

**PART 8—[AMENDED]**

■ 1. The authority citation for part 8 continues to read as follows:

**Authority:** E. O. 10450, 3 CFR, 1949–1953 Comp., p. 936; E.O. 12829, 3 CFR, 1993 Comp., p. 570; E.O. 12958, 3 CFR, 1995 Comp., p. 333; E. O. 12968, 3 CFR, 1995 Comp., p. 391.

**Subpart B—Classification/Declassification of Information****§ 8.11 [Amended]**

■ 2. Section 8.11 is amended as follows:

- a. By removing paragraph (b)(2),
- b. By redesignating paragraphs (b)(3) and (b)(4) as (b)(2) and (b)(3)
- c. By amending newly designated paragraph (b)(2) by removing the reference “Assistant Administrator for Civil Aviation Security”, and by adding in its place, the reference “Assistant Administrator for Security and Hazardous Materials.”

Issued in Washington, DC, on March 30, 2011.

**Ray LaHood,**

*Secretary of Transportation.*

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

[Docket No. 110325225–1224–02]

**RIN 0648–BA96**

**Pacific Halibut Fisheries; Limited Access for Guided Sport Charter Vessels in Alaska**

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

**ACTION:** Final rule; interpretation.

**SUMMARY:** This interpretation clarifies regulations that apply to vessels operating in the guided sport (charter) fishery for halibut in International Pacific Halibut Commission Management Area 2C (Southeast Alaska) and Area 3A (Central Gulf of Alaska). Under regulations implementing the charter halibut limited access program, all vessel operators in Area 2C and Area 3A with charter vessel anglers on board catching and retaining halibut must have a valid charter halibut permit that was issued by NMFS on board the vessel. This interpretation clarifies that a valid charter halibut permit must be

on board a vessel when the charter vessel guide on board is being compensated to provide assistance to persons catching and retaining halibut. A charter vessel guide is not required to have a charter halibut permit on board a vessel during a recreational halibut fishing trip on which he or she is not being compensated to provide assistance to persons catching and retaining halibut.

**DATES:** This rule is effective on April 8, 2011.

**ADDRESSES:** Electronic copies of this action and other related documents are available from <http://www.regulations.gov> or from the NMFS Alaska Region Web site at <http://alaskafisheries.noaa.gov>.

**FOR FURTHER INFORMATION CONTACT:** Rachel Baker, 907–586–7228.

**SUPPLEMENTARY INFORMATION:****Background**

The International Pacific Halibut Commission (IPHC) and NMFS manage fishing for Pacific halibut (*Hippoglossus stenolepis*) through regulations established under authority of the Northern Pacific Halibut Act of 1982 (Halibut Act) (16 U.S.C. 773 *et seq.*). Sections 773c(a) and (b) of the Halibut Act provide the Secretary of Commerce (Secretary) with general responsibility to carry out the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the North Pacific Ocean and Bering Sea and the Halibut Act. Section 773c(c) of the Halibut Act also authorizes the North Pacific Fishery Management Council (Council) to develop regulations, including limited access regulations, that are in addition to, and not in conflict with, approved IPHC regulations. Such Council-developed regulations may be implemented by NMFS only after approval by the Secretary. The Council has exercised this authority in the development of its limited access program for charter vessels in the guided sport fishery, codified at 50 CFR 300.67.

**Charter Halibut Limited Access Program**

In March 2007, the Council recommended a limited access program for charter vessels in IPHC Regulatory Area 2C and Area 3A. The intent of the program was to manage growth of fishing capacity in the charter sector by limiting the number of charter vessels that may participate in the guided sport fishery for halibut in Areas 2C and 3A. NMFS published a final rule implementing the program on January 5, 2010 (75 FR 554). Under the program,

NMFS initially issued a charter halibut permit (CHP) to qualified applicants. A person who was not initially issued a CHP by NMFS may obtain a transferable CHP from another person by submitting a transfer application and meeting CHP transfer requirements. A permit holder may use a CHP on board any vessel that meets Federal and State requirements to operate as a charter vessel in the guided sport fishery for halibut in Areas 2C and 3A.

Beginning February 1, 2011, any person operating a vessel on which charter vessel anglers are catching and retaining halibut in Area 2C or Area 3A is required to have on board the vessel a CHP designated for that area. This requirement is codified in the regulations as a prohibition. The regulation at § 300.66(r) prohibits a person from being an operator of a vessel in Area 2C or Area 3A with one or more charter vessel anglers on board that are catching and retaining halibut without having a valid CHP for the regulatory area in which the vessel is operating.

**Interpretation**

This interpretation clarifies that a CHP is required to be on board a vessel in Area 2C or Area 3A if both of the following conditions are met: (1) One or more persons on board are catching and retaining halibut, and (2) a charter vessel guide on board the vessel is receiving compensation to assist a person to take, or attempt to take, halibut.

Regulations at § 300.61 include three definitions that are relevant for determining whether a CHP is required to be on board a vessel in Area 2C or Area 3A. These definitions are “charter vessel angler,” “charter vessel guide,” and “sport fishing guide services.” For purposes of regulations at §§ 300.65(d), 300.66, and 300.67:

1. “Charter vessel angler” means a person, paying or non-paying, using the services of the charter vessel guide.

2. “Charter vessel guide” means a person who holds an annual sport guide license issued by the Alaska Department of Fish and Game, or a person who provides sport fishing guide services.

3. “Sport fishing guide services” means assistance, for compensation, to a person who is sport fishing, to take or attempt to take fish by being on board a vessel with such person during any part of a charter vessel fishing trip.

NMFS interprets “services” in the definition of “charter vessel angler” to mean “sport fishing guide services” as defined at § 300.61. Under this interpretation, a person who takes or attempts to take halibut would only be

a charter vessel angler if that person is receiving sport fishing guide services from a charter vessel guide. Section 300.61 defines "sport fishing guide services" as assistance, for compensation, to a person who is sport fishing, to take or attempt to take fish by being on board a vessel with such person during any part of a charter vessel fishing trip. Therefore, a person would be a charter vessel angler only if that person is receiving assistance to catch and retain halibut from a charter vessel guide who is being compensated to assist the person to take or attempt to take halibut.

Compensation is generally defined as something given or received as payment or remuneration, as for a service. For purposes of the definition of "sport fishing guide services" at § 300.61, compensation is not strictly limited to a monetary exchange and can include a trade of goods or services in exchange for taking someone fishing. Therefore, assistance for compensation is not limited to situations where persons are directly compensating someone for sport fishing guide services. The definition of "sport fishing guide services" at § 300.61 does not require any person on board the vessel to be individually compensating the person providing assistance for this definition to be applicable. If the charter vessel guide is compensated in any way to provide assistance, then that charter

vessel guide is providing sport fishing guide services under § 300.61.

NMFS recognizes that compensation for assistance can take many forms. For purposes of applying the regulations at §§ 300.61, 300.66, and 300.67, NMFS will evaluate the specific circumstances of a fishing trip to determine if a charter vessel guide is receiving compensation for providing persons with assistance to take or attempt to take halibut.

#### Effects of This Interpretation

NMFS did not intend for a charter vessel guide's recreational fishing activities in Area 2C and Area 3A to be restricted by the charter halibut limited access program regulations. This interpretation clarifies that the regulation at § 300.66(r) does not require a person holding an annual sport guide license issued by the Alaska Department of Fish and Game, defined as a charter vessel guide at § 300.61, to have a CHP on board the vessel for recreational fishing trips that are not undertaken as part of charter halibut business operations. For example, NMFS recognizes that while a charter vessel guide on board a vessel with friends or family may offer his or her expertise to assist those persons to catch and retain halibut, the charter vessel guide may not be compensated for providing such assistance. Thus, if the charter vessel guide is not compensated for providing sport fishing guide services, as defined

at § 300.61, the persons on board the vessel are not charter vessel anglers as defined at § 300.61. If the persons on board are not charter vessel anglers, the fishing trip would not be considered a charter vessel fishing trip.

#### Classification

The Assistant Administrator for Fisheries, NOAA, has determined that this interpretation is consistent with the Halibut Act and other applicable law.

This action is administrative in nature and is exempt from the requirement to prepare an environmental assessment in accordance with NAO 216-6 because this interpretive rule will have no effect on the environment.

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

The notice and comment requirements and the 30-day delay in the effective date requirements of the Administrative Procedure Act do not apply to this interpretive rule as provided in 5 U.S.C. 553(b)(A) and 5 U.S.C. 553(d)(2).

**Authority:** 16 U.S.C. 773 *et seq.*

Dated: April 4, 2011.

**John Oliver,**

*Deputy Assistant Administrator for Operations, National Marine Fisheries Service.*

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