

**FEDERAL COMMUNICATIONS COMMISSION****47 CFR Part 73**

[DA 03-2413; MB Docket No. 03-13; RM-10628]

**Radio Broadcasting Services; Johnston City and Marion, IL****AGENCY:** Federal Communications Commission.**ACTION:** Final rule.

**SUMMARY:** In response to a Notice of Proposed Rule Making, 68 FR 5860 (February 5, 2003), this document reallocates Channel 297B from Marion Illinois, to Johnston City, Illinois. The coordinates for Channel 297B at Johnston City are 37-45-15 North Latitude and 88-56-05 West Longitude, with a site restriction of 7.4 kilometers (4.6 miles) south of Johnston City, Illinois.

**DATES:** Effective September 8, 2003.**FOR FURTHER INFORMATION CONTACT:** R. Barthen Gorman, Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MB Docket No. 03-13, adopted July 23, 2003, and released July 24, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY-A257, 445 12th Street, SW., Washington, DC. This document may also be purchased from the Commission's duplicating contractors, Qualex International, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail [qualexint@aol.com](mailto:qualexint@aol.com).

**List of Subjects in 47 CFR Part 73**

Radio, Radio broadcasting.

■ Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

**PART 73—RADIO BROADCAST SERVICES**

■ 1. The authority citation for part 73 reads as follows:

**Authority:** 47 U.S.C. 154, 303, 334 and 336.

**§ 73.202 [Amended]**

■ 2. Section 73.202(b), the Table of FM Allotments under Illinois, is amended by adding Johnston City, Channel 297B and by removing Marion, Channel 297B.

Federal Communications Commission.

**John A. Karousos,***Assistant Chief, Audio Division, Media Bureau.*

[FR Doc. 03-20209 Filed 8-7-03; 8:45 am]

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**FEDERAL COMMUNICATIONS COMMISSION****47 CFR Part 73**

[DA 03-2468; MB Docket No. 03-116]

**Radio Broadcasting Services; Archer City, TX****AGENCY:** Federal Communications Commission.**ACTION:** Final rule.

**SUMMARY:** As the result of a proposal by the Commission, this document substitutes Channel 248C2 for Channel 248C1 at Archer City, Texas. This will conform the FM Table of Allotments to the outstanding construction permit of Texas Grace Communications for Station KRZB, Channel 248C2, Archer City, Texas (BMPH-199002171B). See 68 FR 26556, published May 16, 2003. The reference coordinates for the Channel 248C2 allotment at Archer City, Texas, are 33-51-40 and 98-38-52. With this action, the proceeding is terminated.

**DATES:** Effective September 8, 2003.**FOR FURTHER INFORMATION CONTACT:** Robert Hayne, Mass Media Bureau, (202) 418-2177.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order in MM Docket No. 03-116, adopted July 30, 2003, and released August 1, 2003. The full text of this decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY-A257, 445 12th Street, SW., Washington, DC.

The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail [qualexint@aol.com](mailto:qualexint@aol.com).

**List of Subjects in 47 CFR Part 73**

Radio, Radio broadcasting.

■ Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

**PART 73—RADIO BROADCAST SERVICES**

■ 1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334 and 336.**§ 73.202 [Amended]**

■ 2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by removing Channel 248C1 and by adding Channel 248C2 at Archer City.

Federal Communications Commission.

**Peter H. Doyle,***Chief, Audio Division, Media Bureau.*

[FR Doc. 03-20214 Filed 8-7-03; 8:45 am]

BILLING CODE 6712-01-P

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

[Docket No. 011206293-3182-02; I.D. 101501A]

RIN 0648-AK17

**Pacific Halibut Fisheries; Guideline Harvest Levels for the Guided Recreational Halibut Fishery****AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.**ACTION:** Final rule.

**SUMMARY:** NMFS issues a final rule to implement a guideline harvest level (GHL) for managing the harvest of Pacific halibut in the guided recreational fishery in International Pacific Halibut Commission (Commission) areas 2C and 3A in and off of Alaska. The GHL establishes an amount of halibut that will be monitored annually in the guided recreational fishery. This action is necessary to allow NMFS to manage more comprehensively the Pacific halibut stocks in waters off Alaska. It is intended to further the management and conservation goals of the Northern Pacific Halibut Act of 1982 (Halibut Act).

**DATES:** Effective September 8, 2003.

**ADDRESSES:** Copies of the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared for the proposed rule and Final Regulatory Flexibility Analysis (FRFA) prepared for this final rule may be obtained from the Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802 1668, Attn: Lori Gravel-Durall.

**FOR FURTHER INFORMATION CONTACT:** Glenn Merrill, (907) 586-7228 or e-mail at [glenn.merrill@noaa.gov](mailto:glenn.merrill@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The Commission makes recommendations regarding management of the Pacific halibut fishery under the Convention between the United States and Canada. The Commission's recommendations are subject to approval by the Secretary of State with concurrence of the Secretary of Commerce (Secretary). Additional management regulations that are not in conflict with regulations adopted by the Commission, may be developed by the North Pacific Fishery Management Council (Council) to allocate harvesting privileges among U.S. fishermen.

The Halibut Act provides NMFS, in consultation with the Council, with authority to implement such allocation measures through regulatory amendments approved by the Secretary. In addition to the Commission regulations, the commercial halibut fishery off Alaska is managed under the halibut Individual Fishing Quota (IFQ) Program implemented in 1995.

Each year the Commission staff assesses the abundance and potential yield of Pacific halibut using all available data from the commercial fishery and scientific surveys. Harvest limits for ten regulatory areas are determined by fitting a detailed population model to the abundance and harvest data from each area. A biological target level for total removals in a given area is then calculated by multiplying a fixed harvest rate presently 20 percent to the estimate of exploitable biomass. This target level is called the "constant exploitation yield" (CEY) for that area in the coming year. Each CEY represents the target level for total removals (in net pounds) for that area. The Commission then estimates the sport and personal use, subsistence harvests, wastage, and bycatch mortalities for each area. These are subtracted from the CEY and the remaining amount of fish may be set as the catch quota or "setline CEY" for each area's directed commercial fixed gear fishery. The setline CEY is a fixed quota, but other removals of fish are not allocated a specific quota.

Harvests by the guided recreational fishery and other non-commercial harvests are thus unrestricted within the CEY because no specific amount is allocated to the guided fishery. This represents an open-ended allocation to the guided recreational fishery from quota available to the commercial halibut fishery. Hence, as the guided recreational fishery expands, its harvests reduce the pounds available to be fished in the commercial halibut fishery and, subsequently, the value of quota shares (QS) in the IFQ Program.

The Council recognized the growth of harvests in the guided recreational

fishery and adopted a problem statement in 1995 that recognized that ever increasing harvests in this fishery may make achievement of Magnuson-Stevens Act National Standards more difficult. Of concern was the Council's ability to maintain the stability, economic viability, and diversity of the halibut industry, the quality of the recreational experience, the access of subsistence users, and the socioeconomic well-being of the coastal communities dependent on the halibut resource. This policy statement led to the development of a GHL policy that would address allocative concerns in the Council's problem statement. More detail on the development of the GHL policy is provided in the preamble to the proposed rule, published in the **Federal Register** on January 28, 2002 (67 FR 3867).

#### **Development of the GHL**

This final rule establishes a GHL policy which specifies a level of harvest for the guided recreational fishery. If the GHL is exceeded, then NMFS will notify the Council within 30 days of receiving information that the GHL has been exceeded. At that time the Council may initiate analysis of possible harvest restrictions and NMFS may initiate subsequent rulemaking to reduce guided recreational harvests. This final rule does not establish specific harvest restrictions for the guided recreational fishery. This final rule does not prevent the Council from recommending management measures before the guided recreational fishery exceeds a GHL, nor does it obligate the Council to take specific action if the GHL is exceeded. Under this GHL policy, NMFS would notify the Council if a GHL for the guided recreational harvests has been met or exceeded.

This final rule is the result of ongoing efforts by the Council to address allocation concerns between the commercial IFQ halibut fishery and the guided recreational fishery. The Council has discussed the expansion of the guided recreational halibut fishery since 1993. In September 1997, the Council adopted two management actions affecting the halibut guided recreational fishery, culminating more than 4 years of discussion, debate, public testimony, and analysis.

First, the Council adopted recording and reporting requirements for the halibut guided recreational fishery. To implement this requirement, the Alaska Department of Fish and Game (ADF&G) Sport Fish Division, instituted a Saltwater Charter Vessel logbook (Logbook) in 1998. It complemented additional sportfish data collected by

the State of Alaska (State) through the Statewide Harvest Survey (Harvest Survey), conducted annually since 1977, and the on-site (creel and catch sampling) surveys conducted separately by ADF&G in Southeast and Southcentral Alaska.

The Council's second management action recommended GHLS for the guided recreational halibut fishery in Commission regulatory areas 2C and 3A. The GHLS were based on the guided recreational sector receiving an allocation of 125 percent of its 1995 harvest. This amount was equivalent to 12.76 percent and 15.61 percent of the combined commercial/guided recreational halibut quota in areas 2C and 3A, respectively.

The Council stated its intent that guided recreational harvests in excess of the GHL would not lead to a mid-season closure of the fishery, but instead would trigger other management measures to take effect in years following attainment of the GHL. These measures would restrict the guided recreational fishery and maintain harvests within the GHL allocation. The overall intent was to maintain a stable guided recreational season of historic length, using area-specific harvest restrictions. If end-of-season harvest data indicated that the guided recreational sector likely would reach or exceed its area-specific GHL in the following season, NMFS would implement measures to reduce guided recreational halibut harvest.

Given the one-year lag between the end of the fishing season and availability of that year's harvest data, management measures in response to the guided recreational fleet's meeting or exceeding the GHL would take up to two years to become effective. However, the Council did not recommend specific management measures to be implemented by NMFS if the GHL were reached.

In December 1997, the NMFS Alaska Regional Administrator informed the Council that publishing the GHL as a regulation without specific management measures would have no regulatory effect on the guided recreational fleet. Further, because the Council had not recommended specific management measures by which to limit harvests if the GHL were reached, no formal approval decision by the Secretary would be required for the Council's proposed GHL policy. Hence, a GHL proposed rule would not be developed and forwarded for review by the Secretary.

After being notified that its 1997 GHL policy recommendation would not be submitted for Secretarial review, the Council initiated a public process to

develop potential harvest restrictions to implement if the GHL were exceeded. The Council formed a GHL Committee to recommend alternative management measures for analysis that would constrain guided recreational harvests below the GHL. In April 1999, the Council identified alternatives for analysis.

In February 2000, after 7 years of discussing the guided recreational halibut fishery, the Council adopted a redefined guided recreational GHL and a system of management measures for recommendation to the Secretary. The Council's recommendation would have established a suite of varying harvest restrictions that would be triggered depending on the degree to which the GHL was exceeded. Once the GHL is reached or exceeded, these measures would be implemented by notice published in the **Federal Register**. Essentially, the Council's recommendation included a "framework" of restrictions that were explicitly designed to be implemented without proceeding through public notice and comment before becoming effective.

NMFS sent a letter to the Council on April 2, 2002, informing the Council that "[t]he current framework cannot be implemented as conceived by the Council because the Administrative Procedure Act (APA) requires that any regulatory action have prior notice and opportunity for public comment before becoming effective."

The notification process described in the proposed rule contemplated compliance with the APA in establishing the framework of harvest restrictions that would be scaled to match the extent to which the guided recreational fishery exceeded the GHL. This framework of potential restrictions, which would be automatically triggered depending on how much the GHL is exceeded, was designed by the Council to minimize the time between exceeding a GHL and the implementation of one or more restrictions. Public comment was specifically invited on the range of restrictions and the link between this range and the level that the guided recreational fishery exceeded the GHL.

This process of implementing pre-conceived and non-discretionary restrictions by notice, depending on how much the GHL is exceeded, however, would not have provided for additional public comment at the time of implementing a restriction. The NMFS letter to the Council indicated that this lack of additional public comment would not be consistent with the APA.

The public comment required by the APA can be waived only for "good cause." The harvest restrictions in the proposed rule likely could not be implemented under the "good cause" exemption of the APA. The APA provides for a "good cause" finding only when the agency finds that notice and opportunity for public comment would be impracticable, unnecessary, or contrary to the public interest (5 U.S.C. 553(b)(B)). These terms are narrowly defined. Because this "good cause" finding would need to be made at the time the harvest restrictions are implemented, NMFS could not conclude in advance that a "good cause" finding would exist in every instance the GHL was exceeded and harvest restrictions triggered. This requirement would effectively undermine the goal of the framework measures to expedite implementation of harvest restriction measures on the guided recreational fishery.

NMFS presented this letter to the Council at its April 2002 meeting, but no action was taken. NMFS sent a second letter to the Council on September 6, 2002, which further clarified factors that may affect the approval of the GHL program and suggested alternative ways to meet the Council's intent.

The September 6, 2002, letter noted that the proposed rule could be approved only if it were changed to explicitly provide for an opportunity for public comment before implementing any harvest restrictions. This change would increase the amount of time between when the GHL is exceeded and implementing any harvest restrictions, because the APA rulemaking process would require an analysis of alternatives to the proposed harvest restrictions recommended by the Council under the requirements of the Regulatory Flexibility Act, the National Environmental Policy Act, Executive Order (E.O.) 12866 (which requires a Regulatory Impact Review), and other applicable laws.

The Council discussed this letter in October 2002. The Council indicated that its preferred course of action would be to implement the GHL policy as a rule and to develop possible harvest restriction measures as necessary at a later time through a separate analytical and rulemaking process. Under this scenario, the Council would undertake its usual process of forwarding recommendations to NMFS based on analysis of alternatives each time recreational guided harvests exceed the GHL.

On December 2, 2002, NMFS informed the Council by letter that

NMFS intended to proceed as recommended by the Council in October, with a final rule to implement the GHL policy without the associated harvest restriction measures. NMFS presented this letter to the Council at its December 2002 meeting. This letter noted that if the GHL were exceeded, subsequent harvest restrictions could be implemented as needed under normal APA rulemaking with the accompanying analyses (e.g., EA/RIR/IRFA). In other words, this final rule would establish the GHL policy and require NMFS to notify the Council when a GHL is exceeded, which could serve as a trigger for subsequent rulemaking.

Hence, this final rule deviates from the proposed rule (January 28, 2002, 67 FR 3867) by omitting all of the proposed restrictions. The specific changes in this final rule from the proposed rule are described in the Changes from the Proposed Rule section of this final rule.

#### **Guideline Harvest Level**

The GHL establishes a pre-season estimate of acceptable annual harvests for the guided recreational halibut fishery in Commission areas 2C and 3A. To accommodate limited growth of the guided recreational fleet while approximating historical harvest levels, the GHL for each area is based on 125 percent of the average of 1995–99 guided recreational harvest estimates as reported by the ADF&G's Harvest Survey. The average harvest during the 1995–1999 time period was chosen as being representative of recent trends in guided fishery harvests with the additional 25 percent over this average added to accommodate limited future growth based on estimated guided fishery harvest trends. The GHLs equal 1,432,000 lb (649.5 mt) net weight in area 2C, and 3,650,000 lb (1,655.6 mt) net weight in area 3A. These amounts equate to 13.05 percent, and 14.11 percent, respectively, of the combined guided recreational and commercial allowable harvest.

The GHLs are established as a total maximum poundage, which is responsive to annual reductions in stock abundance. In the event of a reduction in either area's halibut stocks, as determined by the Commission, the area GHL is reduced incrementally in a stepwise fashion in proportion to the stock reduction. The GHL is reduced by fixed percentages if the stock abundance falls below the average 1999–2000 stock abundance. The 1999–2000 time frame was chosen because these were the two years most recent to the Council's action.

To compare the stock abundance among years using a uniform measure, the stock abundance will be compared to the average 1999–2000 CEY using the CEY established for that year by the Commission. The CEY is the total target biomass that may be removed each year. The Commission sets the CEY based on the best available information and the professional judgment of the Commission. As such, it may reflect uncertainty, or changes in the stock assessment modeling. However, comparing the CEY each year to the average 1999–2000 CEY, provides the best available measure of stock abundance trends between years.

The GHL in each area is reduced in stepwise increments based on a reduction in the CEY. This reduction would occur the year following the availability of the data indicating that a GHL in a given area has been exceeded. This stepwise incremental reduction was chosen by the Council to provide some consideration for the natural variability of halibut stocks and not require the adoption of a new GHL every year if the stock varies only slightly. For example, if the halibut stock in area 2C were to fall from 15 to 24 percent below its 1999–2000 average CEY, then the area 2C GHL would be reduced by 15 percent from 1,432,000 lb (649.5 mt) to 1,217,200 lb (552.1 mt). If the Area 2C stock abundance were to fall at least 25 to 34 percent, then the GHL would be reduced by an additional 10 percent from 1,217,200 lb (552.1 mt) to 1,095,480 lb (496.9 mt). If the stock abundance continued to decline by at least 10 percent increments, the GHL in Area 2C would be reduced by an additional 10 percent once the stock abundance was reduced by at least 10 percent.

If abundance returns to its pre-reduction level (the 1999–2000 average CEY), the GHL would be stepped back up in the following year by commensurate incremental percentage points to its initial level of 125 percent of the average of 1995–99 guided recreational harvest estimates. As an example, if the Area 2C stock abundance was 19 percent lower than the 1999–2000 average stock abundance, the GHL would be 15 percent lower than the initial level. The Area 2C GHL would be 1,217,200 lbs. (552.1 mt). If the stock abundance in Area 2C increased by 15 percent over this level, the GHL in Area 2C would be stepped up to its maximum initial level of 1,432,000 lbs (649.5 mt).

If halibut stock abundance were to increase above its 1999–2000 average CEY, then the GHL would never exceed its initial level of 1,432,000 lb (649.5 mt)

in Area 2C and 3,650,000 lb (1,655.6 mt) in Area 3A. Setting the GHL at a maximum of 125 percent of the 1995–1999 harvest estimates would allow for limited growth of the guided recreational fishery, but would effectively limit further growth at this level. The Council chose not to provide a mechanism to increase the GHL above this initial level if the stock abundance increases. The Council clarified that its goal for the GHL was to provide a limit on the total amount of harvests in the guided fishery that would be designated as a fixed poundage based on an amount equal to 125 percent of the average 1995–1999 harvests. This amount was set higher than existing harvest levels to accommodate some future growth in the recreational sector. The Council stated its intent that the GHLs would not close the fishery, but instead would trigger other management measures in years following attainment of the GHL. The overall intent was to maintain a stable guided recreational fishery season of historic length, using area-specific measures.

Once the Commission determines the stock abundance for the year during its January meeting, NMFS will review the Commission's CEY relative to the baseline 1999–2000 average CEY and announce the GHL for the year in the **Federal Register** by notice before the beginning of the guided fishery. If the GHL is exceeded in any year, then NMFS will notify the Council in writing that the GHL has been exceeded as soon as that information is available. Currently, the only source of information on guided recreational harvests comes from the Harvest Survey. The final results from the Harvest Survey are typically available by August of the year following the survey. Under this data collection system, NMFS would not have data that the GHL was exceeded until eight months after the end of the prior guided recreational season. NMFS has established a contract to develop a data collection system independent of the State's Harvest Survey. That system is still under development.

#### Changes from the Proposed Rule

This final rule does not implement the framework harvest restrictions recommended by the Council and published in the **Federal Register** as a proposed rule on January 28, 2002 (67 FR 3867). The final rule regulatory text includes: (1) the GHL in Areas 2C and 3A; (2) the mechanism for reducing the GHL in years of low abundance as determined by the Commission; (3) a requirement for NMFS to publish the GHL on an annual basis in the **Federal**

**Register**; and (4) a requirement for NMFS to notify the Council in writing within 30 days of receiving information that the GHL has been exceeded. At that time, the Council may choose to initiate an analysis of alternative management restrictions on the guided recreational fishery and propose harvest reduction restrictions through the usual APA rulemaking process.

This final rule also revises the regulatory language to better clarify the mechanism for reducing the GHLs if the stock abundance declines. This change does not modify the intent or effect of the language in the proposed rule but improves its readability and accuracy. The final rule also removes the definition of "guided recreational vessel" because existing regulations (at 50 CFR 300.61) define a "charter vessel" and an additional definition would be duplicative. This change does not modify the intent or effect of the language in the proposed rule. The term "guided recreational fishery" is used in the preamble to the proposed rule because that term has been used consistently throughout the analytical process. Retaining the term in this final rule assists the public by maintaining consistent terminology.

The suite of harvest restrictions recommended by the Council and published in the proposed rule may be one of the alternatives that is analyzed in subsequent rulemaking if the GHL is exceeded. The Council may choose other reasonable alternative harvest reduction restrictions if the GHL is exceeded.

The specific regulatory language in the proposed rule that is not implemented in this final rule includes: (1) the suite of harvest restrictions that would apply if the GHL were exceeded; (2) the notification process for implementing the harvest restriction measures; and (3) regulatory language that would require the Council to review the harvest restriction measures after their implementation to evaluate their efficacy in preventing further excess harvests and recommend that NMFS adjust those measures as necessary to ensure that the following season's harvest levels do not exceed the GHL.

This final rule imposes no restrictions on the guided recreational fishery as outlined in the proposed rule. This change from the proposed rule is necessary to address concerns raised about the ability to implement the harvest restriction measures without providing opportunity for public comment under APA rulemaking procedures.

The effect of removing this regulatory language in this final rule is to establish the GHL as a notification to the Council for consideration of possible subsequent rulemaking, but not to establish specific harvest restriction measures. While this change substantially modifies the regulatory language in the proposed rule, it does not impose new restrictions on the guided recreational fishery. The only regulatory effect of this action is to codify the GHL policy, require the publication of the GHL on an annual basis in Areas 2C and 3A, and to require NMFS to notify the Council if the GHL is exceeded.

### Response to Comments

The proposed rule was published in the **Federal Register** on January 28, 2002 (67 FR 3867), and invited public comments until February 27, 2002. NMFS received 241 public comments.

#### Letters Supporting the Proposed Rule

NMFS received 228 letters that supported, either in whole or in part, the adoption of the proposed rule to implement a GHL and associated management measures for the guided halibut fishery. These comments do not provide specific suggestions or comments on modifying the proposed rule, but urge its Secretarial approval. Therefore, the supportive comments summarized are not individually addressed and responded to in this action.

Many of the public comments supporting the proposed rule are form letters from individual commercial fishermen that urge NMFS to approve the proposed rule. Approximately half of these letters also contain personalized information on the specific nature of the individual's commercial fishing operation and how that individual would be harmed if the proposed rule were not adopted. NMFS received seven letters that support the adoption of the proposed rule from organizations representing fishermen or processors. NMFS also received one petition signed by 69 individuals supporting the GHL proposed rule. The individuals signing the petition indicated they owned or operated vessels primarily homeported in Homer, Alaska. Based on a review of the names on the petition, most of these individuals did not submit separate personal letters.

NMFS received three letters from resident sport anglers who expressed support for the GHL as a means to control effort in the fishery and ensure sport fishing opportunities for local residents. One commercial fisherman and guided recreational lodge owner catering to guided recreational fishery

clients also expressed support for the GHL proposed rule as a means to curtail effort that could adversely affect his lodge operations.

The principal reasons given for supporting the proposed rule in these letters were that it would:

- (1) Establish an equitable allocation between sport and commercial harvests;
- (2) Provide additional security for commercial fishermen who have invested in the IFQ Program and believe that they should be provided a stable percentage of the total halibut resource; and
- (3) Provide a control on guided recreational fishery harvests in nearshore waters that are used by smaller commercial vessels.

Many of the letters noted that commercial fishermen have made substantial investments in the IFQ program and the lack of controls on guided recreational fishery harvests will compromise their investment because no explicit controls exist on the future growth of the guided recreational harvests relative to the commercial fishery. Other letters noted that consumers would benefit from a healthy commercial resource and not all individuals can afford a guided fishing experience if they want to eat Pacific halibut from Alaska. Several letters indicated that the value of commercial fisheries extends to the numerous services (e.g., grocery stores, supply stores) that commercial fisheries support in small rural communities. Other letters noted that localized depletion by guided recreational vessels is a concern and must be controlled. Some letters mention that guided recreational operators are in fact "commercial fishermen" because they derive their income by their ability to find fish for their clients to harvest. Several letters indicate that the Council process that resulted in the recommendation to adopt a GHL for the guided recreational fishery fleet was a long, open process, that allowed ample public participation.

Generally, these letters express support for the Secretary's decision to publish the proposed rule and proceed with the GHL. A number of the comments are no longer pertinent given the restructuring of the final rule to remove the framework harvest restrictions.

#### Letters Opposing the Proposed Rule

NMFS received 12 letters opposing the establishment of a GHL. The authors of all of these letters identified themselves as guided recreational fishermen. Writers of these 12 letters

made 10 unique comments on the proposed rule.

Most of these comments specifically address the harvest restriction measures that were part of the proposed rule but are not included in this final rule. These comments may no longer be pertinent given the removal of the harvest restriction framework.

*Comment 1:* The guided recreational fishery harvests comprise a relatively small portion of overall harvest of halibut in Areas 2C and 3A. The percentage of harvest is not increasing, and controls or other limits on the guided fishery are not needed.

*Response:* This rule does not impose any restrictions on the guided fishery, but serves to notify the public of the GHLs on an annual basis and to notify the Council when the GHL is exceeded. The Council recommended that NMFS allocate resources between the guided recreational and commercial sectors to address longstanding concerns raised by the absence of a specific allocation of the halibut resource to the guided recreational sector. Although this rule does not directly implement harvest restrictions, establishing an upper limit of harvest for the guided recreational fishery is appropriate and necessary if the commercial and guided recreational fleets wish to maintain the existing harvest distributions between these sectors.

The GHL was explicitly designed to allow a limited degree of growth in the guided recreational fishery without reallocating the historic distribution of harvests between the commercial and recreational sectors. The guided fishery has not yet met or exceeded the proposed GHL in either Area 2C or 3A.

*Comment 2:* Guided recreational fishery operations provide a greater economic benefit to Alaska and rural communities than the commercial fishery and the GHL would impede this economic benefit and the exercise of free-markets.

*Response:* This analysis is provided in the EA/RIR/IRFA, and indicates that the relative economic impacts of implementing harvest restrictions may vary depending on the measures used, area, and particular aspects of the fishery operation. This analysis did not explicitly indicate that guided recreational fishery operations uniformly provided a greater economic benefit to Alaska and rural communities. This final rule does not impose harvest restrictions on the guided fishery, however, and is not expected to have a direct economic effect on the guided fishery.

NMFS considered the economic effects of this regulation, among other

factors. Economic value of the fishery is one basis for making an allocation decision, but not the only consideration. The Halibut Act requires consideration of a range of factors when recommending new management measures, such as the GHL, that allocate or assign halibut fishing privileges among various United States fishermen. The Halibut Act requires that such allocation shall be fair and equitable to all such fishermen, based upon the rights and obligations in existing Federal law, reasonably calculated to promote conservation, and carried out in such manner that no particular individual, corporation, or other entity acquires an excessive share of the halibut fishing privileges.

*Comment 3:* The GHL will not conserve the resource. The EA/RIR/IRFA prepared for the GHL proposed rule states that “the [Commission] has determined that resource conservation is not a factor in such allocative decisions,” and by implication establishing a GHL based on concerns about possible localized depletion of the halibut resource are inappropriate.

*Response:* In 1993, the Council became concerned about both localized depletion and “the potential reallocation of greater percentages of the CEY from the IFQ fishery to the guided recreational fishery” (See 67 FR 3867, January 28, 2002). While the EA/RIR/IRFA notes that “the effect on the halibut resource of allocating halibut between user groups is negligible,” it also notes that “if there was a resource conservation concern, the [Commission] would be the responsible management body, however, since this is an allocative issue, the management responsibility is delegated to the Council.”

The EA/RIR/IRFA notes that “while there may be biological concerns associated with localized depletion of halibut stocks, the guided recreational fishery sector may not be the only contributor to localized depletions. In summary, none of the alternatives would be expected to have a significant impact on the environment.” This indicates that the basis for this action is largely one based on concerns for allocation and that the potential effect of this action on the environment is not significant. The commenter correctly notes that the EA/RIR/IRFA does not provide conclusive evidence of localized depletion attributable to the guided recreational fleet.

Although concerns about the potential effects of the guided fishery on localized depletion of halibut stocks may have diminished over the past several years while the Council considered this action

and NMFS developed this final rule, the allocative concerns have not. The Council and NMFS have the authority and responsibility to address allocation concerns. This rule addresses those concerns by establishing a mechanism for notifying the Council that it may wish to consider additional rulemaking to restrict the guided recreational fleet if the GHL is exceeded.

*Comment 4:* The GHL could constrain harvests and force guided recreational fishery vessels to target other stocks (e.g., salmon and lingcod) that may be fully exploited. The EA/RIR/IRFA notes that “other species of salmon, as well as rockfish and lingcod stocks would be impacted if guided recreational fishery operators increased their fishing effort on these stocks in response to a GHL on halibut. ADF&G has expressed conservation concerns for lingcod and rockfish stocks in most areas of Southeast Alaska. Based on these concerns the Board has adopted very restrictive regulations for yelloweye rockfish in the Sitka and Ketchikan areas and for lingcod in the Sitka area. Increased exploitation by the guided sector due to a GHL would add to these conservation concerns.”

*Response:* The implementation of the GHL without any regulatory restrictions would not be expected to have any distributional effects on the guided fishery fleet, and is not expected to have a significant effect on the human environment. Additionally, ADF&G and the Board may choose to implement additional management measures if the implementation of the GHL is perceived to have an adverse effect on state managed resources. At the time that any additional management measures are developed, those considerations may be addressed.

*Comment 5:* The GHL proposed rule contradicts NMFS’ commitment to promote recreational fisheries under E.O. 12962. (E.O. directing Federal agencies to enhance recreational fishing opportunities).

*Response:* This rule does not diminish that productivity or countermand the intent of E.O. 12962. Because this final rule does not impose any regulatory restrictions on the guided recreational fishery it would not limit or otherwise curtail participation in the guided recreational fishery. E.O. 12962 was signed in 1995, and 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 that NMFS or the Council 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.

*Comment 6:* The Council developed the proposed rule without any consideration of analysis of potential socio-economic impacts.

*Response:* The EA/RIR/IRFA analyzes, among other issues, the socio-economic impacts of the proposed rule for the GHL and the associated harvest restriction measures. This analysis addresses the potential socio-economic impacts of the GHL proposed rule using the best available data. The FRFA prepared for this final rule reviews the economic effects of this final rule.

*Comment 7:* Public access to the resource will be diminished by the implementation of the GHL.

*Response:* This rule does not limit guided recreational harvests or public access to fishery resources. This rule serves only to notify the public on an annual basis of the GHLs in Areas 2C and 3A, to codify the GHL policy and to provide a mechanism for NMFS to notify the Council once the GHL has been exceeded.

*Comment 8:* The accuracy of the Logbook data used to determine the GHL is suspect, should not have been used in this process, and should not be used in any future management decisions. The author of the letter notes that in a September 2001 memorandum, ADF&G raised some concerns about the use of Logbook data for management purposes.

*Response:* The GHL is based on 125 percent of the average of 1995–1999 guided recreational harvests using data gathered from the ADF&G Harvest Survey. The GHL is not based on data from the Logbook. The Harvest Survey is considered accurate for purposes of estimating guided recreational harvests on a fleetwide basis. ADF&G is no longer collecting data on halibut harvests using the Logbook. Fleetwide harvests would be monitored relative to the GHL using the Harvest Survey. Because this rule does not implement harvest restriction measures, data from the Logbook would not be used to implement this final rule. NMFS currently is reviewing alternative means of gathering data for collecting data and monitoring harvests in the guided recreational fleet for other management purposes.

*Comment 9:* The absence of Logbook data will not allow NMFS to implement any possible GHL restrictions without a two-year delay, which is unacceptable.

*Response:* The EA/RIR/IRFA indicated that the Harvest Survey could be used and the one-year lag between the end of the fishing season and availability of that year's harvest data was anticipated as was the possibility that it would take up to two years for management measures to be implemented. This final rule does not implement harvest restrictions and Logbook data are not required for monitoring fleetwide harvests. NMFS currently is reviewing alternative data collection methods for the guided recreational fleet and reduce this delay between exceeding the GHL and notification of the Council. These data collection methods would supplement the existing Harvest Survey and provide additional information on fleetwide and individual vessel harvests.

*Comment 10:* The proposed rule does not provide a mechanism for the GHL to increase if the stocks increase and therefore limits guided recreational harvests if halibut abundance increases. This would limit the guided recreational fleet to a smaller percentage of the overall available exploitable biomass relative to the commercial fleet. The GHL should be modified to increase during periods of higher stock abundance.

*Response:* The goal for the GHL is to provide a limit on the total amount of harvests in the guided fishery that would be designated as a fixed poundage based on an amount equal to 125 percent of the average 1995–1999 harvests. This amount was set higher than existing harvest levels to accommodate some future growth in the recreational sector. The intent is not to close the fishery, but additional management measures may be triggered in years following attainment of the GHL. The overall intent was to maintain a stable guided recreational fishing season of historic length, using area-specific measures.

The GHL is not a fixed percentage of the total halibut biomass available for exploitation and it was not envisioned that the GHL would increase if stock abundance increased. The decision to fix the GHL at a maximum level with some reduction in the GHL as stock abundance decreases was based on several factors including: (1) Halibut are believed to be at high abundance but are declining, according to recent Commission stock assessments, making it unlikely that stock abundance will increase; (2) the current level of harvests by the guided recreational sector are below the GHLs in both Area 2C and 3A; and (3) public comment received during the Council deliberations advocated setting the GHL as a fixed

poundage that would be adjusted in a stepwise fashion if abundance decreases.

Based on these factors, the GHL is not designed to increase if stock abundance increases. However, this final rule does not impose specific harvest restrictions if the GHL is exceeded. If stock abundance does increase and the GHL is exceeded in a specific area, then the Council can review the appropriateness of pursuing additional subsequent rulemaking at that time, including a review of the mechanism used to set the GHL.

#### *State Comments on the Proposed Rule*

The ADF&G also provided written comments on the proposed rule.

*Comment 1:* The description of CEY in the preamble to the proposed rule as it relates to total allowable harvests is incorrect.

*Response:* The preamble to the proposed rule described the CEY as a specific allocation to the commercial fishery, which is not accurate. The statement in the preamble to this final rule has been corrected to more accurately describe CEY as an estimate of the total allowable harvests, including harvests by the guided fishery, sport anglers, and as bycatch in other fisheries.

*Comment 2:* The preamble to the proposed rule does not adequately define how stock biomass is defined. Differences exist between the Commission model estimates of CEY and the setline CEY actually approved by the Commission for the commercial fishery. These differences could affect how stock abundance is measured and applied relative to the GHL.

*Response:* The Commission determines the total biomass based on a variety of model estimates, data sources, and consideration of uncertainty in the model estimates. The proposed rule did not specify the particular method that would be used to estimate changes in stock biomass and model estimates may vary among years. An appropriate measure is the CEY. The CEY is a numerical determination of the amount of biomass available for total removals (i.e., harvests, bycatch) from the fishery.

The CEY incorporates uncertainty that may exist in the fishery stock assessment models and may vary from the stock assessment models based on the professional judgment of the Commission. The CEY reflects the amount of biomass available for harvest on an annual basis and is therefore a reasonable proxy for comparing stock abundance on an interannual basis. The CEY is distinct from the "setline CEY" which is the specific catch limit for the

commercial fishery, and is a portion of the overall CEY. The final rule has been modified from the proposed rule to clarify that the CEY will be used as the means for comparing stock abundance among years.

*Comment 3:* The proposed rule does not specifically address localized depletion concerns that are described in the Council's Problem Statement which guided the development of this proposed rule. The proposed rule does not address these concerns because the GHL and associated harvest restriction measures would apply on an area-wide basis.

*Response:* This action does not directly resolve all of the problems raised in the Problem Statement adopted by the Council. This final rule does not impose harvest restrictions and the specific management measures which may address any possible localized depletion would need to be developed by additional future rulemaking.

At the time the Council developed the Problem Statement, it was concerned about the potential adverse effects of localized depletion and cited localized depletion as well as allocation debates as problems in the management of the guided halibut fishery. The EA/RIR/IRFA indicated that localized depletion may not be as great of a concern as originally assumed. Allocation issues also are addressed by the proposed rule. Because this final rule does not impose harvest restriction measures, it would not address potential localized depletion.

*Comment 4:* The preamble to the proposed rule does not provide adequate consideration of overall economic efficiency and the impact of this rule on the guided recreational halibut fishery.

*Response:* The preamble to the proposed rule notes that the Council prepared an EA/RIR/IRFA that examines the economic effect of this rule. The EA/RIR/IRFA notes that the economic effects on the guided recreational fishery were calculated with the best available data which was limited for some aspects of the analysis. The preamble to the proposed rule provides a brief review of the effects of this action on economic efficiency. The preamble to the proposed rule refers the reader to the EA/RIR/IRFA for additional discussion. An FRFA was prepared and it addresses the economic impacts of this final rule.

*Comment 5:* Logbook data should not be used for the estimation of harvests or management of the guided recreational fishery.

*Response:* This final rule does not rely on the Logbook for monitoring the GHL. The Harvest Survey will be used to estimate annual harvests by the guided recreational fleet since the Logbook no longer collects data on halibut harvest in the guided recreational fleet. NMFS is exploring the development of a data collection system to augment the Harvest Survey. This final rule does not implement harvest restrictions and data on individual vessel harvests are not required at this time.

*Comment 6:* The mechanism for implementing the harvest restriction measures without the use of the Logbook for monitoring and enforcement is unclear.

*Response:* This final rule does not impose harvest restrictions on the guided recreational fleet. As stated earlier, NMFS is in the process of developing a new data collection program for the guided recreational fishery. That program could be used if the Council were to recommend, and the Secretary were to adopt, any additional management measures during subsequent rulemaking.

#### **Classification**

Included in this final rule is the Final Regulatory Flexibility Analysis (FRFA) that contains the items specified in 5 U.S.C. 604(a). The FRFA consists of the IRFA, the comments and responses to the proposed rule, and the analyses completed in support of this action. A copy of the IRFA is available from the Council (*see ADDRESSES*). The preamble to the proposed rule included a detailed summary of the analyses contained in the IRFA, and that discussion is not repeated in its entirety here.

#### **Statement of Objective and Need**

A description of the reasons why this action is being considered, and the objectives of and legal basis for this action are contained in the preamble to the proposed rule and are not repeated here.

#### **Summary of Significant Issues Raised in Public Comments**

Comments received prior to the close of the comment period for the proposed rule focused on a range of issues. Specifically, many comments addressed issues related to the implementation of a framework of harvest restriction measures which are no longer a part of this final rule. These comments are addressed in detail in the preamble. For a summary of the comments received, refer to the section above titled "Comments and Responses."

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

A description and estimate of the number of small entities to which the rule will apply is provided in the IRFA and IRFA summary contained in the Classification section of the proposed rule and is not repeated here. The final rule has been modified from the proposed rule and the number of small entities to which the rule will apply has been affected by these changes. As noted in the preamble, no entities are directly regulated by this action. This action serves as a notification for the public and the Council that a specific harvest level has been reached. NMFS provides this notification process and no small entities are regulated once a GHL is reached without additional action by the Council and NMFS. This FRFA is being undertaken because an IRFA was prepared for the proposed rule which contained measures that would have regulated small entities. Those measures are no longer part of this final rule.

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

A description of projected reporting, recordkeeping, and other compliance requirements is provided in the IRFA and IRFA summary contained in the Classification section of the proposed rule and is not repeated here.

#### **Steps Taken to Minimize Economic Impacts on Small Entities**

This rule would (1) establish the GHL in Areas 2C and 3A; (2) describe the mechanism for reducing the GHL in years of low abundance as determined by the Commission; (3) establish a requirement for NMFS to publish the GHL on an annual basis in the **Federal Register**; and (4) require NMFS to notify the Council in writing within 30 days of receiving information that the GHL has been exceeded. The potential economic impacts of these measures are described in detail in the IRFA and IRFA summary contained in the classification section of the proposed rule and in the preamble of this final rule. This action does not directly regulate small entities and would not have an impact on those entities. No measures were taken to reduce impacts on small entities beyond those already taken with the development of alternatives in the IRFA. The IRFA considered an alternative that would have maintained the status quo. The regulatory effect described in this action is effectively the same as the no

action alternative developed in the IRFA.

NMFS is not aware of any alternatives in addition to those considered in this action that would accomplish the objectives of the Magnuson-Stevens Act and other applicable statutes while further minimizing the economic impact of the rule on small entities. The impact on small entities under this action is the same as the status quo for the small entities in the Pacific halibut and sablefish IFQ fisheries and the guided halibut recreational fishery.

The IRFA analyzed alternatives that would have established a series of frameworked harvest restriction measures as well as a moratorium on new participants to the guided recreational halibut fishery as well as the no-action alternative. The no action alternative would have resulted in no changes to existing fishing patterns by the guided recreational fleet. This alternative was not chosen, in order to implement the GHL policy and notification process described in this proposed rule. The net economic effect of this action is the same as the no action alternative. The analysis supporting this statement is provided in the IRFA and is not repeated here.

The IRFA also examined an alternative that would have implemented a series of frameworked harvest restriction measures if a GHL were exceeded. This alternative would have been expected to result in more significant economic impacts on guided recreational vessels than the action being implemented. The analysis supporting this statement is provided in the IRFA and is not repeated here.

The IRFA also examined an alternative that would have implemented a moratorium on new participants in the guided recreational fishery. This alternative would have been expected to result in more significant economic impacts on guided recreational vessels than the action being implemented. The analysis supporting this statement is provided in the IRFA and is not repeated here.

#### **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." The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. This paragraph serves



as the small entity compliance guide. Small entities are not required to take any additional actions to comply with this action. NMFS will publish the GHL on an annual basis and notify the Council if the GHL is exceeded. These actions do not require any additional compliance from small entities. Copies of this final rule are available from NMFS (see ADDRESSES) and at the following web site: <http://www.fakr.noaa.gov/>

**Need for and Objectives of the Final Rule**

This final rule is necessary to implement a GHL policy. The intent of this final rule is to notify the Council that a specific level of harvest has been achieved by the guided recreational fishery. This action is consistent with the provisions of the Halibut Act.

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

This final rule complies with the Halibut Act and the Council's authority to implement allocation measures for the management of the halibut fishery.

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

Fisheries, Fishing, Reporting and recordkeeping requirements, Treaties.

Dated: August 4, 2003.

**Rebecca Lent,**  
Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR part 300 is amended as follows:

**PART 300—INTERNATIONAL FISHERIES REGULATIONS**

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

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

■ 2. Section 300.61 is amended by adding, in alphabetical order, the

following definitions for "guideline harvest level" and "halibut harvest" to read as follows:

**§ 300.61 Definitions.**

\* \* \* \* \*

*Guideline harvest level (GHL)* means a level of allowable halibut harvest by the charter vessel fishery.

*Halibut harvest* means the catching and retaining of any halibut.

\* \* \* \* \*

■ 3. In § 300.65, paragraph (i) is added to read as follows:

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

\* \* \* \* \*

(i) *Guideline harvest level.* (1) The annual GHLs for regulatory areas 2C and 3A are determined as follows:

If the Annual Total Constant Exploitation Yield for Halibut in Area 2C is More Than:	Than the GHL for Area 2C will be:	If the Annual Total Constant Exploitation Yield for Halibut in Area 3A is More Than:	Than the GHL for Area 3A will be:
(i) 9,027,000 lbs. (4094.5 mt)	1,432,000 lbs. (649.5 mt)	21,581,000 lbs. (9,788.9 mt)	3,650,000 lbs. (1655.6 mt)
(ii) 7,965,000 lbs. (3612.9 mt)	1,217,000 lbs. (552.0 mt)	19,042,000 lbs. (8637.3 mt)	3,103,000 lbs. (1407.0 mt)
(iii) 6,903,000 lbs. (3,131.2 mt)	1,074,000 lbs. (496.7 mt)	16,504,000 lbs. (7,485.9 mt)	2,734,000 lbs. (1266.4 mt)
(iv) 5,841,000 lbs. (2,649.4 mt)	931,000 lbs. (447.2 mt)	13,964,000 lbs. (6334.0 mt)	2,373,000 lbs. (1,139.9 mt)
(v) 4,779,000 lbs. (2,167.7 mt)	788,000 lbs. (357.4 mt)	11,425,000 lbs. (5,182.3 mt)	2,008,000 lbs. (910.8 mt)

(2) NMFS will publish a notice in the **Federal Register** on an annual basis establishing the GHL for Area 2C and Area 3B for that calendar year within 30 days of receiving information from the Commission which establishes the constant exploitation yield for that year.

(3) If the GHL in either Area 2C or 3A is exceeded, NMFS will notify the Council in writing that the GHL has been exceeded within 30 days of receiving information that the GHL has been exceeded.

[FR Doc. 03-20285 Filed 8-7-03; 8:45 am]

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 648**

[Docket No. 030514123-3162-02; I.D. 041003B]

RIN 0648-AQ76

**Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Framework Adjustment 38 to the Northeast Multispecies Fishery Management Plan; Correcting Amendment**

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

**ACTION:** Final rule; correcting amendment.

**SUMMARY:** NMFS issued a final rule to implement measures contained in Framework Adjustment 38 (Framework 38) to the Northeast (NE) Multispecies Fishery Management Plan (FMP) to exempt a fishery from the Gulf of Maine (GOM) Regulated Mesh Area mesh size regulations. The final rule implementing Framework 38 was published in the **Federal Register** on July 9, 2003. One of the coordinates contained in the Gulf of Maine (GOM) Grate Raised Footrope Trawl Whiting Fishery Exemption Area table was incorrect. NMFS published a correcting amendment on July 25, 2003. However, in the correction document, the headings in the three columns of the table, GOM Grate Raised Footrope Trawl Whiting Fishery Exemption Area, are incorrect. This document corrects those errors.

**DATES:** This regulation is effective August 8, 2003.