits
	Ceremonial Permit	30 hooks per person onboard up to 90 hooks per vessel
	Educational Permit	30 hooks per person onboard up to 90 hooks per vessel
	Community Harvest Permit	fishing under Community Harvest Permit not allowed
3B	SHARC	30 hooks per person onboard up to 90 hooks per vessel
4A and 4B	SHARC	30 hooks per person onboard up to 90 hooks per vessel
4C, 4D, and 4E	SHARC	no hook limit

\* \* \* \* \*  
 (2) The retention of subsistence halibut is limited per person eligible to conduct subsistence fishing for halibut and onboard the vessel according to the following table:

Regulatory Area	Permit Type	Gear Restrictions
2C--Except Sitka Sound, and Ketchikan and Juneau non-subsistence marine waters areas	SHARC	20 halibut per day per vessel and in possession
	Ceremonial Permit	25 halibut per permit
	Educational Permit	25 halibut per permit
	Community Harvest Permit	no daily or possession limit
2C--Sitka Sound	SHARC	September 1 through May 31: 10 halibut per day per vessel and in possession
		June 1 through August 31: 5 halibut per day per vessel and in possession
	Ceremonial Permit	September 1 through May 31: 25 halibut per permit
		June 1 through August 31: fishing under Ceremonial Permit not allowed
	Educational Permit	25 halibut per permit
Community Harvest Permit	fishing under Community Harvest Permit not allowed	
2C--Ketchikan and Juneau non-subsistence marine waters areas	SHARC	general subsistence halibut fishing not allowed
	Ceremonial Permit	25 halibut per permit
	Educational Permit	25 halibut per permit
	Community Harvest Permit	fishing under Community Harvest Permit not allowed
3A--Including Chiniak Bay, but excluding Anchorage-Matsu-Kenai and Valdez non-subsistence marine waters areas	SHARC	20 halibut per person per day and in possession
	Ceremonial Permit	25 halibut per permit
	Educational Permit	25 halibut per permit
	Community Harvest Permit	no daily or possession limit
3A--Anchorage-Matsu-Kenai and Valdez non-subsistence marine waters areas	SHARC	general subsistence halibut fishing not allowed

Regulatory Area	Permit Type	Gear Restrictions
	Ceremonial Permit	25 halibut per permit
	Educational Permit	25 halibut per permit
	Community Harvest Permit	fishing under Community Harvest Permit not allowed
3B	SHARC	20 halibut per person per day and in possession
4A and 4B	SHARC	20 halibut per person per day; no possession limit
4C, 4D, and 4E	SHARC	no daily or possession limit

\* \* \* \* \*

(j) *Community Harvest Permit (CHP)*. An Area 2C or Area 3A community or Alaska Native tribe listed in paragraphs (g)(1) or (g)(2) of this section may apply for a CHP, which allows a community or Alaska Native tribe to appoint one or more individuals from its respective community or Alaska Native tribe to harvest subsistence halibut from a single vessel under reduced gear and harvest restrictions. The CHP consists of a harvest log and up to five laminated permit cards. A CHP is a permit subject to regulation under § 679.4(a) of this title.

(1) \* \* \*

(ii) NMFS will issue a CHP to a community in Area 2C or Area 3A only if:

(A) The applying community is listed as eligible in Area 2C or Area 3A according to paragraph (g)(1) of this section; and

(B) No Alaska Native tribe listed in paragraph (g)(2) of this section exists in that community.

(iii) NMFS will issue a CHP to an Alaska Native tribe in Area 2C or Area 3A only if the applying tribe is listed as eligible in Area 2C or Area 3A according to paragraph (g)(2) of this section.

\* \* \* \* \*

(3) \* \* \*

(i) In Area 2C or Area 3A, except that a CHP may not be used:

(A) Within Sitka Sound as defined in paragraph (e)(1)(ii) of this section (see Figure 1 to this subpart E); or

(B) Within the Ketchikan, Juneau, Anchorage–Matsu–Kenai, and Valdez non–subsistence marine waters areas as defined in paragraph (h)(3) of this section (see Figures 2, 3, 4, and 5 to this subpart E).

\* \* \* \* \*

(k) \* \* \*

(3) \* \* \*

(i) In Area 3A, except:

(A) In the Anchorage–Matsu–Kenai non–subsistence marine waters area defined in paragraph (h)(3) of this

section (see figure 4 to this subpart E), only the following tribes may use a Ceremonial or Educational permit:

- (1) Kenaitze Indian Tribe;
- (2) Seldovia Village Tribe;
- (3) Ninilchik Village;
- (4) Native Village of Port Graham;
- (5) Native Village of Nanwalek; and
- (6) Village of Salamatoff.

(B) In the Valdez non–subsistence marine waters area defined in paragraph (h)(3) of this section (see figure 5 to this subpart E), only the Native Village of Tatitlek may use a Ceremonial or Educational permit.

(ii) In Area 2C, except:

(A) In the Ketchikan non–subsistence marine waters area defined in paragraph (h)(3) of this section (see figure 2 to this subpart E), only the following tribes may use a Ceremonial or Educational permit:

- (1) Central Council of Tlingit/Haida Indians;
- (2) Ketchikan Indian Corporation; and
- (3) Organized Village of Saxman;

(B) In the Juneau non–subsistence marine waters area defined in paragraph (h)(3) of this section (see figure 3 to this subpart E), only the following tribes may use a Ceremonial or Educational permit:

- (1) Central Council of Tlingit/Haida Indians;
- (2) Douglas Indian Association; and
- (3) Aukquan Traditional Council.

(C) A Ceremonial Permit may not be used within Sitka Sound from June 1 through August 31;

\* \* \* \* \*

■ 6. In § 300.66, revise paragraphs (i) and (j), and add paragraph (n) to read as follows:

**§ 300.66 Prohibitions.**

\* \* \* \* \*

(i) Fish for subsistence halibut from a charter vessel or retain subsistence halibut onboard a charter vessel if anyone other than the owner of record, as indicated on the State of Alaska vessel registration, or the owner's

immediate family is aboard the charter vessel and unless each person engaging in subsistence fishing onboard the charter vessel holds a subsistence halibut registration certificate in the person's name pursuant to § 300.65(i) and complies with the gear and harvest restrictions found at § 300.65(h).

(j) Retain or possess subsistence halibut for commercial purposes; cause subsistence halibut to be sold, bartered, or otherwise entered into commerce; or solicit exchange of subsistence halibut for commercial purposes, except that a person who qualified to conduct subsistence fishing for halibut under § 300.65(g), and who holds a subsistence halibut registration certificate in the person's name under § 300.65(i), may be reimbursed for the expense of fishing for subsistence halibut under the following conditions:

(1) Persons who qualify as rural residents under § 300.65(g)(1) and hold a subsistence halibut registration certificate in the persons's name under § 300.65(i) may be reimbursed for actual expenses for ice, bait, food, and fuel directly related to subsistence fishing for halibut, by residents of the same rural community listed on the person's subsistence halibut registration application; or

(2) Persons who qualify as Alaska Native tribal members under § 300.65(g)(2) and hold a subsistence halibut registration certificate in the person's name under § 300.65(i) may be reimbursed for ice, bait, food, and fuel directly related to subsistence fishing for halibut, by any Alaska Native tribe, or its members, or residents of the same rural community listed on the person's subsistence halibut registration application.

\* \* \* \* \*

(n) Transfer subsistence halibut to charter vessel anglers.

[FR Doc. E8–22411 Filed 9–23–08; 8:45 am]