

Dated: November 14, 2019.

Shelly E. Finke,

Alternate OSD Federal Register Liaison
Officer, Department of Defense.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 300 and 679

[Docket No. 191114-0081]

RIN 0648-BH94

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: This final rule implements regulations that require Charter Halibut Permits (CHPs) to be registered annually with NMFS before use. In 2010, NMFS implemented the Charter Halibut Limited Access Program that issued a limited number of CHPs to persons who operate in the guided sport (charter) halibut fishery on the waters of International Pacific Halibut Commission Regulatory Areas 2C and 3A. The annual registration of CHPs is intended to improve the enforcement of CHP transfer limitations and ownership caps, as well as provide additional information to NMFS and the North Pacific Fishery Management Council on any changes in CHP ownership, leasing, and participation.

DATES: Effective December 20, 2019.

ADDRESSES: Electronic copies of the Categorical Exclusion and the Regulatory Impact Review (RIR) prepared for this action are available from <http://www.regulations.gov> or from the NMFS Alaska Region 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 by mail to NMFS Alaska Region, P.O. Box 21668, Juneau, AK 99802-1668, Attn: Glenn Merrill; in person at NMFS Alaska Region, 709 West 9th Street, Room 401, Juneau, AK; by email to OIRA_Submission@omb.eop.gov; or by fax to 202-395-5806.

FOR FURTHER INFORMATION CONTACT:
Doug Duncan, 907-586-7228.

SUPPLEMENTARY INFORMATION:

Authority for Action

The International Pacific Halibut Commission (IPHC) and NMFS manage fishing for Pacific halibut (*Hippoglossus stenolepis*) through regulations established under authority of the Northern Pacific Halibut Act of 1982 (Halibut Act). The IPHC adopts regulations governing the Pacific halibut fishery under the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the North Pacific Ocean and Bering Sea (Convention), signed at Ottawa, Ontario, on March 2, 1953, as amended by a Protocol Amending the Convention (signed at Washington, DC, on March 29, 1979). For the United States, regulations developed by the IPHC are subject to acceptance by the Secretary of State with concurrence from the Secretary of Commerce. After acceptance by the Secretary of State and the Secretary of Commerce, NMFS publishes the IPHC regulations in the **Federal Register** as annual management measures pursuant to 50 CFR 300.62.

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

The Halibut Act, at section 773c(c), also provides the North Pacific Fishery Management Council (Council) with authority to develop regulations, including limited access regulations, that are in addition to, and not in conflict with, approved IPHC regulations. Regulations developed by the Council may be implemented by NMFS only after approval by the Secretary of Commerce. The Council has exercised this authority in the development of subsistence halibut fishery management measures, the Charter Halibut Limited Access Program (CHLAP), and a 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 773 of the Halibut Act and section 303(b) of the Magnuson-Stevens Fishery

Conservation and Management Act (16 U.S.C. 1801 *et seq.*).

Management of the Halibut Fishery

Description of the Action Area

This final rule implements regulations for the management of the guided sport halibut fishery in IPHC Regulatory Areas 2C (Southeast Alaska) and 3A (Southcentral Alaska). This preamble uses the term “Area 2C” and “Area 3A” to refer to IPHC Regulatory Areas 2C and 3A, respectively.

Summary Background on Management of the Charter Halibut Fishery

In addition to this summary, the preamble to the proposed rule for this action (84 FR 38912; August 8, 2019) and Section 3.2 of the RIR provides detail on charter halibut management programs that have been implemented in Areas 2C and 3A.

Guided sport fishing in Areas 2C and 3A is currently managed under the CHLAP, which limits the number of operators in the charter fishery. The CHLAP established Federal charter halibut permits (“CHP” or “permit”) for operators in the charter halibut fisheries in Areas 2C and 3A (75 FR 554, January 5, 2010). Since 2011, all vessel operators in Areas 2C and 3A with charter anglers on board must have an original, valid permit on board during every charter vessel fishing trip on which Pacific halibut are caught and retained. CHPs are endorsed for the appropriate regulatory area and the number of charter anglers that may catch and retain halibut on a trip.

NMFS issued both transferable and nontransferable CHPs depending on specific qualifying criteria detailed in the final rule implementing the CHLAP (75 FR 554, January 5, 2010). Transferable CHPs were issued to participants with more extensive participation in the charter halibut fishery during the qualifying period and used to establish a market-based system of access to the halibut charter fishery after the initial allocation of permits.

Nontransferable CHPs were authorized as a means to allow a business with relatively low participation during the qualifying period to continue to operate, while reducing the size of the charter fleet over time. Nontransferable CHPs may not be transferred to another individual or business entity, and the permits are invalidated when a permit holder dies, or the business entity that holds the permit dissolves or adds new owners. 50 CFR 300.67(j) describes CHP limitations, including ownership changes.

Community Charter Halibut Permits (Community CHPs) were also made available to eligible Community Quota Entities, and Military Charter Halibut Permits (Military CHPs) were made available to U.S. Military Morale, Welfare, and Recreation Programs. Community CHPs and Military CHPs are nontransferable and were issued by NMFS in limited quantities not based on historical participation, but to provide economic benefits to small rural communities and allow military service members harvesting opportunity.

Administration of CHPs

The CHLAP included ownership gap regulations that generally prohibit a person or entity from holding more than five CHPs to limit potential consolidation in the charter fishery and provide continuing opportunities to access the fishery. Existing businesses that initially qualified for more than five permits were allowed to continue their business at levels above this excessive share standard; however, they are prevented from acquiring more permits than their initial allocation. Permit transfers that result in a person, business, or other entity receiving more than five permits are only approved by NMFS under limited exceptions. This preamble uses the term “ownership cap” to describe the limit on the number of CHPs that a person or entity is eligible to hold because this term is commonly used by participants in the charter halibut fishery.

Ownership shares were initially accounted for on the applications for CHPs. If the initial applicant was not a sole individual, then the corporation, partnership, or other business entity that applied was required to submit the names of all the individual owners of the business entity, together with the percent of the business ownership for each individual.

If there is a change in the ownership of either transferable or nontransferable CHPs, NMFS must be notified. For an individual CHP holder, a “change” might mean that the person has died, in which case, NMFS must be notified within 30 days of the individual’s death (50 CFR 300.67(j)(5)(i)). For corporations, partnerships, or other non-individual entities, a “change” occurs when a new partner is added, unless it is a court appointed trustee acting on behalf of an incapacitated partner (50 CFR 679.42(j)(4)(i)). Non-individual entity changes must be registered with NMFS within 15 days of the effective date of the change. Many ownership changes occur when a CHP is transferred; however, other changes occur when a business entity adds

partners or shareholders, or an individual dies. Monitoring the ownership structure of CHPs is necessary for NMFS to implement and enforce features of the CHLAP, such as transfer provisions, ownership caps, and the retirement of nontransferable CHPs. See the proposed rule for a more complete history and discussion of the regulations relating to CHPs (84 FR 38912; August 8, 2019).

Need for This Action

Currently, CHPs are indefinitely valid for the initial recipient or transferee until the permit is transferred, reissued, or subject to a qualifying change of ownership. If a CHP is not lost, destroyed, transferred, or subject to a reported change in ownership, then permit holder information may fall out of date because there is no regular reporting requirement to NMFS. Both transferable and nontransferable CHPs can also be non-permanently “transferred” or “leased” to another person to use without record of that transaction being submitted to NMFS.

This final rule addresses the Council’s intent to advance several goals under the CHLAP, including: The enforcement of CHP ownership caps and on-the-water enforcement through the annual registration and issuance of valid permits. By annually documenting and updating the ownership structure of active CHPs, this final rule also facilitates the retirement of nontransferable permits, as well as addresses the Council’s intent to collect information on leasing of CHPs by identifying whether the CHP holder received financial compensation for leasing their permit(s) in the previous year.

Provisions of This Final Rule

This final rule implements an annual registration requirement for CHPs. To be valid, a CHP will need to be registered with NMFS each calendar year before use. This annual registration requirement does not apply to Military CHPs or Community CHPs due to existing reporting requirements, but it does apply to transferrable CHPs held by CQEs, which are separate from their Community CHPs.

The registration process requires submission of a form including the CHP holder name, CHP number, CHP holder address, CHP holder phone number and/or email address, CHP ownership holdings including all partners and corporate entities, anyone affiliated with the CHP holder, and a “yes” or “no” question that asks whether financial compensation for the use of the CHP was received in the preceding year. The

financial compensation question refers to CHP leases or “leasing-like” behavior, but does not collect more detailed information on an arrangement other than whether one had occurred.

After approval of a CHP annual registration, NMFS will issue a new version of the original CHP that is valid to the CHP holder. The CHP will have an alphanumeric version code, and the published CHP list will indicate the registration status and, if applicable, the valid version code of each CHP. A CHP that has been successfully registered will be valid until December 31 of the year in which it is registered, unless transferred, replaced, or otherwise superseded by a more recent version of the CHP. Any previous versions of the CHP will not be valid. Consistent with existing regulations at 50 CFR 300.67, a charter vessel guide must have an original valid CHP on board when catching and retaining halibut during a charter vessel fishing trip.

If a CHP holder does not complete the annual registration process they will maintain ownership of the CHP, subject to CHP ownership caps and other CHP limitations. However, the CHP will not be valid for use until it has been successfully registered. The CHP holder or authorized representative can complete the annual registration process at any time, but the original valid CHP that is issued will always expire on December 31 of the calendar year the registration occurred. For example, a CHP registered at any time during 2020 would expire on December 31, 2020.

Under this final rule, transferring a CHP is a separate process from the annual registration of a CHP. A new owner receiving a CHP through permanent transfer will be required to register the CHP before using it, even if the previous holder had registered it within the same calendar year.

This final rule also establishes a standard process in the event a CHP annual registration is denied. A denial may occur due to an incomplete or inaccurate registration application, registration of a non-transferable permit by a non-eligible holder, violation of a CHP ownership cap, or violation of another CHP limitation. If this occurs, NMFS will inform the applicant why the annual registration was denied and begin a 30-day period in which the applicant can correct the application. If NMFS determines that there is still sufficient reason to deny the application after corrections and evidence are received during the 30-day period, an Initial Administrative Determination (IAD) detailing the problems will be issued to the applicant. An applicant that receives an IAD can appeal the

denial to the Office of Administrative Appeals. This is consistent with the process relating to the denial and appeal of other NMFS fishing permits.

Finally, this rule makes a non-substantive update to the appeal process for a CHP application. It revises the outdated reference for the Office of Administrative Appeals in order to bring it up to date with current regulations and practice. This does not change how appeals are currently made or handled.

Response to Comments

NMFS received nine comment letters on the proposed rule. NMFS identified and considered ten unique, relevant comments, which are summarized and responded to below. The commenters consisted of individuals, representatives of the charter sector, and representatives of the commercial fishing sector.

Comment 1: We support the CHP annual registration requirement because it will allow for more effective enforcement of transfer provisions, ownership caps, non-transferable permit retirement, and provide a more accurate picture of CHP ownership and leasing. We urge the Agency to have the annual registration in effect for the 2020 charter season.

Response: NMFS acknowledges this comment. NMFS intends to have this CHP annual registration requirement in place for the 2020 charter fishing season.

Comment 2: An additional benefit of an annual registration requirement is that in the event a CHP holder passes away, this requirement will serve as a notification of the existence of the CHP and may prompt a transfer in ownership that could keep the permit active rather than remaining latent and unused.

Response: NMFS acknowledges this comment. The CHP annual registration process will indicate whether a CHP has been registered and could provide information to someone with a CHP, or interest in using it, that a transfer and/or annual registration is required for the CHP to be valid and therefore usable.

Comment 3: We encourage all steps directed at reforming charter halibut management toward a more stable, transparent environment for invested operators.

Response: NMFS acknowledges this comment. The CHP annual registration process will improve transparency by regularly documenting CHP ownership which will help ensure CHP limitations are adhered to. The additional information will also help the Council and NMFS better evaluate if the goals of the CHLAP are being met, or if potential

management action is needed to maintain program stability.

Comment 4: All legal halibut charter operators have to have a CHP on board when they retain halibut on a charter trip and they are all required to fill out and file Alaska Department of Fish & Game (ADF&G) Logbook Reports for each trip. ADF&G collects and tabulates the CHP catch data weekly and annually, by owner, operator and CHP number. NOAA, NMFS, and Council have access to this same data, making this collection unnecessary.

Response: NMFS disagrees. The Alaska Department of Fish & Game Saltwater Charter Logbook contains the CHP number and holder name used for each trip, but it does not contain any additional information about the CHP holder, such as whether the CHP has been leased in the previous year, or information about the ownership and affiliation structure related to the permit. The CHP annual registration requirement is intended to facilitate retirement of non-transferable permits when ownership changes, improve the ability of enforcement agents to ensure valid permits are being used on the water, and improve understanding of temporary leasing behavior.

Comment 5: Transferable CHP owners are required to file a 9-page NOAA Application for Transfer of CHP when they permanently transfer their CHP. Therefore, NOAA already gets updated ownership information for CHP holders.

Response: NMFS acknowledges that updated CHP holder information is supplied when a CHP is transferred but disagrees that transfers alone are sufficient to provide information for all fishery participants. On average, only about 5% of CHPs are transferred each year which leaves an information gap for the overwhelming majority of CHP holders, particularly as some CHPs may never be transferred (see Section 3.2.4 of the RIR). This action provides regularly updated information, which is not currently collected, from all active CHP holders.

Comment 6: CHP holders already have a large list of licenses, permits, registrations, and contracts to complete each year. Adding an annual registration requirement adds additional paperwork burden which is not worth it. If registration must be required, it should only occur every 10 years, at the most frequent.

Response: The annual registration requirement is designed to efficiently address the Council's management objectives. The annual registration requirement regularly documents and updates ownership information, facilitates the retirement of

nontransferable permits, and identifies whether the CHP holder received financial compensation for leasing their permit(s). Longer registration intervals would allow active CHP information to fall out of date which would fail to meet the Council's management objectives. The burden and costs of compliance to accomplish these objectives will be minimal. Annual registration is expected to take an average of 15 minutes per application and estimated to impose less than \$20 in labor costs and other expenses related to submittal. There is no fee from the agency for the annual registration process. Additionally, the CHP holder is not required to submit the CHP annual registration on a specific date, and may submit the annual application shortly before starting charter operations, further reducing the potential burden for applicants.

Comment 7: Whether financial compensation was received for use of a CHP should not matter.

Response: NMFS disagrees. The Council requested this information to inform potential future management action related to CHP leasing that occurs. Currently, no information about CHP leasing is collected or available. Furthermore, by gathering this information as a simple "yes" or "no" question, the reporting burden on the CHP holder is minimized.

Comment 8: Financial compensation for use of a CHP needs to be defined.

Response: NMFS agrees, financial compensation refers to CHP leasing or "leasing-like" behavior. Clear instructions are provided on the CHP annual registration form to guide CHP holders in responding to this question.

Comment 9: There should not be a fee associated with completing the annual registration form.

Response: There is no agency fee charged to complete or submit the CHP annual registration.

Comment 10: Please specify who is responsible for completing and submitting the CHP annual registration. What if a CHP is being leased or a lienholder is retaining ownership of the CHP prior to pay off while another person uses it? Would the inactive CHP owner of record, or the active purchaser/user of the CHP, or both, be responsible for registration? Also, leasing should be prohibited for nontransferable CHPs.

Response: NMFS acknowledges this comment. The current CHP holder (owner of record) is responsible for annual registration of the CHP. Once the CHP transfer is completed and approved, the new CHP holder will be responsible for completing the annual

registration prior to being issued a valid CHP. Modifications to the CHP transfer process and CHP leasing provisions are not addressed and outside the scope of this rule.

Changes From Proposed to Final Rule

The NMFS Alaska Region website address was changed after the proposed rule was submitted for publication; therefore, the regulatory text for this final rule replaces the outdated web address with the current web address, which is <https://www.fisheries.noaa.gov/region/alaska>.

Classification

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

Executive Order 12866

This final rule has been determined to be not significant for purposes of Executive Order 12866. This rule is not an Executive Order 13771 regulatory action because this rule is not significant under Executive Order 12866. This final rule also complies with the Secretary of Commerce's authority under the Halibut Act to implement management measures for the halibut fishery.

Regulatory Flexibility Act

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. Several comments were received regarding the increased burden of the

annual registration requirement or disputing its utility. These are addressed in the Response to Comment section of this final rule. Specifically, Comment 6 expresses concern about the increased burden resulting from this action. The agency response to this comment briefly summarizes the rationale for certification which include the minimal cost and time burden anticipated to complete the CHP annual registration process. No comments were received providing new information for, or refuting the factual basis for certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

Regulatory Impact Review

An RIR was prepared to assess all costs and benefits of available regulatory alternatives. A copy of the RIR is available from NMFS (see ADDRESSES). The Council recommended this action based on those measures that maximized net benefits to the Nation.

Collection-of-Information Requirements

This final rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA) and which have been submitted for approval by the Office of Management and Budget under OMB Control Number 0648-0592, Pacific Halibut Fisheries: Charter Permits. Public reporting burden is estimated to average 15 minutes per response for the application for annual registration of a CHP and 4 hours per response for appeal of a denied application. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information.

Send comments on these burden estimates or any other aspects of the collections of information, 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.reginfo.gov/public/do/PRAMain>.

List of Subjects

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.

50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: November 14, 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 parts 300 and 679 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 § 300.67, add paragraph (a)(4) and revise paragraph (h)(6) introductory text to read as follows:

§ 300.67 Charter halibut limited access program.

* * * * *

(a) * * *

(4) *Annual registration.* A charter halibut permit holder must register a charter halibut permit with NMFS during the calendar year when it will be used to be valid.

(i) *Application and submittal.* An application for a charter halibut permit annual registration will be made available by NMFS. A completed registration application may be submitted using the NMFS-approved electronic reporting system on the Alaska Region website at <https://www.fisheries.noaa.gov/region/alaska>. Completed applications may also be submitted by mail, hand delivery, or facsimile at any time to the address(s) listed on the application.

(ii) *Complete annual registration.* To be complete, a charter halibut permit registration application must have all required fields accurately completed and be signed and dated by the applicant.

(iii) *Denied registration applications.* If NMFS does not approve an annual charter halibut permit registration application, NMFS will inform the applicant of the basis for its disapproval

and provide the applicant with a 30-day evidentiary period in which to correct any application deficiencies.

(A) *Initial Administration Determination (IAD)*. NMFS will send an IAD to the applicant following the expiration of the 30-day evidentiary period if NMFS determines there is sufficient reason to deny the application. The IAD will indicate the deficiencies in the application and the deficiencies with the information submitted by the applicant in support of its claim.

(B) *Appeal*. An applicant that receives an IAD may appeal to the Office of Administrative Appeals (OAA) pursuant to 15 CFR part 906.

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(h) * * *

(6) *Appeal*. An applicant that receives an IAD may appeal to the Office of Administrative Appeals (OAA) pursuant to 15 CFR part 906.

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PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 3. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*; 1801 *et seq.*; 3631 *et seq.*; Pub. L. 108–447; Pub. L. 111–281.

■ 4. In § 679.4, revise paragraph (a)(1)(xv)(A) to read as follows:

§ 679.4 Permits.

(a) * * *

(1) * * *

If program permit or card type is:	Permit is in effect from issue date through the end of:	For more information, see * * *
(xv) * * *.		
(A) Charter halibut permit.	Until expiration date shown on permit.	§ 300.67 of this title.
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