

FINAL ACTION DRAFT

Proposed Regulatory Amendment to the Subsistence Halibut Program to

Revise the Definition of Rural Eligibility

Regulatory Impact Review

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Abstract: This Regulatory Impact Review evaluates the costs and benefits of a regulatory amendment to change the criteria to participate in the subsistence halibut program for rural residents (50 CFR 300.65(g)). Current regulations prohibit some rural residents from legally participating in the program, because they live in locations that are “too rural” to have met minimum population thresholds to have been deemed eligible, or they live outside the legal boundaries of rural places listed in the regulations. This action would open additional subsistence halibut fishing opportunities for some rural residents of Alaska, which meets the North Pacific Council’s original intent. This action would not open eligibility to urban residents, nor would it open non-subsistence areas to subsistence fishing. This action would not remove the current list of eligible rural places, but would add clarifying text and maps to the regulations, as necessary. This analysis addresses the requirements of Presidential Executive Order 12866.

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Executive Summary

A person is eligible to harvest subsistence halibut if he or she is a rural resident of a community with customary and traditional uses of halibut. Persons eligible to fish must hold a subsistence halibut area registration certificate (SHARC) to exercise the privilege. The Council adopted its definition of “rural”, for purposes of subsistence halibut fishing, to match that of the State of Alaska and defined non-rural waters based upon definition of the non-subsistence areas by the Joint Board of Fish and Game.

The Council has received numerous requests from the public to revise the criteria, because the regulatory language excludes rural communities (or ‘places’) that were not recognized as places by the U.S. Census, but whose residents are equivalently situated to those who reside in places that do qualify. In order to be recognized as a ‘place’ by the U.S. Census, a community must be incorporated by the state, or identified as a census designated place (CDP). From 1950, until the 2000 Census, the minimum population size to be determined a CDP in Alaska has been 25 residents. Thus, individuals who live in areas that are not recognized by the U.S. Census (i.e., are not municipalities or do not meet the minimum population threshold for a census designated place) are summarily excluded from the program. Also, since 2007, SHARCs have been denied to individuals who previously received them, but who have since been determined to live outside of the legal boundaries of listed census designated places. Some SHARCs were either returned voluntarily, or not renewed by NMFS. Other SHARCs are being fished outside the strict letter of the regulations. SHARCs that would now not be issued have been identified for Petersburg, Alaska, in Southeast (Area 2C) and Kodiak, Alaska, in Southcentral (Area 3A), but additional instances may be more widespread.

This proposed action is needed, because some subsistence halibut applicants are “too rural” to be eligible, as they do not reside in a municipality or census designated place that is listed as eligible under Federal regulations. As a result, certain rural residents are unable to subsistence fish. Individuals in remote locations, within eligible subsistence use areas, practice the same patterns of use as eligible participants.

This action would not remove the current list of eligible places, but would add additional clarifying text and maps to the regulations, as necessary. The purpose of this action is to provide subsistence halibut harvest opportunities for rural residents, which were contemplated under the original subsistence action.

The No Action Alternative would continue the current program as stipulated in the regulations. Some rural residents who rely on halibut to feed their families would continue to be denied legal participation in the program, because they live in a rural place that is too small to be recognized as a subsistence eligible municipality or a census designated place, or because they live outside the legal boundaries of eligible municipalities or census designated places. The proposed alternative would amend §300.65(g), by adding a provision that would allow rural residents to be deemed eligible to harvest Pacific halibut under subsistence regulations if they reside within ten statute miles (from mean high waters) of the coast. They would not be permitted to fish in non-subsistence fishing areas. An unknown, but presumably small number of individuals would be affected by the proposed action.

It is infeasible to make a quantitative assessment of benefits and costs attributable to this action. On balance, however, the net welfare change is likely to be positive. The proposed alternative will reduce the cost of acquiring subsistence halibut, reduce associated fishing time and effort, and provide comparable opportunity to subsistence harvest this resource as other rural residents. In these ways, their benefits from subsistence fishing should be increased. Rural residents who would be eligible as a result of the proposed alternative are likely to harvest relatively small amounts of halibut, compared to the aggregate amounts taken by other subsistence, commercial, and sport fishermen.

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1 Introduction

This Regulatory Impact Review (RIR) evaluates the costs and benefits of a regulatory amendment to the subsistence halibut program. The proposed alternative would add regulations that further describe rural eligibility requirements for Alaska residents, to include individuals who reside outside of current eligible rural places.^{1 2} This proposed action would maintain the prohibition on fishing in non-subsistence areas. The regulations authorize eligible persons to conduct subsistence halibut fishing in waters off Alaska. Eligible persons are identified as:

1. Residents of rural communities with customary and traditional uses of halibut; and
2. Members of federally recognized Alaska Native Tribes with customary and traditional uses of halibut.³

For purposes of the program, a rural resident means a person domiciled in a rural community (list attached under Appendix 1), who has maintained a domicile in that rural community for 12 consecutive months, immediately preceding the time when the assertion of residence is made, and who is not claiming residency in another state, territory, or country. A community in this program is defined as a place that is recognized by the U.S. Census, thus only municipalities and census designated places are included.

Since regulations were implemented to authorize a subsistence halibut fishery, in April 2003 (68 FR 18145), the Council and NMFS have received letters and calls from individuals who either:

1. Live in a rural place that is not recognized by the U.S. Census;
2. Live outside the boundaries of designated communities, but may live in close proximity to and/or have a mailing address in that community; or
3. Live in a place within non-subsistence area boundaries.

With the receipt of another letter of appeal in January 2007, the Council asked staff to prepare a discussion paper on how the subsistence halibut rural definition may be inadvertently excluding individuals who otherwise may be deemed eligible for participation in the program under categories 1 and 2 (above). The Council did not identify a solution to category 3 in its proposed action, because such communities do not meet the rural definition adopted by the Council, in conformance with Joint Board of Fisheries and Game findings.⁴

The Council initiated this analysis in June 2007. The Council adopted the alternatives in October 2007 after reviewing an action plan for preparation of the analysis. The Council consulted with the Alaska Board of Fisheries on the proposed action during a joint meeting in April 2008. Current regulations have adverse implications for some rural residents. Individuals who do not reside within the legal boundaries of the listed places are prohibited from participating in the program. If proposed regulatory language was implemented, additional rural residents who reside within a designated 10 statute mile boundary, adjacent to the waters of the Pacific, would be eligible to subsistence fish for halibut. Final action is scheduled for June 2008.

¹ <http://209.112.168.2/frules/fr18145.pdf>

² The current lists in §300.65(g)(1) and (g)(2) would be maintained because the text of the proposed action may not be inclusive of rural residents in certain areas. For instance, Seldovia city, Nanwalek, and Port Graham (all presently eligible) are within the Kenai Peninsula Borough, but not within the unorganized borough. If this action replaces existing regulations, Alternative 2 would remove them from eligibility. Note that Bethel, and all communities downriver on the Kuskokwim River from it, are presently eligible, but it may be more than 10 miles upriver and, therefore, might be inadvertently excluded.

³ Tribes are not part of this analysis. All known tribes have been identified, and a procedure exists to add them to the list in 300.65(g)(2).

⁴ The Council could include exceptions for non-subsistence areas as part of its preferred alternative because it is less restrictive than Alternative 2, but it would still conflict with state regulations. An exception is under Secretarial review to allow the use of special permits within non-subsistence use areas by eligible tribes (73 FR 20008 at <http://www.fakr.noaa.gov/prules/73fr20008.pdf>).

2 What is a Regulatory Impact Review?

This RIR is required under Presidential Executive Order (E.O.) 12866. The requirements for all regulatory actions specified in E.O. 12866 are summarized in the following statement from the order:

In deciding whether and how to regulate, agencies should assess all costs and benefits of available regulatory alternatives, including the alternative of not regulating. Costs and benefits shall be understood to include both quantifiable measures (to the fullest extent that these can be usefully estimated) and qualitative measures of costs and benefits that are difficult to quantify, but nonetheless essential to consider. Further, in choosing among alternative regulatory approaches agencies should select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity), unless a statute requires another regulatory approach.

E.O. 12866 requires that the Office of Management and Budget review proposed regulatory programs that are considered to be “significant.” A “significant regulatory action” is one that is likely to:

- Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, local or tribal governments or communities;
- Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in this Executive Order.

3 Statutory authority for this action

The International Pacific Halibut Commission (IPHC) and National Marine Fisheries Service (NMFS) manage fishing for Pacific halibut *Hippoglossus stenolepis* through regulations established under the authority of the Northern Pacific Halibut Act of 1982. 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, 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.

Additional regulations that are not in conflict with approved IPHC regulations may be recommended by the North Pacific Fishery Management Council (Council). Council action must be approved and implemented by the U.S. Secretary of Commerce. It was under this general authority that the Council, in October 2000, voted to adopt a subsistence halibut policy. The National Marine Fisheries Service (NMFS), Alaska Region, prepared regulations formalizing the Council’s subsistence halibut policy and these regulations were adopted by the Secretary and published in the Federal Register on April 15, 2003 (68 FR 18145). Regulations implementing the Halibut Act in waters in and off Alaska appear at 50 CFR part 300.60-300.66.

4 Purpose and need for this action

A person is eligible to harvest subsistence halibut if he or she is a rural resident of a community with customary and traditional uses of halibut, listed in the tables at § 300.65(g)(1). Persons eligible to fish must hold a subsistence halibut area registration certificate (SHARC) to exercise the privilege. Persons who qualify under rural eligibility for their subsistence fishing privilege must fish in the halibut management area where their residence is based, but they may not fish for subsistence halibut in a non-subsistence area.

This action is needed, because some subsistence halibut applicants are “too rural” to be eligible, that is, their residence does not meet the “minimum” population threshold of 25 to qualify as a census designated place, much less the requirements of a municipality. As a result, certain rural residents are unable to legally subsistence fish for halibut. Individuals in these extremely remote locations within eligible subsistence use areas could practice the same patterns of use as eligible participants, and should qualify for subsistence halibut fishing eligibility.

The purpose of this action is to rectify an unintended consequence of the wording of the original subsistence action, by providing subsistence halibut harvest opportunities for some rural residents of Alaska that were inadvertently excluded by that action.

5 Description of the alternatives under consideration

Two alternatives were considered in this analysis:

Alternative 1. No action

Alternative 1 is the No Action Alternative. Some rural residents would continue to be excluded from opportunities for subsistence harvest, because they live outside of designated places listed in the regulations. The list of rural places was originally prepared by ADF&G Subsistence Division staff at the request of the Council and was derived from positive customary and traditional (“c & t”) findings for halibut and bottomfish, made by the Board of Fisheries, prior to the McDowell decision in December 1989. As described by ADF&G staff in its February 2004 report to the Board, “after that decision, state regulations direct the Boards of Fisheries and Game to determine whether each fish stock or game population in subsistence use areas of the state is subject to customary and traditional uses. Hence, the focus of the c & t determination process is not on communities or areas that conduct the use, but on the pattern of uses of that stock or population.

Alternative 2. Excluding all non-subsistence areas, allow residents to be deemed eligible to harvest Pacific halibut under subsistence regulations if they reside within 10 statute⁵ mi (mean high waters) of the coast outside all non-subsistence areas of SE Alaska east of 141 deg. long. and all of the Alaska Peninsula, Aleutian Islands, Nunivak Island, and Kodiak Island south of Bristol Bay Borough and a line of latitude that approximates the Naknek River and within 10 statute mi (mean high waters) of the coast from Naknek River north to Cape Espenberg, and all other areas within 10 statute miles of the coast from Dixon Entrance to Cape Espenberg.

Alternative 2 would add regulations that address eligibility criteria for the subsistence halibut program off Alaska to include certain individuals who are living a subsistence lifestyle, rely on halibut as a customary and traditional source of food for themselves and their families, and do not reside in an eligible community, to participate in the program. Although the Council used a community-based approach in its original action, the Council may revise its policy, based on new information that numerous individuals and their families have been disadvantaged under current regulations. The Council may recommend a wider geographic scope to its eligibility recommendations, so as to include individuals who reside in remote homesteads and in locations outside the boundaries of eligible communities. It is reasonable to find that those individuals or families in remote locations within the subsistence use areas of the state practice the same patterns of use as nearby communities that have customary and traditional uses, and, as such, should qualify for subsistence halibut fishing eligibility (ADF&G 2004)

⁵ International practice for describing linear distances requires the use of geographic or nautical miles as units offshore and statute miles onshore (from “Best Practices for Boundary Making, from the Marine Boundary Working Group Federal Geographic Data Committee” found at http://www.csc.noaa.gov/products/mb_handbook/MMA_Boundaries_Handbook.pdf).

The Council is now considering a management approach that attempts to include areas, such as remote homesteads and rural residents who live outside the boundaries of eligible communities for inclusion in the program, within the construct of its community-based or geographic approach. The Council is now considering whether it is reasonable to find that individuals or families in *extremely* remote locations within the subsistence use areas of the state, and those who live *outside* the legal boundaries of listed communities, *practice the same patterns of use* as nearby communities that have customary and traditional uses, and, as such, should qualify for subsistence halibut fishing eligibility, as was proposed by ADF&G staff in its 2004 report to the Board. Under Alternative 2, the Council could choose to relax eligibility criteria for inclusion in the program for persons living within a narrow band of 10 statute miles from mean high water, adjacent to all subsistence use areas off the State of Alaska. The alternative does **not** include non-rural residents, so as not to expand eligibility beyond its original intent. It specifically does **not** include residents living within non-subsistence use areas, as that also is seen as potentially opening eligibility criteria beyond the limited scope of the proposed action.

The current regulation, or the proposed action, does not intend that owners of charter businesses and/or lodges who qualify for rural SHARCs could trade, sell, or share subsistence halibut with their clients. A lodge owner/operator could not feed subsistence halibut to their clients, because they would be causing the halibut to enter into commerce. Providing halibut for a meal to clients of a lodge would not be considered customary trade, because one of the services/items provided by the lodge to a client, in exchange for money, is meals - including halibut. A proposed rule to amend the subsistence halibut program would make it unlawful to transfer subsistence halibut to charter vessel anglers (<http://www.fakr.noaa.gov/prules/73fr20008.pdf>, 73 FR 20008).

6 Analysis of the alternatives

Alternative 1 would not change subsistence halibut fishing regulations to redefine the list of eligible rural places that are qualified to participate (Table 1). Some rural residents would continue to be excluded from opportunities for subsistence harvest, because they live outside of designated places listed in the regulations. Some applicants live in areas that are “too rural” to be described and delineated as a ‘place’ under the U.S. Census, and thus eligible under current regulations. According to the Census Bureau’s Geographic Areas Reference Manual (1994), a ‘place’ either is legally incorporated under the laws of its respective State, or a statistical equivalent that the Census Bureau treats as a census designated place (CDP). Each State enacts laws and regulations for establishing incorporated places. The Census Bureau designates criteria of total population size, population density, and geographic configuration for delineating CDPs (albeit with State and local input). Since before 1950, the minimum CDP size for Alaska has been 25 or more inhabitants. Note that for Census 2000, the U.S. Census Bureau dropped this requirement, and a CDP anywhere in the United States can be any population size. The definition of a community, as established by the state for purposes of revenue sharing agreements, is a group of not fewer than 25 people living in a geographic location as a social unit.

Alternative 2 would identify a ten statute mile (from mean high water) strip within which rural residents who have a finding of c&t use of halibut may fish. Persons residing within this area would be permitted to participate in the subsistence halibut fishery. The strip is depicted in four maps, under Appendix 1, and is intended to clarify the geographical effect of the proposed regulatory change. It would redefine rural eligibility more broadly and provide opportunities for subsistence harvest for an unknown, but assumed to be small, number of individuals who are currently excluded from participation. It would not expand the criteria to urban areas, nor open non-subsistence use areas. The exclusion of non-subsistence areas in the language of the alternative limits the possibility that the program would be expanded to the four non-rural areas designated in the regulations, near Ketchikan, Juneau, Anchorage-Matanuska/Susitna-Kenai, and Valdez.

Table 2 identifies those additional rural places that are located within the ten statute mile strip, under Alternative 2; however, this list is intended to assess the effects of the proposed action, and not to be included in the regulations because it is not inclusive of all Alaska residents residing in the strip. Further, the current list contains rural places that do not occur within the strip (e.g., Saxman), and there is no intent under this alternative to eliminate them.

Basing eligibility on a set of legal boundaries (i.e., 10 statute miles), in addition to the current list of eligible places, would minimize potential future discrepancies that may arise, as the boundaries for CDPs with low populations could change every 10 years, as a result of the decennial census. While the list of eligible communities only would change if the Secretary of Commerce approved an amendment to the regulations, the public could become confused if the census designation for their place of residence changed.

Table 1 Current List of Eligible Places Qualified to Participate in the Subsistence Halibut Program.

Adak Station	Kake	Port Alexander
Akhiok	Karluk	Port Graham
Akutan	Kasaan	Port Heiden
Alakanuk	King Cove	Port Lions
Angoon	King Salmon	Port Protection
Atka	Kipnuk	Quinhagak
Bethel	Klawock	Saint George
Brevig Mission	Klukwan	Saint Michael
Chefornak	Kodiak	Saint Paul
Chenega Bay	Kongiganak	Sand Point
Chevak	Kotlik	Savoonga
Chignik	Koyuk	Saxman**
Chignik Lagoon	Kwigillingok	Scammon Bay
Chignik Lake	Larsen Bay	Seldovia
Clark's Point	Levelock	Shaktoolik
Coffman Cove	Manokotak	Sheldon Point
Cold Bay	Mekoryuk	Shishmaref
Cordova	Metlakatla	Skagway
Craig	Meyers Chuck	Sitka
Dillingham	Naknek	Solomon
Diomedea	Nanwalek	South Naknek
Edna Bay	Napakiak	Stebbins
Eek	Napaskiak	Tatitlek
Egegik	Naukati*	Teller
Elfin Cove	Nelson Lagoon	Tenakee Springs
Elim	Newtok	Thorne Bay
Emmonak	Nightmute	Togiak
False Pass	Nikolski	Toksook Bay
Gambell	Nome	Tuntutuliak
Golovin	Old Harbor	Tununak
Goodnews Bay	Oscarville	Twin Hills
Haines	Ouzinkie	Ugashik
Hollis	Pelican	Unalakleet
Hoonah	Perryville	Unalaska
Hooper Bay	Petersburg	Wales
Hydaburg	Pilot Point	White Mountain
Hyder	Platinum	Wrangell
Ivanof Bay	Point Baker	Yakutat

* Proposed to be included in the program under 73 FR 20008

**Before the McDowell decision, the Joint Board had determined that Saxman was a rural place, and the Board of Fisheries had found that it was a rural place with c&t uses of halibut. Therefore the Council chose to include it as an eligible place even though it falls with the Ketchikan non-subsistence area boundary and is the only exception to ineligibility of residents of non-subsistence areas (except tribal members) (J. Fall pers. commun.).

Table 2 List of additional eligible places under Alternative 2

Place	General Description	Population
Afognak	Kodiak Island Borough	0
Aleneva CDP	Kodiak Island Borough	48
Attu	Aleutian islands abandoned	15
Ayakulik	Kodiak Island abandoned	NA*
Belkofski	Near King Cove; abandoned	0
Bill Moores	Yukon Delta	0
Cape Yakataga	Near Yakutat	NA
Chiniak	Kodiak road system	42
Choolunawick	Yukon Delta	0
Covenant Life CDP	Part of Haines Borough	348
Cube Cove CDP	Southeast Alaska	0
Ekuk	Nushagak Bay; no one year round	0
Excursion Inlet CDP	Part of Haines Borough	12
Eyak	Part of Cordova	137
Fort Glenn	Aleutian islands	NA
Game Creek CDP	Southeast Alaska	19
Hamilton	Yukon Delta	0
Hobart Bay CDP	Southeast Alaska	1
Kaguyak	Kodiak Island; abandoned	0
King Island	Near Nome; abandoned	0
Kodiak Station CDP	Kodiak Island Borough road system	1,817
Kupreanof	Near Petersburg	26
Lutak CDP	Part of Haines Borough	40
Mary's Igloo *	Near Nome	0
Mosquito Lake CDP	Part of Haines Borough	150
Mud Bay CDP	Part of Haines Borough	141
Paimiut	Near Hooper Bay	2
Pauloff Harbor	On Sanak Island near False pass; abandoned	0
Port Clarence CDP	Near Nome	23
Port Moller	Near Nelson Lagoon; few if any year-round	NA
Portlock	Near Nanwalek; abandoned	NA
Sanak	Near False Pass; abandoned	NA
Seldovia Village CDP	Road connected to Seldovia city	161
Shemya Station	Aleutians, a.k.a. Earekson Air Force Station	27
Squaw Harbor	Near Sand Point; abandoned	NA
Thoms Place CDP	Southeast Alaska	7
Umkumiute	Nelson Island	NA
Uganik	Kodiak Island	NA
Unga	Near Sand Point; abandoned	NA
Uyak	Kodiak Island	NA
Whitestone Logging Camp CDP	Southeast Alaska	NA
Womens Bay	Kodiak road system	830
Woody Is.	Kodiak road system	0
*NA is not available	Total	3,846

Source: Alaska Dept. Labor Place Estimates <http://almis.labor.state.ak.us/?PAGEID=67&SUBID=171>

Table 3 identifies the total population of the “remainder” of the boroughs and census areas (not listed in Table 2), as an upper estimate of additional potentially affected individuals that may derive from single family homesteads that are not included in Table 2. The population estimates from Table 3 likely, 1) double count some residents who are included in Table 2, and 2) count some Alaska residents who live outside of the strip and would not be subject to this action⁶. Only a few single family homesteads are believed to occur within the strip, and the subsistence harvest of those residing on them is expected to be small.

Most of the population, referenced in Table 3, is comprised of the “remainder of Kodiak Island Borough,” which is almost entirely the population along the island road system outside of the city, Women’s Bay, Kodiak station, and Chiniak. Along with the population referenced in Table 2, these places are within the 10 mile strip proposed to be added to the program. Until 2007, anyone living in this area received a SHARC, and their harvests were included in Fall et al. (2007). While Table 3 identifies 4,478 “new” people proposed for eligibility, these people received SHARCs at the beginning of the program. No new harvest results from clarifying (and confirming) their eligibility. Table 3 also includes some remote populations in the remainders of the Lake and Peninsula Borough, Dillingham census area, and Nome census area that are not within the strip (J. Fall pers. comm.).

Table 3 Upper Estimate of Additional Population from Affected Boroughs and Census Designated Places That Could Qualify Under Alternative 2

Place	Population
Remainder of Aleutians East Borough	1
Remainder of Aleutians West Census Area	28
Remainder of Lower Kuskokwim Census Area	4
Remainder of Bristol Bay Borough	0
Remainder of Chugach Census Subarea	121
Remainder of Dillingham Census Area	30
Remainder of Haines Borough	92
Remainder of Kodiak Island Borough	4,478
Remainder of Lake and Peninsula Borough	22
Remainder of Nome Census Area	118
Remainder of Prince of Wales Census Area	273
Remainder of Skagway-Hoonah-Angoon Census Area	30
Remainder of Wrangell-Petersburg Census Area	370
Remainder of Yakutat Census Area	25
Total	5,592

Table 4 summarizes the number of SHARCs issued by NMFS Restricted Access Management (RAM) since the subsistence halibut program was implemented in 2003. SHARCs issued in 2004 are considered new permits to those issued in 2003, because rural SHARCs have a two-year duration. For example, rural residents fishing with SHARCs in 2004, include those permits issued in both 2003 and 2004. Fall et al. (2007) report that less than 51 percent of rural SHARCs were used (Table 5).

Anecdotally, RAM staff has noted that while each member of some families gets a SHARC, all applicants probably do not harvest subsistence halibut, based on their reported ages. More than 100 SHARC holders were born in 2000 and 2001 (7 and 8 year olds); more than 15 were born in 2004 (3-4 year old); six were

⁶ When the Council adopted the original list, it included places on the Kuskokwim River up to Bethel, but not above it. It also limited eligibility on the Yukon River to places in the delta and did not include places on the Nushagak River, including Portage Creek, Ekwok, New Stuyahok, and Koliganek because they do not have c&t uses of halibut.

born in 2006 (2 years old); and three are under the age of 1 (born in summer 2007). There could be many reasons for children receiving SHARCs: 1) parents think everyone on the vessel, or in the family, has to have one; 2) parents think that the children may be left out of a future program without a SHARC; 3) parents are trying to maximize the number of hooks they can fish, even though there are no hook limits in Area 4C/D/E. RAM staff concludes that it is possible that the older the child, the more likely the family would obtain a SHARC, perhaps to maximize the amount of fish they can harvest. (J. Gharrett and T. Buck pers. comm.). Therefore, the number of annual SHARCs is a poor index of annual participation, because of their two-year duration and the high percentage of unused SHARCs.

Table 4 Number of two-year rural subsistence fishing permits by IPHC area, 2003-2007

Year of issue of 2-year permit	2C	3A	3B	4A	4B	4C	4D	4E
2003	4,104	1,669	62	84	18	12	3	113
2004	679	464	15	27	7	1	0	25
2005	3,275	1,489	60	82	7	1	0	63
2006	900	548	14	28	2	2	0	20
2007	2,950	1,423	50	72	27	0	0	60

Source: NMFS RAM Division.

Table 5 summarizes the estimated number of SHARC fishermen and pounds harvested in 2006, from a survey conducted by ADF&G Subsistence Division (Fall et al. 2007). More SHARCs, fishermen, and halibut harvest occur in Southeast and Southcentral Alaska (Area 2C and Area 3A) than westward (Area 3B and Area 4), due to the demographic distribution of Alaska residents. Average subsistence harvest was highest in westward Alaska, followed by Area 3A, at 202 lb/fisherman. It was lowest in Area 2C, at about 157 lb/fisherman.

While fewer than 9,400 rural residents (from Tables 2 and 3) would be eligible under Alternative 2, the extent of the increase in the number of persons who would hold and fish SHARCs is expected to be small. Fall et al. (2007) reported that only a fraction of eligible individuals actively participated in the program. Thus, only approximately 400 rural residents⁷ are expected to receive SHARCS under Alternative 2. Those SHARC holders are expected to each harvest less than 175 lb, on average, for total additional subsistence halibut harvests of approximately 70,000 lb.

Table 5 Number of rural SHARC permits issued and used, number and pounds of halibut harvested by IPHC area in 2006.

AREA	# ELIGIBLE	# SHARCS	# FISHER MEN	% ACTIVE/ ELIGIBLE	#FISH	#LB	LB/ FISHERMAN	% TOTAL HALIBUT REMOVALS
2C	27,271	4,510	2,196	8.1	16,147	344,210	157	2.33
3A	18,878	2,245	1,192	6.3	11,002	240,794	202	0.68
3B	2,320	82	54	2.3	605	11,373	211	0.03
4	33,852	246	92	0.3	898	19,912	216	0.13
TOTAL	82,321	7,083	3,534	4.3	28,651	616,290	174	0.65

Source: Fall et al. 2007 and IPHC 2007.

A summary of the benefits and costs, in Table 6, provides a qualitative comparison of the net benefits of Alternative 2, compared to the status quo. Alternative 2 appears to have the larger net benefit of the two alternatives under consideration. This action recognizes the legitimate need of rural residents to access

⁷ 400 rural residents = 9,400 residents (sum of populations in Tables 2 and 3) X 4.3 percent (active SHARC holders from total population listed in Table 5)

resources to feed their families and seeks to provide a means to that end. In addition to the benefits and costs identified in the summary below, the proposed action to include homesteaders, who live in proximity to subsistence fishing areas, and other rural residents who live in proximity to listed eligible places, best conforms to the Council’s original intent and present purpose.

Table 6 Benefits and costs to potentially affected groups of persons by alternative.

	Alt 1	Alt 2
Description of alternative	This is the status quo, no action alternative.	Some rural Alaskan residents were excluded from eligibility, because they lived in locations of fewer than 25 persons (which was the minimum threshold used to develop the list of eligible rural places), or they lived outside the legal boundaries of eligible rural places.
Does this alternative accomplish the purposes of the action?	No. This alternative does not correct the error of excluding some rural residents.	Yes. This alternative includes rural residents who were inadvertently excluded from the subsistence halibut program and provides them the subsistence fishing opportunities contemplated in the original subsistence program.
Impact on rural residents	None. There is no legal subsistence halibut fishing by rural residents who live outside the eligible rural places, but who are living a subsistence lifestyle comparable to the neighbors who happen to reside in eligible areas. These rural residents became ineligible to continue their customary and traditional practices, when the original regulations were implemented.	Fewer than 400 rural residents would, in general, be expected to avail themselves of this opportunity. As much as 70,000 lb of halibut could be harvested for personal consumption by these families, reducing their cost of acquiring protein in their diets. Some of these residents had previously received a SHARC, but were later found not to be eligible, based on a closer examination of the regulatory language. These 400 rural residents may be feeding their families with halibut harvested under personal use regulations, or by purchasing other protein sources from commercial industries. Expect a small increase in effort and harvest overall.
Impact on other halibut fishermen	None. There is probably little or no impact on other halibut fishermen under current conditions.	Very little. The contribution of these rural residents, who are likely feeding themselves, their family, and other members of their small location, to total halibut removals of approximately 70,000 lb should be insignificant.
Impact on support businesses	None.	Rural residents likely fished for halibut under personal use regulations, rather than buying commercially caught halibut. Businesses supporting subsistence fishing may benefit, as fewer trips using more gear and bait may be expected. Fewer trips, with higher harvest rates may actually reduce demand for some consumable goods (e.g., fuel), with resulting loss of sales to local businesses. Such reductions should be small, and cash not spent on multiple halibut personal-use trips would be available for alternative purchases.
Assessment of net impacts	None. This alternative is the baseline against which Alternative 2 is measured.	It is impossible to make a quantitative assessment of benefits from this action. On balance, benefits are likely to be positive. The costs of subsistence fishing for affected rural residents should be reduced and their benefits from subsistence should be increased.

In addition to those that accrue directly to subsistence harvesters and their families, benefits or costs may also accrue to businesses providing equipment and services used by subsistence anglers. But these are believed to be limited, as the need for frequent fishing trips, under a 2-hook and 2-fish daily personal use limit, may be replaced with fewer, but more efficient effort to harvest halibut under subsistence regulations. Those regulations that limit the legal gear for harvesting subsistence halibut to setline and handheld gear of not more than 30 hooks, including longline, hand line, rod and reel, spear, jig, and hand-troll gear, and the daily retention of subsistence halibut is up to 20 halibut per person, except there is no daily limit in Areas 4C, 4D, and 4E. A proposed rule would revise the subsistence gear restrictions for Kodiak Island, and add seasonal gear and vessel limits in Sitka Sound under 73 FR 2008.

Revising regulations, as management solutions are found to problems in the fisheries or to correct errors, is a recurring agency function. For example, in 2007, NMFS staff identified that perhaps as many as 50 percent of Kodiak Island Borough residents who do not live within the Kodiak city limits, or one of the six other eligible communities on the island, should not be eligible to receive SHARCs, based on the language under 50 CFR 300.65(g)(1). ADF&G staff has determined that 1,700 SHARC holders reported mailing addresses for the Kodiak Road system, at the end of 2006. About 12,700 people lived along the island's road system, with only about half of those living within the city limits. Therefore about 850 SHARC holders ($\frac{1}{2}$ of 1,700) would be ineligible to receive rural SHARCs, under current regulatory language. These SHARC holders are, functionally, part of the Kodiak community and have the same subsistence use patterns for halibut and other resources as those that live within the city limits (J. Fall pers. commun.).

The listing of "Kodiak City" as the eligible rural place in the regulations may have been shorthand for "Kodiak City Area," a phrase that was used in some tables in the original 2003 Council analysis (NPFMC 2003). Numerous Council documents use data that ADF&G staff provided, to support inclusion of Kodiak on the list, which included the entire road system not just people within the city limits. All the analyses prepared in support of the subsistence halibut regulations were based on including the entire road system in the eligible category, even if the final rule shortened the name of this area from "Kodiak City Area" to "Kodiak City." The intent of the Council was to include the entire road-connected population of Kodiak Island, and not the more limited geographical limits that were identified in the regulations (NPFMC 2003).

Another example occurs for perhaps as many as 100 rural residents who do not live within the legal boundaries of Petersburg. Many residents of Petersburg and Kodiak have returned their SHARCs to remain in compliance with federal regulations. No information is available for where the same issue may occur in other parts of the state. The proposed action would amend the regulations to bring the subsistence halibut program regulations into conformity with the Council's original intent for the program.

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APPENDIX. Draft maps of 10 statute mile strip proposed under Alternative 2.









