

make up food packaging treated with a pesticide may serve one of two purposes: (1) To control pests, or (2) to be one of the materials that make up the container for food. As a result of this proposed rule, EPA would continue to regulate the materials that control pests and FDA will regulate the substances that make up the food packaging material. Consistent with EPA's pesticide registration regulations, EPA will not issue a registration under FIFRA for pesticide products containing food packaging inert ingredients if the presence of these ingredients in or on food is not authorized or permitted by FFDCA and the implementing regulations.

EPA, in consultation with FDA, believes that section 201(q)(3) is applicable to inert ingredients in pesticide treated food packaging materials that are the components of the food packaging (paperboard, coatings, etc). When such inert ingredients are the components of the food packaging itself, EPA believes the occurrence of these substances as residues in or on food would be appropriately excepted from the definition of "pesticide chemical" or "pesticide chemical residue" because such substances are not attributable primarily to the use of the substances for a pesticidal purpose in the production, storage, processing or transportation of food. Rather, the presence of such substances as residues in food is primarily attributable to their use for purposes of packaging food. For this reason, and because of FDA's considerable experience in regulating such substances found in food packaging, EPA and FDA believe it is appropriate for FDA to regulate these inert ingredients under section 409 of FFDCA.

As noted, this proposed regulation would except from the definition of "pesticide chemical" and "pesticide chemical residue" any inert ingredient that is a component of food packaging material treated with a pesticide. EPA, in consultation with FDA, believes the identity of the pesticide in or on the packaging material is not relevant to a determination under section 201(q)(3) regarding whether it is appropriate to except an inert ingredient from the definition of "pesticide chemical" or "pesticide chemical residue." As noted above, that determination turns only on whether: (1) the occurrence of the residues of the substance in or on food is attributable primarily to the use of substances for a pesticidal purpose in the production, storage, processing or transportation of food; and (2) whether it is more appropriate to regulate such substances under another provision of

FFDCA other than sections 402(a)(2)(B) and 408. Thus, EPA has determined that inert ingredients that are the components of the food packaging material in pesticide treated food packaging are more appropriately regulated by FDA under FFDCA. This proposed rule would therefore amend 40 CFR 180.4 to extend the exception contained therein to any food packaging materials treated with a pesticide.

### III. Statutory and Executive Order Reviews

As an exception, this action does not impose any regulatory obligations. Under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), it has been determined that this proposed rule is not "significant" and is not subject to OMB review. This proposed rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et. Seq., or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104-4). This proposed rule has no federalism or tribal implications, because it will not have substantial direct effects on States or Indian tribes, on the relationship between the Federal Government and the States or Indian tribes, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes, as specified in Executive Orders 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and 13175 entitled *Consultation and Coordination with Indian Tribal Governments*, (65 FR 67249, November 6, 2000). Nor does this rule raise issues that require special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This proposed rule is also not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use* (66 FR 28355, May 22, 2001), because this action is not expected to affect energy supply, distribution, or use. In addition, this action does not involve any standards that would require Agency consideration pursuant to section 12(d) of the National Technology Transfer and

Advancement Act (NTTAA) (Public Law 104-113)

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Agency hereby certifies that this proposed regulatory action will not have a significant economic impact on a substantial number of small entities, because this regulatory action is an exemption and imposes no regulatory obligations. EPA will provide this information to the Small Business Administration's office of Advocacy upon request.

### List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 26, 2007.

**Janet L. Andersen,**

*Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.*

Therefore, it is proposed that 40 CFR chapter I be amended as follows:

### PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 321(q), and 371.

2. Section 180.4 is amended by revising paragraph (a) to read as follows.

#### § 180.4 Exceptions.

\* \* \* \* \*

(a) Inert ingredients in food packaging treated with a pesticide, when such inert ingredients are the components of the food packaging material (e.g. paper and paperboard, coatings, adhesives, and polymers).

\* \* \* \* \*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 300

[Docket No. 070326070-7070-01; I.D. 032107A]

RIN 0648-AV47

### Pacific Halibut Fisheries; Guided Sport Charter Vessel Fishery for Halibut

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes regulations that would restrict the harvest of halibut by persons fishing on a guided sport charter vessel in International Pacific Halibut Commission (IPHC) Regulatory Area 2C. The current sport fishing catch or bag limit of two halibut per day is proposed to be changed for a person sport fishing on a charter vessel in Area 2C to require that at least one of the two fish taken in a day be no more than 32 inches (81.3 cm) in length. This proposed regulatory change is necessary to reduce the halibut harvest in the charter vessel sector while minimizing negative impacts on this sector, its sport fishing clients, and the coastal communities that serve as home ports for the fishery. The intended effect of this action is a reduction in the poundage of halibut harvested by the guided sport charter vessel sector in Area 2C.

**DATES:** Written comments must be received by April 23, 2007.

**ADDRESSES:** Send comments to Sue Salvesson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. Comments may be submitted by any of the following methods:

- *Mail:* P.O. Box 21668, Juneau, AK 99802 1668;
- *Hand deliver to the Federal Building:* 709 West 9th Street, Room 420A, Juneau, AK;
- *Fax:* 907-586 7557;
- *E-mail:* 0648-AV47-PR-

HAL@noaa.gov. Include in the subject line of the e-mail the following document identifier: Charter Vessel Halibut 0648-AV47. E-mail comments with or without attachments are limited to 5 megabytes; or

- *Webform at the Federal e-Regulation Portal:* <http://www.regulations.gov>. Follow the instructions at that site for submitting comments.

Copies of the Draft Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared for this action are available from NMFS at the above address or from the NMFS Alaska Region website at <http://www.fakr.noaa.gov>.

**FOR FURTHER INFORMATION CONTACT:** Jay Ginter or Jason Gasper, (907) 586-7228 or email at [jay.ginter@noaa.gov](mailto:jay.ginter@noaa.gov) or [jason.gasper@noaa.gov](mailto:jason.gasper@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The IPHC and NMFS manage fishing for Pacific halibut (*Hippoglossus stenolepis*)

through regulations established under the authority of the Northern Pacific Halibut Act of 1982 (Halibut Act). The IPHC promulgates 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 in Ottawa, Ontario, on March 2, 1953, as amended by a Protocol Amending the Convention signed at Washington, D.C., on March 29, 1979. The IPHC's regulations are subject to approval by the Secretary of State with concurrence of the Secretary of Commerce (Secretary). Approved regulations developed by the IPHC are published as annual management measures pursuant to 50 CFR 300.62.

Current regulations applicable to sport fishing for halibut in all IPHC areas in Alaska are contained in section 25 of the 2007 annual management measures (72 FR 11792; March 14, 2007). These regulations include the following restrictions per person sport fishing:

1. A single line with no more than two hooks attached or a spear;
2. A daily bag limit of two halibut of any size;
3. A possession limit of two daily bag limits; and
4. A sport fishing season of February 1 through December 31.

The IPHC first adopted sport halibut fishing rules in 1973, in response to Federal, state, and provincial agencies seeking consistency and uniformity in sport fishing regulations in all IPHC areas. The IPHC bag limit rule was first established as three fish per day per person in 1973, was reduced to one fish per day in 1974, and raised to two fish per day in 1975, where it has remained until present. Similarly, the IPHC established the sport fishing season for halibut originally from March 1 through October 31 in 1973, and changed it for several years until the current 11-month season was set in 1986. Finally, during the years 1984 through 1997, the IPHC required sport charter vessels to have IPHC licenses.

Additional regulations that are not in conflict with approved IPHC regulations may be recommended by the North Pacific Fishery Management Council (Council) and implemented by the Secretary through NMFS to allocate harvesting privileges among U.S. fishermen in and off of Alaska. The Council has exercised this authority, most notably in the development of its Individual Fishing Quota (IFQ) Program, codified at 50 CFR part 679, and subsistence halibut fishery management measures, codified at 50 CFR 300.65.

The Council also has been developing a regulatory program to manage the guided sport charter vessel fishery for halibut and is continuing this work. This program could include measures to restrict harvest in 2008 and a moratorium on new entry into the charter vessel fishery in 2009.

#### Management of the Halibut Fisheries

The harvest of halibut occurs in three basic fisheries the commercial, sport, and subsistence fisheries. An additional amount of fishing mortality occurs as bycatch or incidental catch while targeting other species and wastage.

The IPHC annually determines the amount of halibut that may be removed from the resource without causing biological conservation problems on an area-by-area basis in all areas of Convention waters. It imposes catch limits, however, on only the commercial sector in areas in and off of Alaska. The IPHC estimates the exploitable biomass of halibut using a combination of harvest data from the commercial, recreational, subsistence fisheries, and information collected during scientific surveys and sampling of bycatch in other fisheries. The target amount of allowable harvest for a given area is calculated by multiplying a fixed harvest rate by the estimate of exploitable biomass. This target level is called the total constant exploitation yield (CEY) as it represents the target level for total removals (in net pounds) for that area in the coming year. The IPHC subtracts estimates of all non-commercial removals (sport, subsistence, bycatch, and wastage) from the total CEY. The remaining CEY, after the removals are subtracted, is the maximum catch or "fishery CEY" for an area's directed commercial fixed gear fishery.

This method of determining the commercial fishery's catch limit in an area results in a decrease in the commercial fishery's use of the resource as other non-commercial uses increase their proportion of the total CEY. As conservation of the halibut resource is the overarching goal of the IPHC, it attempts to include all sources of fishing mortality of halibut within the total CEY. This method for determining the limit for the commercial use of halibut has worked well for many years to conserve the halibut resource, provided that the other non-commercial uses of the resource have remained relatively stable and small. Although most of the non-commercial uses of halibut have been relatively stable, growth in the charter vessel fishery in recent years, particularly in Area 2C, has resulted in a de facto allocation of the halibut

resource away from the commercial fishery to the charter vessel fishery.

#### **Guideline Harvest Level (GHL)**

Currently, the Council's only approved management policy in effect for the charter vessel fisheries is to have separate GHLs for Area 2C and Area 3A. These GHLs are codified at 50 CFR 300.65(c). The GHLs serve as benchmarks for monitoring the charter vessel fishery relative to the commercial fishery and other sources of fishing mortality. The GHLs do not limit the charter vessel fisheries. Although it is the Council's policy that the charter vessel fisheries should not exceed the GHLs, no constraints have been imposed on the charter vessel fisheries for GHLs that have been exceeded in the past.

The Council has discussed the expansion of the charter vessel fishery for halibut since 1993. The GHLs were initially adopted by the Council in 1997 without implementing regulations. The Council stated its intent to maintain a stable charter vessel fishing season without a mid-season closure. If a GHL was exceeded, other management measures would be triggered to take effect in years following attainment of the GHL. The Council envisioned "framework" regulations of increasing restrictiveness depending on the extent to which a GHL was exceeded. Proposed framework regulations were published in 2002 (January 28, 2002; 67 FR 3867); however, NMFS informed the Council later that year that its framework regulations could not be implemented. Hence, a final rule establishing the GHLs was eventually published without any restrictive regulations (68 FR 47256; August 8, 2003).

The GHLs represent a pre-season specification of acceptable annual halibut harvests in the charter vessel fisheries in Areas 2C and 3A. To accommodate some growth in the charter vessel sector while approximating historical harvest levels, the Council recommended GHLs based on 125 percent of the average 1995 through 1999 charter vessel harvest. For Area 2C, the GHL was set at 1,432,000 lb (649.5 mt) net weight and in Area 3A, the GHL was set at 3,650,000 lb (1,655.6 mt) net weight. When the Council recommended these GHLs, halibut stocks were considered to be near record high levels of abundance. To accommodate decreases and subsequent increases in abundance, the Council recommended a system of step-wise adjustments in each GHL based on a predetermined uniform measure of stock abundance. The measure used was the CEY determined annually by the

IPHC. Specifically, the Council linked a step-wise reduction in the GHL in any one year to the decrease in the CEY as compared to the 1999 through 2000 average CEY. For example, if the halibut stock in Area 2C were to fall from 15 to 24 percent below its 1999 through 2000 average CEY, then the GHL for Area 2C would be reduced by 15 percent. Conversely, as the CEY increased from low levels, the GHL also would increase in the same step-wise manner. Regardless of how high the CEY may rise above its 1999 through 2000 average, however, the GHLs were not designed to increase above their maximum amounts. Since 2003 when the GHLs became effective, they have never been reduced below their maximum level because declines in the total CEY have not been sufficient to trigger the first step reduction of the GHLs.

#### **Recent Harvests of Halibut in Areas 3A and 2C**

In Area 3A, the commercial and sport harvest of halibut over the past 10 years (1997 through 2006) has been estimated by the IPHC to average about 28.999 million lb (13,153.9 mt) per year. Of this amount, the commercial fishery accounts for about 77.9 percent, the sport fishery (guided and unguided combined) accounts for about 16.8 percent, and the remaining 5.3 percent may be attributed to subsistence, bycatch, and wastage combined. Estimates of the subsistence harvest of halibut have been made based on surveys conducted by the Alaska Department of Fish and Game (ADF&G) only in the past three years and average about 379,000 lb (171.9 mt) per year.

In the most recent three years (2004 through 2006), the annual average of total halibut removals in Area 3A is 32.894 million lb (14,920.6 mt), of which the commercial fishery has taken about 76.8 percent, the sport fishery has taken about 17.6 percent, the subsistence fishery has taken about 1.2 percent, and about 4.4 percent is attributed to bycatch and wastage. The commercial fishery is the primary user of the halibut resource in Area 3A followed by the sport fishery, which together account for almost 95 percent of the total removals from the halibut resource.

The sport fishery in Area 3A, comprised of guided fishing on charter vessels and unguided angling, has harvested an annual average of 5.142 million pounds (2,332.4 mt) over the past 10 years (1997 through 2006), of which about 63 percent is taken by the charter vessel sector. In the most recent three years (2004 through 2006),

however, the average annual sport fishing harvest has increased slightly to 5.789 million pounds (2,625.9 mt) and the charter vessel sector proportion of this catch has increased to 65.1 percent.

In Area 2C, the commercial, sport and subsistence harvest of halibut over the past 10 years (1997 through 2006) has been estimated by the IPHC to average about 12.454 million lb (5,649.3 mt) per year. Of this annual average total removal from the halibut resource, the commercial fishery accounts for about 76.7 percent, the sport fishery (guided and unguided combined) account for about 19.1 percent, and the remaining 4.2 percent may be attributed to subsistence, bycatch, and wastage combined. Estimates of the subsistence harvest of halibut have been made based on surveys conducted by ADF&G only in the past three years and average about 600,000 lb (272.2 mt) per year.

In the most recent three years (2004 through 2006), the annual average of total halibut removals in Area 2C is 14.142 million lb (6,414.8 mt) of which the commercial fishery has taken about 73.8 percent, the sport fishery has taken about 20.7 percent, the subsistence fishery has taken about 4.3 percent, and about 1.2 percent is attributed to bycatch and wastage. Clearly, the commercial fishery is the primary user of the halibut resource in Area 2C followed by the sport fishery, which together account for almost 95 percent of the total removals from the halibut resource.

In Area 2C, the sport fishery is comprised of guided fishing on charter vessels and unguided angling. The latter is done primarily by residents of Southeast Alaska and their visiting family and friends, while the former is done primarily by non-resident tourists. The linkage between guided sport fishing and tourism is apparent from data collected by ADF&G and compiled by IPHC staff. Over the past 10 years (1997 through 2006), the average guided harvest of halibut has been 1.431 million lb (649.1 mt) per year and the unguided sport harvest of halibut has amounted to 0.951 million lb (431.4 mt) per year. Proportionately, the guided charter vessel harvest to unguided sport harvest has been a ratio of about 60 to 40 percent. The guided sport harvest has increased in more recent years. Over the past five years (2002 through 2006), the annual guided sport charter vessel harvest amounted to an average 63.9 percent of the total sport harvest of halibut in Area 2C, and in 2005 reached a record 69.8 percent of the total sport harvest. In response, the Council is considering a management program to

restrict the charter vessel harvest of halibut.

Since their implementation in 2003, the GHLs for Areas 3A and 2C have been exceeded by the estimated charter vessel halibut harvest in 2004, 2005, and 2006. In Area 3A, based on ADF&G sport fishing survey data, the charter vessel harvest in 2003 was seven percent under the GHL, but in 2004 and 2005, it was one percent over the GHL for Area 3A each year. In 2006, the GHL for Area 3A was projected to be exceeded by nine percent, or 297,000 lb (134.7 mt).

In Area 2C, based on ADF&G sport fishing survey data, the charter vessel harvest in 2003 was one percent under the GHL, but in 2004 and 2005, it was 22 percent and 36 percent over the GHL, respectively. In 2006, based on sport fishing survey data the GHL for Area 2C was projected to be exceeded by 42 percent, or 596,000 lb (270.3 mt).

#### Management Agency Response

At its annual meeting in January 2007, the IPHC adopted a motion to recommend reducing the daily bag limit for anglers fishing on charter vessels in Areas 2C and 3A from two halibut to one halibut during certain time periods. Specifically, the IPHC recommended that the one-fish bag limit should apply to guided anglers in Area 2C from June 15 through July 30, and in Area 3A from June 15 through June 30.

In Area 3A, the one-fish bag limit restriction applicable for two weeks in June would reduce the charter vessel harvest of halibut by an estimated 326,000 lb (147.9 mt). In Area 2C, the one-fish bag limit restriction applicable for six weeks would reduce the charter vessel harvest of halibut by an amount estimated to range from 397,000 lb (180.1 mt) to 432,000 lb (195.9 mt).

The IPHC intended the reduced bag limits to apply until superseded by measures developed by the Council and implemented by the Secretary that would more effectively manage the charter vessel harvest of halibut. The IPHC recommended these harvest restrictions because it believed its management goals were at risk by the magnitude of the halibut harvest by the charter vessel sector in excess of the GHLs in Areas 3A and 2C. In taking this action, the IPHC Commissioners highlighted its preference for the Council to resolve the allocation issue between commercial and sport sectors. One reason given for delaying the effective date of the reduced bag limit until June 15 was to afford the Secretary time to resolve the issue under U.S. domestic law with regulations that would achieve "comparable reductions"

in halibut harvest by the charter vessel fishery.

In a letter to the IPHC on March 1, 2007, the Secretary of State, with concurrence from the Secretary, rejected the recommended one-fish bag limit in Areas 2C and 3A, and indicated that appropriate reduction in the charter vessel harvest in these areas would be achieved by a combination of ADF&G and NMFS regulatory actions.

For Area 3A, the State of Alaska (State) Commissioner of Fish and Game issued an emergency order on January 26, 2007 (No. 2-R-3-02-07), prohibiting a sport fishing guide and a sport fishing crewmember working on a charter vessel in salt waters of Southcentral Alaska from retaining fish while clients are onboard the vessel. Also, the emergency order limits the maximum number of lines that may be fished from a charter vessel to the number of paying clients onboard the vessel. This emergency order will be effective from May 1, 2007, through December 31, 2007. The State estimates that this action will reduce the harvest of halibut on charter vessels in Area 3A by 7.7 percent to 10.6 percent of the 2006 harvest or 306,000 lb (138.8 mt) to 421,000 lb (191.0 mt). Assuming the charter halibut fishery in Area 3A in 2007 is similar to the fishery in 2006, this reduction in the charter halibut harvest is expected to produce a charter halibut harvest of about 3.662 million lb (1,661.1 mt) to 3.547 million pounds (1,609.3 mt), a volume range that brackets the GHL for Area 3A. Hence, NMFS and ADF&G will rely on the effectiveness of the State's emergency order by itself to make comparable reductions in the charter vessel halibut harvests in Area 3A, which allows this proposed rule to focus only on managing the charter vessel fishery for halibut in Area 2C. No further regulatory action by NMFS is necessary to manage the 2007 charter vessel halibut fishery in Area 3A.

In Area 2C, an emergency order to prohibit retention of fish by charter vessel guides and crewmembers in Area 2C also was issued by the State in 2006 and again in 2007 (No. 1-R-02-07). This action alone, however, would not likely reduce the 2007 charter vessel harvest of halibut to levels comparable to the IPHC-recommended bag limit reduction, an amount estimated to range from 397,000 lb (180.1 mt) to 432,000 lb (195.9 mt). Regulatory action to remedy this problem by June 2007 would require the Secretary to develop regulations independent of the Council process.

Therefore, NMFS developed alternatives for analysis in an EA/RIR/

IRFA (see **ADDRESSES**). The goal of the restrictive measures analyzed in the EA/RIR/IRFA is to reduce sport fishing mortality of halibut in the charter vessel sector in Area 2C to a level comparable to the level that would be achieved by the IPHC-recommended regulations and in a manner that would reduce adverse impacts on the charter fishery, its sport fishing clients, the coastal communities that serve as home ports for this fishery, and on fisheries for other species. The one-fish bag limit recommended by the IPHC would have had negative economic impacts on the charter vessel industry in Area 2C. Comments from charter vessel guides before, during, and after the IPHC meeting in January 2007, have indicated that changing the bag limit for anglers on charter vessels from two fish to one fish per day for a six-week period from June 15 to July 31 would have an adverse impact on charter vessel bookings that had already, or were in the process of being, made for the 2007 season. This change was perceived by the affected public as adversely affecting demand for guided charter services during that period. Charter vessel operators and representatives stated that the ability to offer an opportunity to harvest more than one fish was important for their charter business. Hence, NMFS was guided in formulating regulatory alternatives for analysis by a need to reduce the charter vessel fishery's amount of halibut harvest in Area 2C to a level comparable to the level that would have been achieved by the IPHC-recommended one-fish bag limit while preserving a two-fish bag limit that would minimize adverse impacts on the guided sport industry.

#### The Proposed Action

For the reasons described above, NMFS proposes a change to regulations at 50 CFR 300.65 that would allow a daily bag limit of two halibut per sport fishing client on a charter vessel operating in Area 2C provided that at least one of the two halibut retained is no longer than 32 in (81.3 cm) with its head on. If only one halibut is retained by the sport fishing client, it could be of any length. The ADF&G has estimated that a maximum size restriction for one of two potential fish taken by charter vessel clients would reduce the overall harvest in Area 2C by the charter vessel sector by about 425,000 lb (192.8 mt), which is about 98 percent of the maximum amount of the poundage range estimated that could be reduced as a result of the IPHC-recommended one-fish bag limit during the six-week period, June 15 - July 31.

NMFS considered other alternative restrictions to the proposed action in addition to the status quo alternative. These included (1) a two-halibut bag limit that required at least one of the retained fish to have a minimum size of four optional lengths 45 in (114 cm), 50 in (127 cm), 55 in (140 cm), or 60 in (152 cm), and (2) a two-halibut bag limit that required both retained fish to be at least 32 in (81.3 cm) long. An alternative of a one-fish bag limit identical to the IPHC-recommended restriction was considered but rejected because it would fail to meet the goal of providing charter vessel anglers with an opportunity to harvest two halibut per day.

The proposed restriction was selected over the other two-fish bag limit alternatives for the following four reasons:

1. The status quo alternative of allowing a two-fish bag limit without further restriction would not reduce the charter vessel halibut harvest below what it was in 2006. This would be counter to the commitment to substitute a regulation for the IPHC-recommended bag limit reduction that would result in a comparable reduction in charter vessel harvest of halibut.

2. A two-fish bag limit that would require both retained halibut to be at least 32 in (81.3 cm) long would not result in a reduction of poundage taken by the charter vessel sector, and could have the reverse effect.

3. A minimum size limit of at least 45 in (114 cm) for one of the two halibut harvested under a two-fish bag could reduce the charter vessel sector harvest in Area 2C by an estimated 434,000 lb (196.9 mt). Anecdotal information suggests, however, that a minimum size limit may disadvantage charter businesses operating in areas where small halibut are typically caught. This restriction would be a de facto one-fish bag limit for operators in areas with fewer large halibut. In addition, a minimum size limit would stimulate searching for big halibut which could result in increased catch-and-release mortality of smaller fish. The increased search for the "trophy" sized fish also could increase the bycatch of other species such as rockfish, which typically do not survive being caught and released, or lingcod.

4. A maximum size limit of 32 in (81.3 cm) for one of the two halibut harvested under a two-fish bag would provide an appropriate reduction in charter vessel harvest in Area 2C while also reducing the potential difficulties with a minimum size limit. Specifically, charter operators fishing in waters where small halibut are typically caught

would likely be able to provide their clients with a good chance of harvesting two fish. This maximum size limit also would likely reduce the bycatch and catch-and-release mortality that would be expected from searching for a "trophy" fish of a larger minimum size limit.

For halibut harvested on a charter vessel in Area 2C, the proposed regulation would prohibit the possession of halibut that are disfigured in a manner that prevents the determination of their length or number harvested. This regulation is necessary to allow Federal enforcement officers to determine the number of halibut harvested and the head-on length for halibut subject to the previously described 32 inch maximum size requirement. Charter vessel operators would be allowed under the proposed regulation to fillet halibut onboard the charter vessel; however, the intact carcass (i.e., a carcass with the head attached to the tail) must be retained onboard the vessel until all fillets are offloaded. An intact carcass is required because enforcement officers cannot otherwise determine the head-on length of a halibut filleted at sea.

Finally, definitions for "Area 2C" and "head-on length" are added. These definitions are based on the most recent annual management measures authorized by 50 CFR 300.62 and published in the **Federal Register** on March 14, 2007 at 72 FR 11792. The term "Area 2C" is defined in the annual management measures at section 6(3). The Area 2C definition used in this action is identical to that in section 6(3) and repeated for the convenience of the reader. The term "head-on length" is not defined in the annual management measures, however, it is described in section 13, "Size limits," in terms of the method by which the size of halibut is to be determined. It is a straight line measurement passing over the pectoral fin from the tip of the lower jaw with the mouth closed to the extreme end of the middle of the tail. This definition is consistent, therefore, with the measurement method used in the commercial halibut fishery.

#### Classification

An Initial Regulatory Flexibility Analysis was prepared, as required by section 603 of the Regulatory Flexibility Act. The IRFA describes the economic impact that this proposed rule, if adopted, would have on directly regulated small entities. 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 analysis follows.

The action under consideration would modify the two fish daily bag limit for halibut imposed on guided charter clients in IPHC Area 2C to require that one of the two fish be no more than 32 in (81.3 cm) long. The entities directly regulated by this action would be the guided charter operations active in harvesting halibut in IPHC Area 2C (Southeast Alaska).

In 2005, 381 guided charter businesses operating 654 vessels indicated bottomfish harvesting effort in Area 2C. All of these operations are believed to be small entities, with annual gross revenues of less than the limit of \$6.5 million dollars for charter vessels. The largest companies involved in the fishery, lodges or resorts that offer accommodations as well as an assortment of visitor activities, may be large entities under the Small Business Administration size standard. Key informant interviews have indicated that the absolute largest of these companies may gross more than \$6.5 million per year, but that it was also possible that all of the entities involved in the charter halibut harvest grossed less than this amount. The number of small entities is likely to be overestimated because of the limited information on vessel ownership and operator revenues. However, it is likely that nearly all entities qualify as small businesses. This proposed action is expected to reduce the halibut catches per guided trip for these operations, and could reduce the demand for their services, the overall harvests in the guided sport fishery, and the growth of the fishery. This is believed to be a competitive industry. This action may reduce short-term profit levels or create short-run losses for charter vessel operators. In the long run, entry or exit by firms in this industry, in response to positive or negative profits, should tend to drive profits to zero. Very little systematic information is available on charter boat operations or on how charter boat clients and operators may respond to the size limit. The demand for charter boat trips depends on a number of factors affecting the nature of the experience, and the halibut catch per unit of effort is only one of these. It is not possible to predict quantitatively the impact on gross or net revenues, or on entry or exit from the industry.

NMFS has examined three alternatives to this action. Alternative 1, the status quo, would retain the two-fish bag limit without changes. This alternative would fail to meet a key objective of the action, which is to

reduce the guided sport harvest by an amount comparable to the reduction that would have been achieved by the IPHC bag limit recommendation. Alternative 2 would have kept the two-fish bag limit, but impose a season-long 45-inch (114 cm) or larger minimum size restriction on the second fish. The 45-inch (114 cm) limit associated with this alternative would have generated guided harvest reductions comparable to those of the IPHC recommendation and thus the expected harvest reduction would have been close to the preferred alternative. However, Alternative 2 would have required guides to measure larger, heavier fish than the preferred alternative, which would have increased the difficulty of compliance for the guides. Moreover, in areas with halibut of a smaller size, larger fish might be more difficult to find than smaller fish. If fish larger than 45 inches (114 cm) were scarce in some areas, the minimum size limit could have a similar impact to a one fish bag limit. Such an impact would be more burdensome to charter vessel operators in those areas than operators in areas where larger fish were more common. Alternative 3 would impose a minimum size limit of 32 inches (81.3 cm) on both fish for the fishing season (currently February 1 to December 31). NMFS does not prefer this alternative because of uncertainties about its effect on reducing harvest. In particular, this alternative may actually increase the pounds of fish harvested in the charter fishery because anglers would be required to harvest larger halibut than they may otherwise harvest under the current bag limit. Alternative 4 would allow anglers to harvest one halibut of any size and one halibut with a total length at least 30 inches (76.2), 32 inches (81.3 cm), or 35 inches (88.9 cm). Of these options, NMFS preferred a size limit of 32 inches (81.3 cm) because its estimated harvest reduction is the most comparable to the IPHC-recommended action. The estimated harvest reduction for the preferred alternative is approximately 425,000 lb (192.8 mt). The enforcement of a size limit requires charter vessel operators to retain the halibut carcass until the fillets are offloaded from the vessel. To an unknown extent, proper disposal of the carcasses may increase costs to charter vessel operators.

This action does not modify recordkeeping or reporting requirements, or duplicate, overlap, or conflict with any Federal rules. This proposed rule has been determined to be not significant for the purposes of Executive Order (E.O.) 12866. This proposed rule complies with the Halibut

Act and the Secretary's authority to implement allocation measures for the management of the halibut fishery. No duplicative or overlapping rules exist that are associated with this proposed rule.

This proposed action is consistent with E.O. 12962 which directs Federal agencies to improve the quantity, function, sustainable productivity, and distribution of aquatic resources for increased recreational fishing opportunities "to the extent permitted by law and where practicable." This E.O. does not diminish NMFS' responsibility to address allocation issues, nor does it require NMFS or the Council to limit their ability to manage recreational fisheries. E.O. 12962 provides guidance to NMFS to improve the potential productivity of aquatic resources for recreational fisheries. This proposed rule does not diminish that productivity or countermand the intent of E.O. 12962.

**List of Subjects in 50 CFR Part 300**

Fisheries, Fishing, Reporting and recordkeeping requirements, Treaties.

Dated: April 2, 2007.

**John Oliver**

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

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

**PART 300—INTERNATIONAL FISHERIES REGULATIONS**

**Subpart E—Pacific Halibut Fisheries**

1. The authority citation for 50 CFR part 300, subpart E, continues to read as follows:

**Authority:** 16 U.S.C. 773–773k.

2. In § 300.61, definitions for "Area 2C" and "Head-on length" are added, in alphabetical order, to read as follows:

**§ 300.61 Definitions.**

\* \* \* \* \*

*Area 2C* includes all waters off Alaska that are east of a line running 340° true from Cape Spencer Light (58°11'54" N. lat., 136°38'24" W. long.) and south and east of a line running 205° true from said light.

\* \* \* \* \*

*Head-on length* means a straight line measurement passing over the pectoral fin from the tip of the lower jaw with the mouth closed to the extreme end of the middle of the tail.

\* \* \* \* \*

3. In § 300.65, paragraphs (d) through (k) are redesignated as (e) through (l),

respectively, and new paragraph (d) is added to read as follows:

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

\* \* \* \* \*

(d) In Commission Regulatory Area 2C, halibut harvest on a charter vessel is limited to no more than two halibut per person per calendar day provided that at least one of the harvested halibut has a head-on length of no more than 32 inches (81.3 cm). If a person sport fishing on a charter vessel in Area 2C retains only one halibut in a calendar day, that halibut may be of any length.

\* \* \* \* \*

4. In § 300.66, paragraph (m) is added to read as follows:

**§ 300.66 Prohibitions.**

\* \* \* \* \*

(m) Possess halibut on board a charter vessel in Area 2C that has been mutilated or otherwise disfigured in a manner that prevents the determination of size or number of fish, notwithstanding the requirements of the Annual Management Measure 25(2) and (7) (as promulgated in accordance with § 300.62 and relating to Sport Fishing for Halibut). Filleted halibut may be possessed on board the charter vessel provided that the entire carcass, with the head and tail connected as single piece, is retained on board until all fillets are offloaded.

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 648**

[Docket No. 070322065–7065–01; I.D. 030607C]

RIN 0648–AV39

**Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery; Amendment 13**

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes regulations to implement measures in Amendment 13 to the Atlantic Sea Scallop Fishery Management Plan (Scallop FMP). Amendment 13 was developed by the New England Fishery Management