may provide a slightly greater conservation benefit than the winter closure, and that NMFS believes it is reasonable to evaluate whether the winter closure will allow fishery participants to realize an economic benefit pertaining to vessel operations, NMFS did not choose this alternative.

NMFS also considered the alternative of not implementing the 2006 IATTC Tuna Conservation Resolution. This alternative would have imposed no economic costs on small entities. However, failure to implement measures that have been agreed to pursuant to the Convention would violate the United States' obligations under the Convention, and would violate the Tuna Conventions Act.

Authority: 16 U.S.C. 951–961 and 971 *et seq.*

Dated: May 29, 2007.

Samuel D. Rauch III,

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

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 070326070–7110–02; I.D. 032107A]

RIN 0648–AV47

Pacific Halibut Fisheries; Guided Sport Charter Vessel Fishery for Halibut

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

ACTION: Final rule.

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

DATES: Effective June 1, 2007.

ADDRESSES: Copies of the Environmental Assessment, Regulatory Impact Review, and Final Regulatory Flexibility Analysis (EA/RIR/FRFA) prepared for this action are available from: NMFS, Alaska Region, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Ellen Sebastian, Records Officer; NMFS, Alaska Region, 709 West 9th Street, Room 420, Juneau, AK; or NMFS Alaska Region Website at *http://www.fakr.noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Jay Ginter, telephone (907) 586–7228, e-mail *jay.ginter@noaa.gov*; or Jason Gasper, telephone (907) 586–7228, e-mail *jason.gasper@noaa.gov*.

SUPPLEMENTARY INFORMATION: The IPHC and NMFS manage fishing for Pacific halibut (*Hippoglossus stenolepis*) through regulations established under the authority of the Northern Pacific Halibut Act of 1982 (Halibut Act). The IPHC promulgates regulations governing the Pacific halibut fishery under the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the North Pacific Ocean and Bering Sea (Convention), signed in Ottawa, Ontario, on March 2, 1953, as amended by a Protocol Amending the Convention signed at Washington, D.C., on March 29, 1979. The IPHC's regulations are subject to approval by the Secretary of State with concurrence of the Secretary of Commerce (Secretary). Approved regulations developed by the IPHC are published as annual management measures pursuant to 50 CFR 300.62. The annual management measures for 2007 were published on March 14, 2007 (72 FR 11792).

The Halibut Act provides the Secretary with the authority and general responsibility to carry out the requirement of the Convention and Halibut Act. Regulations that are not in conflict with approved IPHC regulations may be recommended by the North Pacific Fishery Management Council (Council) and implemented by the Secretary through NMFS to allocate harvesting privileges among U.S. fishermen in and off of Alaska. The Council has exercised this authority, most notably in the development of its Individual Fishing Quota (IFQ) Program, codified at 50 CFR part 679, and subsistence halibut fishery management measures, codified at 50 CFR 300.65. The Council also has been developing a regulatory program to manage the guided sport charter vessel fishery for halibut and is continuing this work. This program could include harvest restrictions in regulatory Area 2C and 3A for 2008, and a moratorium on new entry into the Area 2C and Area 3A charter vessel fishery.

Background and Need for Action

The background and need for this action were described in the preamble of the proposed rule published in the **Federal Register** on April 6, 2007 (72 FR 17071). In summary, this final rule will reduce sport fishing mortality of halibut in the Area 2C charter vessel sector to a level comparable to the level that would have been achieved by the one-fish bag limit recommended by the IPHC. Of the alternatives analyzed in the EA/RIR/FRFA, the alternative selected for the final rule is expected to provide the necessary level of harvest reduction while also reducing adverse impacts on the charter fishery, its sport fishing clients, the coastal communities served by the charter sector, and on the fisheries for other species.

The harvest of halibut occurs in three basic fisheries the commercial, sport, and subsistence fisheries. An additional amount of fishing mortality occurs as bycatch, wastage, and incidental catch while targeting other species. The IPHC annually determines the amount of halibut that may be removed from a regulatory area without causing biological conservation concerns for the entire Pacific halibut stock. In Convention waters in and off Alaska, the IPHC sets an annual catch limit specific for the commercial fishery. Thus, to maintain conservation goals, the IPHC reduces commercial catch when other sources of fishing mortality (e.g., sport fishing) grow. Although most of the non-commercial uses of halibut have been stable, growth in the charter vessel fishery in recent years, particularly in Area 2C, has resulted in a shift of the halibut resource away from the commercial fishery to the charter fishery. Moreover, the rate of growth in the charter vessel sector in Area 2C has made it difficult for the IPHC to forecast future removals of halibut in the charter vessel sector and set appropriate commercial harvest limits.

The IPHC addressed the increase in the harvest of halibut by the charter vessel fishery at its annual meeting in January 2007. The IPHC adopted a motion to reduce the daily bag limit for anglers fishing on charter vessels in Areas 2C and 3A from two halibut to one halibut per day during certain time periods. Specifically, the IPHC recommended a one-fish bag limit apply to guided anglers in Area 2C from June 15 through July 30, and in Area 3A from

June 15 through June 30. In Area 3A, the one-fish bag limit would reduce the charter vessel harvest of halibut by an estimated 326,000 lb (147.9 mt). In Area 2C, the one-fish bag limit restriction would reduce the charter vessel harvest of halibut by an amount estimated to range from 397,000 lb (180.1 mt) to 432,000 lb (195.9 mt).

In a letter to the IPHC on March 1, 2007, the Secretary of State, with concurrence from the Secretary of Commerce, rejected the IPHC-recommended one-fish bag limit in Areas 2C and 3A, and indicated that appropriate reduction in the charter vessel harvest in these areas would be achieved by a combination of State of Alaska Department of Fish and Game (ADF&G) and NMFS regulatory actions. Prior to Secretarial rejection of the IPHC-recommended harvest measures, ADF&G promulgated regulations for Area 3A that prohibited skipper and crew from harvesting halibut onboard a charter vessel and limited the number of lines that could be fished from a charter vessel. ADF&G estimates that its action in Area 3A would reduce harvest the charter halibut harvest to or close to the Area 3A guideline harvest level (GHL). Thus, NMFS believed this level of harvest reduction was sufficient to meet management goals for the halibut fishery in Area 3A.

The one-fish bag limit recommended by the IPHC would have had negative economic impacts on the charter vessel industry. Comments from charter vessel guides before, during, and after the IPHC meeting in January 2007 indicated that changing the bag limit for anglers on charter vessels from two fish to one fish per day for the six-week period in Area 2C would have an adverse impact on charter vessel bookings that had been or were in the process of being made for the 2007 charter fishing season. Charter vessel operators and representatives stated that the ability to offer an opportunity to harvest more than one fish was important for their charter business. To reduce potential negative impacts on the charter fishing sector, NMFS considered regulatory alternatives for analysis that reduced the charter vessel fishery's amount of halibut harvest in Area 2C to a level comparable to the level that would have been achieved by the IPHC recommended one-fish bag limit while preserving a two-fish bag limit. The preamble to the proposed rule provides a detailed description of these analytical alternatives (March 14, 2007, 72 FR 11792).

Current Federal halibut fishing regulations published in the annual management measures (March 14, 2007, 72 FR 11792) allow sport anglers to retain two halibut of any size, per calender day. This action will amend those regulations to allow a daily bag limit of two halibut per sport fishing client on a charter vessel operating in Area 2C provided that at least one of the two halibut retained is no longer than 32 in (81.3 cm) with its head on. If only one halibut is retained by the sport fishing client, it could be of any length. The regulations in this final action would apply for the entire fishing season.

This action will require enforcement officers to determine the size of some halibut caught during a charter vessel trip. To accommodate this enforcement need, halibut must remain in measurable form until all halibut fillets are offloaded from the charter vessel. Thus, persons onboard a charter vessel are prohibited from possessing halibut that have been mutilated or disfigured in a way that prevents determining the size or number of halibut. Charter operators may fillet halibut onboard their vessels if the entire carcass is retained as a single piece until all fillets are offloaded. This requirement also is expected to improve the quality of data collected on the length composition of halibut harvested in the sport fishery. This requirement may increase the number of carcasses brought back to a port which may lead to disposal problems at some ports. NMFS strongly encourages charter operators to properly dispose of carcasses, including following all port-specific policies.

Expected Harvest Reduction

The draft EA/RIR/IRFA and the proposed rule (April 6, 2007, 72 FR 17071) indicated that the IPHC-recommended one fish bag limit would result in a harvest reduction by the charter vessel sector in Area 2C of between 397,000 lb (180.1 mt) and 432,000 lb (195.9 mt). The best scientific information available when these documents were prepared included an ADF&G estimate that the proposed regulation would reduce the charter vessel fishery harvest in Area 2C by 425,000 lb (192.8 mt). The proposed action appeared to be the best of several alternatives considered in the EA/RIR/IRFA, in part because the estimated reduction in poundage of halibut taken by the charter vessel sector was about 98 percent of the poundage range estimated for the IPHC-recommended action.

After publication of the proposed rule, however, ADF&G discovered a calculation error and corrected its harvest estimates. The correction changed the harvest reduction estimate for the proposed regulation from 425,000 lb (192.8 mt) to 518,000 lb (235.0 mt). This ADF&G correction increased the estimated poundage reduction of the proposed regulation by 93,000 lb (42.2 mt).

The revised poundage reduction estimate based on the ADF&G correction does not change the preferred alternative selected by NMFS. That preferred alternative published as a proposed rule on April 6 2007 (72 FR 17071), and implemented by this final rule, will achieve a harvest reduction that is comparable to the IPHC-recommended action while maintaining the traditional two-fish bag limit and reducing negative impacts on the charter vessel sector. NMFS is not changing its preferred alternative in light of the ADF&G correction for several reasons. First, the additional 93,000 lb (42.2 mt) reduction of charter vessel halibut harvest in Area 2C based on the revised estimates amounts to about four percent of the estimated 2,113,000 lb (958.4 mt) of halibut harvested by the charter vessel fishery in Area 2C in 2006. Second, changing the preferred alternative to the next more lenient alternative of a 35–inch (88.9–cm) maximum size limit would result in a difference of only 46,000 lb (20.9 mt) or about two percent of the Area 2C charter vessel harvest in 2006. Although the revised ADF&G estimates of predicted halibut poundage reductions are based on the best scientific information available, they are based on confidence ranges that have not been calculated, but are believed to be high based on the type of data available. Therefore, no change is made in the preferred alternative and no change is made from the proposed rule to this final rule.

Summary of Comments

The proposed rule was published in the **Federal Register** on April 6, 2007 (72 FR 17071), and invited public comments until April 23, 2007. NMFS received 477 comments in 128 letters and e-mail messages.

Comments Supporting the Proposed Rule

NMFS received 23 letters that supported, either in whole or in part, the adoption of the proposed rule to restrict the size of one of two harvested halibut caught by anglers fishing from a charter vessel in Area 2C. Of these letters, 18 were from the commercial fishing sector, including two commercial fishing associations. Comments in support of the proposed rule from the commercial fishing industry generally indicated a preference that halibut harvest in the

charter halibut fishery be reduced to the GHL, but believed the NMFS action was a first step towards managing the level of halibut harvest in the charter sector. These letters indicated that a long term solution is needed to manage the charter vessel sector to the GHL. Several letters, including two from the charter industry, indicated partial support of the action and that the chosen preferred alternative was better than Alternative 2, which would require one of two harvested halibut to be at least 45 inches (114.3 cm), 50 inches (127.0 cm), 55 inches (139.7 cm), or 60 inches (152.4 cm) in head-on length. The principle reasons given for supporting the proposed rule were that it would accomplish the following:

(1) Provide a necessary first step in reducing the charter halibut harvest to the GHL;

(2) Be the best choice for lessening the impact on the charter industry and associated sport mortality of the halibut resource by handling larger halibut;

(3) Reduce the erosion of the commercial quota by halibut harvested in the charter fishery; and

(4) Improve data collection and enforcement because charter operators would be required to keep the entire carcass until fillets are offloaded.

Comments Opposing the Proposed Rule

NMFS received a total of 103 letters opposed to the proposed rule. Of these letters, 11 were from the commercial fishing industry, 33 were from the charter industry, 54 were from recreational anglers, and 5 letters were of other origin. Many of the letters from commercial fishermen did not explicitly indicate disapproval of the NMFS action. These letters indicated that charter fishery harvest should be limited to the GHL instead of a level comparable to the IPHC-recommended action and requested that NMFS promulgate a rule to maintain charter harvest of halibut within the GHL.

Several letters from the commercial industry indicated that the proposed rule did not provide a long-term solution to manage the charter fishery to the GHL. Several letters indicated that a one-fish bag limit should have been included in the EA/RIR/IRFA because the amount of harvest reduction and assumptions associated with bycatch mortality are easier to predict with a bag limit than with any size limit. Two letters indicated that NMFS should support continued efforts by the Council to develop market-based allocation solutions for the charter fishery. Two letters indicated the Council should identify and NMFS should implement management measures that can be annually adjusted to control charter harvest. Several letters from the commercial and charter sectors indicated support for the moratorium adopted by the Council. One letter from a commercial fisherman indicated he would not be satisfied until an IFQ program is implemented for the charter fishery.

The majority of letters from the commercial sector noted the substantial investment made by the commercial industry to obtain halibut quota shares and how the lack of controls on the charter vessel fishery will compromise their investment, negatively impact coastal communities, crew, and the processing sector, and reduce the surplus for seafood consumers. Other letters noted that localized depletion of halibut and other species caused by the guided recreational vessels and commercial vessels is a concern that must be controlled. Several letters suggested that NMFS needs to manage the fishery to the GHL to prevent over harvesting the halibut resource. Two letters indicated that NMFS should enhance current data collection methods to include an electronic monitoring program. Three letters recommended that NMFS increase enforcement effort in the charter fishery. Several commercial operators expressed that NMFS should have taken action in Area 3A to reduce charter halibut harvest because of confusion associated with the accounting of skipper and crew fish in the ADF&G postal survey and whether skipper and crew fish were included in the calculation of the original GHL. These letters also indicated that NMFS' decision to take no action in Area 3A will lead to a GHL overage in 2007; especially if anglers substitute Area 2C halibut trips with those in Area 3A. Several letters indicated that halibut harvest above the GHL has a negative impact on subsistence users, non-guided anglers, and other resource users that rely on a healthy halibut stock, and indicated that the problem statement should have included these groups. Three letters also expressed concerns about increased mortality of demersal shelf rockfish (DSR), lingcod, and halibut. These letters indicated that the regulation would likely increase discards of these species, which would create more allocative concerns, result in local depletion, and increase conservation concerns.

Several letters from the commercial industry supported the preferred alternative over Alternative 2 because of concerns associated with harvesting and handling large halibut, which may lead to increased mortality rates. These letters also supported the requirement to retain carcasses because it would improve data quality and enforcement efforts.

Many of the letters from charter operators indicated the proposed rule would harm their business because charter trips in Area 2C will be less desirable to anglers. The majority of letters indicated that charter clients would be disappointed and confused when they learned that the daily bag limit for halibut had changed. Several letters indicated general support for the Council process and believed NMFS should not implement the final action because the Council is currently developing long-term management measures for the charter fishery. Three letters were received from travel agents that sell charter vessel trips in Alaska. These letters all indicated that the proposed rule would reduce tourism and disappoint charter clients. One letter indicated that they were obligated under Arizona State law to refund trips if clients were not satisfied because of the harvest regulation. Twelve letters from charter vessel operators indicated that a fishery management plan for the halibut fishery should be developed by the Council and approved by the Secretary to comply with the Magnuson Stevens Fishery Conservation and Management Act.

Most letters from the charter industry indicated support for the NMFS decision to disapprove the IPHC-recommended bag limit. Several letters suggested NMFS create slot limits to allow anglers to harvest two fish, but maintain the opportunity to harvest two large halibut. Eight letters from charter vessel operators and several letters from the commercial industry expressed concerns for increased catch-and-release mortality of halibut and other species. Authors of thirteen letters believed the rule would increase the number of halibut caught and released, and four letters believed the rule would increase the mortality of species other than halibut.

Most of the letters from recreational anglers were form letters. The majority of these letters indicated that the current GHL was not a fair allocation for the sport fishing sector for the following reasons:

(1) The GHL fails to account for recent growth in the charter industry and is set too low;

(2) The sport fishery harvests much less of the exploitable biomass than the commercial fishery (including bycatch and wastage) and should thus be allowed to increase its allocation;

(3) The GHL discriminates between guided and non-guided anglers and

should be the same for both angling groups; and

(4) The GHL should increase stepwise if the abundance of halibut also increases.

Letters from recreational anglers generally indicated their disappointment in a reduction in the amount of halibut they may harvest. These anglers provided a description of their angling experience and indicated they may not return to Area 2C for halibut fishing if the harvest regulation is approved. The majority of letters indicated that the halibut harvest by charter anglers should not be restricted because the commercial fishery accounts for a large portion of the halibut removals, including bycatch and wastage. The letters also indicated that the proposed rule should reduce commercial harvest and bycatch, that the sport fishery should not be restricted because the data used to determine sport harvest for 2006 is preliminary, the rule discriminates based on the state of residency, and that the proposed rule will limit growth in the charter sector. Twenty-one letters indicated that the Council should develop a fishery management plan for halibut to protect the halibut resource and fairly allocate between the commercial and sport sectors. Many letters indicated that NMFS should not reallocate halibut from the sport sector to the commercial sector with this action.

NMFS received 10 comments that could not be categorized as having a commercial, charter, or recreational angler perspective. Three of these comments were from government agencies. Of the non-government comments, two supported the NMFS action, but believed harvest should be reduced to the GHL, and five did not support the action because it did not reduce harvest to the GHL.

A detailed response to the comments is provided in the following section entitled ''Comments and Responses.''

Comments and Responses

Of the 477 comments NMFS received on the proposed rule and EA/RIR/IRFA, 60 were considered unique and are summarized and responded to as follows:

Comment 1: The EA/RIR/IRFA underestimates the expected landed catch (and therefore overestimates the reduction in catch) by the sport charter sector by using an inappropriate average weight for the retained halibut less than 32 inches (81.3 cm). The analysis uses an average weight of 9.0 lbs (4.05 kg, net weight) to estimate the landed catch under the preferred alternative. The average weight of the smaller halibut will be closer to the weight of 32–inch (81.3 cm) halibut because anglers will highgrade to keep the largest fish possible.

Response: A considerable amount of highgrading occurred in the 2006 charter halibut fishery under a two-fish bag limit with no size limits. The Area 2C length distribution of halibut 32 inches or under that were harvested in the 2006 charter vessel fishery is strongly skewed, presumably as a result of highgrading. Although additional highgrading would increase the skewness towards the 32–inch (81.3 cm) size limit, no information exists to indicate whether or to what degree highgrading would increase beyond the level observed in 2006. A substantial portion of the 2006 charter halibut harvest consisted of halibut under 29 inches (73.4 cm) even without size limits imposed on the charter fishery. The size distribution of halibut also varies by port, with halibut smaller than 32 inches (81.3 cm) halibut composing a large portion of the total harvest in some ports. Hence, the analysis assumes that anglers highgrade smaller halibut to the greatest extent possible. This assumption is believed to be reasonable because very small halibut generally are less desirable than larger halibut, and the abundance of halibut and amount of time available for fishing is often limited (especially for charter vessel anglers who are cruise ship passengers). This action also may change fishing behavior such that anglers increase their ability or desire to highgrade halibut. However, the harvest selection process for anglers in the Area 2C halibut fishery is poorly understood and NMFS believes the 9 lb (4.1 kg) average used reflects the best available data.

Comment 2: The proposed rule is a violation of the Halibut Act, Magnuson-Stevens Fishery Conservation and Management Act (MSA), and the Convention because it changes allocation between the commercial and sport sectors without a re-allocation recommendation from the Council.

Response: This rule does not violate the Halibut Act, MSA, or Convention. As discussed in the preamble to this action, the Secretary has the general authority and responsibility to carry out the Convention and Halibut Act. This includes the authority to promulgate regulations without Council consultation. This final rule is necessary to address management concerns expressed by the IPHC and NMFS about the magnitude of the charter halibut harvest and its impact on the IPHC's ability to set the appropriate commercial catch limits that are necessary to maintain the sustainability of the halibut stock.

Comment 3: The EA/RIR/IRFA fails to consider local depletion of demersal shelf rockfish assemblage (DSR) and lingcod stocks, which results in an incorrect conclusion that the proposed rule will not have a significant impact on these species.

Response: The EA/RIR/IRFA references current management practices by ADF&G and NMFS that establish harvest limits for DSR and lingcod. In establishing these harvest limits, both agencies rely on scientific information and solicit public comment through their respective processes, including the Gulf of Alaska Plan Team, State of Alaska Board of Fish, Council, and the Federal regulatory process. The analysis indicates that an increase in sport harvest of these species may lead to increased allocation problems between the sport and commercial sectors. However, these allocation problems occur within the confines of the management measures established by each government to maintain sustainable stocks.

Comment 4: The sport charter fleet should be required to contribute money to the research of the halibut biomass.

Response: The purpose of this final rule is not to collect fees from the charter vessel fishery. However, the State of Alaska (State) currently collects fees from charter businesses and recreational anglers to support management and research of the halibut biomass. Charter businesses and charter vessel operators are required to pay business and guide license fees, which are used in part to fund the State's charter logbook program. Businesses and guides paid over a quarter-million dollars in license fees in 2006. Charter vessel operators and clients, as well as unguided anglers, also are required to purchase State fishing licenses. The sport fishing license money is used by the State to match Federal Aid in Sport Fish Restoration funds to pay for creel surveys that estimate fishery statistics for halibut and other species such as rockfish and salmon. The State's survey information is used by the Council and NMFS to develop management policy for the charter halibut fishery.

Comment 5: The preamble to the proposed rule incorrectly uses ten and three year averages to estimate halibut harvest in the charter and commercial sectors. The proposed rule should have compared harvest that occurred two years prior to the GHL implementation (2003 and 2002), with two years under the GHL (2004 and 2005). This would have shown the magnitude of the commercial harvest increase when

compared with the increase of harvest in the charter vessel sector and would not have included a partial year under the GHL.

Response: The years selected in the preamble were used to provide a general example of the difference in the proportion of the total amount of halibut removals in the commercial and charter sectors, and the difference in harvests between the charter and non-charter sport fisheries. The preamble to the proposed rule is not an analytical document. However, the numbers used in the preamble accurately illustrate recent removals in the charter sector, and recent quota levels for the commercial IFQ fishery. Using the three most recent years provides a more robust average. Moreover, the GHL does not impose a harvest restriction on the charter fishery and thus would not likely be directly responsible for changes in charter harvest during pre-GHL and post-GHL periods. The 10-year average was used to illustrate the general long-term ratio of harvest between the non-guided and guided fishing sectors; not the commercial fishing sector in comparison with the sport fishing sector.

Comment 6: This action will interfere with the progress of the Council's Charter Halibut Stakeholders Committee.

Response: This action does not change charter management measures currently being developed by the Charter Halibut Stakeholder Committee (CHSC), nor does it prevent the Council from adopting management measures currently being considered by the CHSC. The intent of this action is to implement a harvest reduction for the 2007 Area 2C charter fishing season. Management options developed by the Council and CHSC to reduce halibut harvested in Area 2C could not be implemented in time for the 2007 fishing season. However, the Council is considering management measures for the Area 2C charter sector that would reduce charter vessel harvest of halibut to the Area 2C GHL. If adopted, the Council's Area 2C management measures would likely replace this action. In addition, the Council and CHSC are developing measures for the long-term management of the charter and commercial halibut sectors.

Comment 7: The proposed rule will increase the number of halibut harvested that are under 32 inches (81.3 cm) which will reduce the number of larger halibut available for the recreational and commercial fisheries, and potentially endanger recruitment.

Response: The final rule is expected to increase the harvest of halibut that are 32 inches (81.3 cm) and smaller. Under the previous two-fish bag limit, some charter vessel anglers likely would have released more halibut that are 32 inches (81.3 cm) or under in favor of a larger halibut. However, the number of these halibut that would have been released, survived to a large size, and would have been available for the commercial and sport fisheries in Area 2C is unknown. To grow beyond 32 inches (81.3 cm) in length and be available for the Area 2C sport and commercial fisheries, a halibut must survive to an older age and reside in Area 2C. Natural mortality, fishing mortality (including catch-and- release mortality in the sport and commercial fisheries), migration rates, and immigration rates complicate any attempt to estimate the probability of a halibut under 32 inches (81.3 cm) being caught in Area 2C several years later. Further, the management methods used by the IPHC carefully consider age structure in the halibut stock to ensure the long-term sustainability of the halibut stock. Hence, the EA/RIR/FRFA concludes that this action will not have a significant impact on the halibut stock.

Comment 8: The proposed rule violates Executive Order (E.O.) 12962 because it reduces the amount of halibut recreational anglers may harvest, resulting in a loss of angling opportunity.

Response: This final rule does not violate E.O. 12962. To the extent permitted by law, E.O. 12962 directs Federal agencies to improve the quality, function, sustainability, productivity, and distribution of aquatic resources for increased recreational fishing opportunities. Although this rule is designed to reduce the poundage of halibut harvested in Area 2C by the charter vessel fishery, it maintains the opportunity of charter vessel anglers to harvest two halibut per day, and has no effect on recreational anglers not fishing from a charter vessel.

In addition, this final rule is promulgated to meet the management goals set forth in the Halibut Act and Convention and implemented by the Secretary. These management goals include setting annual limits on the amount of halibut that may be removed without endangering the long-term sustainability of the halibut stock, including the achievement of maximum sustainable yield for halibut fisheries including commercial and subsistence, as well as recreational. This final rule does not diminish that productivity or violate E.O. 12962.

Comment 9: A two-fish bag limit with no size limit should be maintained because the 2006 ADF&G mail survey estimates are preliminary and thus not likely to be accurate.

Response: This action is designed to achieve a harvest reduction that is comparable to the IPHC-recommended one-fish bag limit. In making its recommendation, the IPHC used a preliminary estimate from the ADF&G mail survey in conjunction with ADF&G weight data collected from the creel survey to predict the amount of halibut harvested in 2006. The IPHC relies on preliminary estimates from the ADF&G mail survey because final mail survey results for the year immediately prior to the IPHC's annual meeting in January are typically not available. During its January meeting, the IPHC must determine the commercial catch limit using the best available information that includes the preliminary ADF&G mail survey estimate. Hence, the 2006 mail survey numbers were used by the IPHC to set the commercial halibut catch limit in 2007. The analysis also uses the mail survey data, as well as logbook and creel data to estimate potential impacts from this action. These data sources represent the best available scientific information. The use of the projected mail survey estimate is consistent with the goal of this action, which is to achieve a comparable reduction to the IPHC-recommended action.

Comment 10: The proposed rule should not be adopted because the current composition of the Council does not represent recreational fishing interests.

Response: This final rule was not developed by the Council nor does it affect membership of the Council or that of its Scientific and Statistical Science Committee and Advisory Panel. The final rule was initiated in response to a recommendation by the IPHC to reduce the harvest of halibut in Area 2C by the charter vessel fishery. In making its recommendation, the IPHC Commissioners highlighted their preference for the Council to resolve allocation issues between the commercial and sport fishing sectors. However, an action could not be approved by the Council and promulgated by the Secretary in time for the 2007 fishing season. Therefore, consistent with his responsibility under the Convention and Halibut Act, the Secretary is taking action to manage the halibut resource for 2007. This final rule may be replaced by regulations developed by the Council and approved by the Secretary.

Comment 11: It is unlikely that charter vessel logbook records will accurately reflect catch and discards. Reported discards are likely to be less

than those reported under the current two-fish bag limit, because charter skippers and anglers will know that discard mortality will decrease the amount of catch available to them in the future. An alternate method of estimating discards, instead of self-reporting in logbooks, will be required. That method could be based on IPHC survey of length frequencies, since those data would likely be a minimum estimate of the size frequency encountered by anglers.

Response: The ADF&G resumed mandatory collection of halibut harvest data in its charter logbooks in 2006 to gather data on harvest that is specific to individual businesses and vessels. Data required to be reported in ADF&G charter vessel logbooks include the number of halibut retained and released by individual anglers. Additional data collection measures implemented by ADF&G include (1) validation of the numbers of halibut offloaded by creel survey technicians whenever possible, (2) increased logbook inspections by deputized ADF&G staff, (3) increased review of submitted logbooks and follow-up calls to charter operators to resolve missing or misreported information, and (4) a mail survey of a random sample of clients to compare their reported harvest to logbook data recorded by operators. The evaluation of logbook data quality is ongoing. The ADF&G can also directly or indirectly estimate the numbers of released halibut through logbooks, the statewide sport fish mail survey, and creel survey interviews. Therefore, alternate methods of estimating discards exist; however, uncertainties exist in estimating discards by any method, including the use of the IPHC length frequency data.

Comment 12: The proposed rule will confuse anglers that booked charter trips that thought the daily bag limit is two-halibut of any size.

Response: Disapproval of the IPHC one-fish bag limit was described in the annual management measures for the Pacific halibut fishery, which published on March 14, 2007 (72 FR 11792). NMFS indicated in the annual management measures that the IPHC-recommended reduced bag limits for the charter vessel halibut fishery in Area 2C were rejected in favor of alternative restrictions that would be implemented through a separate domestic action. The proposed rule for this final action published in the **Federal Register** on April 6, 2007, with a public comment period that closed on April 23, 2007 (72 FR 17071). Thus, the public was notified about this action as required by law. In addition, NMFS published an information bulletin on its website and press release notifying the charter industry about the proposed regulation changes. Further public outreach will be conducted by NMFS and ADF&G when this final rule is published.

Comment 13: The proposed rule fails to consider the need for increased halibut harvest in the charter fishery to accommodate growth.

Response: Growth in the charter vessel fishery for halibut would be at the expense of other resource users, principally the commercial fishery. The question of what is the right proportion of the allowable halibut harvest to allocate between the commercial and sport fishing sectors is a fundamental question that will be answered later with Council involvement. The purpose of this action is to prevent further *defacto* reallocation to the charter vessel sector to allow the Council time to develop the fundamental resource allocation policies. The Council process is appropriate to determine whether and how much growth in the charter vessel fishery should be accommodated.

Comment 14: The proposed rule should discriminate between non-Alaska residents and Alaska residents by requiring that the harvest limit only be applied to non-Alaska residents.

Response: Federal law prohibits discrimination based on state residency. This rule applies to all anglers who harvest halibut on charter vessels regardless of their state of residency.

Comment 15: The language in the proposed rule fails to acknowledge that the total Constant Exploitation Yield (CEY) is threatened because of the overharvest of halibut by the sport fishery.

Response: The proposed rule describes the IPHC process in determining the total CEY, including a discussion about how it may be exceeded. In summary, the IPHC considers removals from all directed fisheries, including the sport and subsistence fisheries and removals resulting from bycatch and wastage, when setting the commercial harvest limit. This process allows an increase of harvest from one removal source to be balanced against other sources of removals. For example, an increase of halibut harvest in the charter fishery may result in a decline in the commercial catch limit. With this method, the IPHC attempts to maintain fishery removals within biological conservation limits.

Only halibut bycatch in directed commercial fisheries for other species (prohibited species catch limits, (PSC)) and the directed commercial fishery for halibut have an allocation that requires the fishery to be closed, or IFQ holders to stop fishing, when PSC or IFQ limits are reached. The charter halibut fishery is not restricted to an annual amount of halibut that when reached closes the fishery. Thus, the amount of halibut harvested in the charter fishery increases with increases in angling effort on charter vessels. As discussed in the preamble to the proposed rule, the IPHC must predict the annual growth of charter harvest, bycatch, subsistence, and wastage based on the previous year's level. The proposed rule states that ''this method has worked well for many years to conserve the halibut-resource, provided that the other non-commercial uses of the resource have been relatively stable.'' If any of the removal categories grow beyond the IPHC's annual prediction, the total CEY may be exceeded, which occurred in 2006 and may occur again in 2007. Generally, bycatch, wastage, and subsistence harvests of halibut have been relatively stable, while charter halibut harvest has increased in recent years. To compensate for the increase in charter harvest, the IPHC has reduced the commercial set line catch limit and recommended a catch reduction in the charter sport fishery.

Comment 16: The problem statement was not properly defined because it did not include a statement about protecting resource health by managing to the CEY and preventing disruptive impacts to all sectors by reducing halibut harvest in the charter sector to the GHL.

Response: This rule is not designed to manage the halibut fishery to either the CEY or GHL. The CEY is a biological conservation objective of the IPHC and the GHL is an allocation objective of the Council. Those resource management institutions make regulatory recommendations as needed to achieve their respective objectives. This action is not intended to usurp these functions, and consequently, the problem statement did not include the goals of achieving the CEY or GHL.

The problem statement in the preamble to the proposed rule for this final action indicates the alternatives in the EA/RIR/IRFA were developed to reduce the amount of halibut harvested in the Area 2C charter halibut fishery to a comparable level that would have been achieved by the IPHC-recommended one-fish bag limit. The problem statement also requires that the harvest reduction occur in a manner that, when compared to the one-fish bag limit, reduces negative impacts on the charter fishery, its sport fishing clients, the coastal communities that serve as home ports for this fishery, and fisheries for other species. Of the alternatives considered, this action met the goals

described in the problem statement, including protecting resource health by meeting the harvest reduction the IPHC indicated was necessary for its management and limiting the negative economic impacts associated with the IPHC-recommended level of harvest reduction.

Comment 17: The proposed action should not be implemented until NMFS and the Council implement a fishery management plan for Pacific halibut.

Response: A fishery management plan for halibut developed under the Magnuson-Stevens Fishery Conservation and Management Act is not necessary because the Halibut Act provides sufficient authority to the Secretary to implement regulations for the conservation and management of the halibut resource.

Comment 18: NOAA Fisheries should implement regulations in Area 3A because the data are not certain as to the actual harvest level and the GHL is likely to be exceeded in future years.

Response: The preamble of the proposed rule for this final action provides a detailed discussion about why NMFS decided not to impose additional harvest restrictions in Area 3A. In summary, on January 26, 2007, ADF&G issued an Emergency Order (2–R–3–02–07) for the 2007 charter halibut season that prohibited the retention of halibut by skipper and crew and limited the number of lines that could be fished on a charter vessel. The State estimates its action will reduce charter harvest by 7.7 to 10.6 percent of the 2006 harvest or 306,000 lb (138.8 mt) to 421,000 lb (191.0 mt). Assuming the 2007 charter halibut fishery is similar to the 2006 fishery, this reduction in charter harvest is expected to be at or near the Area 3A GHL. In 2006, the GHL was predicted to be exceeded by nine percent, or 297,000 lb (134.7 mt).

The amount of harvest in the 2006 charter fishery is based on preliminary estimates of charter fishery halibut harvests from the State. These preliminary estimates have been used historically by the IPHC in determining the most recent year's sport harvest and represent the best information available. The Council recognizes the potential for growth in the charter fishery in Area 3A and currently is developing alternatives to allocate halibut between the commercial and the charter vessel sport fishery. NMFS supports the Council's continued progress in developing long-term management policies for the halibut fisheries.

Comment 19: The proposed rule will reduce the number of charter anglers in Area 2C and encourage them to fish in Canada or Area 3A. An increase of halibut anglers in Area 3A would exacerbate that area's GHL overage.

Response: Data are not available to predict the number of clients that will choose to not take a charter vessel trip in Area 2C as a direct result of this rule. Likewise, no data exist on the portion of clients that would choose to maximize their experience with some other type of fishing experience. For example, some anglers may value the opportunity to catch a large halibut more than the need to harvest a large amount of halibut, or a segment of anglers may value harvesting halibut more than the experience of catching and releasing halibut. Other than acknowledging these possibilities, as was done in the EA/RIR/IRFA, NMFS cannot forecast their probability.

Comment 20: Because halibut that are 32 inches (81.3 cm) or under are not included as part of the set-line commercial quota limit, they should not be included in the charter vessel sport harvest estimate.

Response: The annual management measures (72 FR 11792, March 14, 2007) prohibit the harvest of halibut less than 32 inches (81.3) in the commercial set line fishery. These halibut are not counted towards a person's IFQ because they are not landed and do not enter commerce. The sport fishery does not have a minimum size limit. Thus, halibut that are 32 inches (81.3 cm) or under in total length are targeted and retained by sport anglers and are not required to be discarded as they would be in the commercial fishery. Therefore, it is reasonable to include halibut 32 inches (81.3 cm) and under in the charter vessel harvest estimate.

Comment 21: The proposed rule should not be adopted by NMFS until the Council develops and approves an allocation solution to the commercial and charter vessel halibut fisheries.

Response: As explained in the preamble to this final action, NMFS is taking this action because of concerns by the IPHC that its management goals were in danger by the unpredictable growth of halibut harvest in the charter fishery. In making its recommendation, the IPHC expressed its desire for the Council to manage the harvest of halibut in the charter fishery, but believed a harvest reduction was needed for the 2007 charter fishing season. A Council action to reduce charter halibut harvest could not be implemented for the 2007 fishing season. Hence, NMFS is promulgating this regulation in response to the recommendation by the IPHC that its management goals were thwarted by the magnitude of charter halibut harvest in excess of the GHL. The Council is considering harvest reduction measure for Area 2C and management measures that would resolve the allocation issues between the commercial and charter vessel sectors. Future Council actions to manage the charter fishery may replace the regulations in this final rule.

Comment 22: The EA/RIR/IRFA incorrectly states that the preferred alternative will have a similar level of discard (catch and release) mortality as the current (two fish of any size) regulation. The release mortality associated with the proposed rule will be higher than the status quo, if for no other reason than the preferred alternative requires discard of fish above the 32–inch (81.3 cm) maximum size limit. In addition, it is reasonable to expect that anglers will catch and release a number of small fish in order to take home the largest fish possible under the 32–inch (81.3 cm) size limit.

Response: The EA/RIR/IRFA discusses the potential impacts of this rule on the number of halibut that may die soon after release. Only a qualitative discussion was provided in the analysis, however, because of limited information about how anglers may respond to changes in the traditional two-fish bag limit. All available data were collected under the traditional two fish bag limit, and information about size distribution of halibut released in the sport fishery was not available. The analysis provided a qualitative discussion about the relative impact the final rule may have on the number of halibut released, including the impact local catch rates may have on the number of fish released, the type of charter trip taken (half-day or full-day), and the amount of catch and release and high grading of fish that currently occurs in the fishery.

Based on differences in the length composition of the charter halibut harvest among Area 2C ports, it is reasonable to assume that the size composition of discarded fish also varies among ports. For Area 2C overall, however, halibut under 32 inches comprised nearly half of the charter harvest in 2006. Therefore the analysis assumed that the majority of discarded fish were under 32 inches in length because, under the traditional two-fish bag limit, anglers were highgrading to the maximum extent possible or optimizing the size of harvested halibut based on individual preferences. While some larger halibut may be released in pursuit of a fish under 32 inches (81.3 cm) (''lowgrading'') in areas where halibut under 32 inches (81.3 cm) are less common, size data from the 2006 charter fishery indicated that in most areas halibut that are 32 inches or under in length would be more readily available than larger halibut. Under the

preferred alternative, many of the smaller fish that would have been released in pursuit of larger halibut would be retained, reducing some highgrading that occurred under the traditional two-fish bag limit. Anglers could continue to highgrade. Therefore, it was assumed that on balance, reductions in discard mortality from highgrading would offset discard mortality from lowgrading, although NMFS has no data to test this assumption.

In addition, the selection process used by anglers under the each of the options is poorly understood. The analysis relies on gross assumptions regarding highgrading and angler responses to management. Some anglers likely prefer to harvest large fish, while others select a halibut based on other attributes such as perceived differences in the taste of the fish, the amount of halibut they may transport home, the amount of fishing time is limited, the local catch rates, discards, and other factors. Thus, a high degree of uncertainty exists on the amount of discard that occurred in the fishery in the past and the amount of discard that may occur under this rule. The conclusions reached in the analysis represent the best qualitative estimate based on assumptions regarding highgrading and angler behavior.

Comment 23: There was no discussion or analysis in the EA/RIR/IRFA of the amount of halibut discards. While size composition data on discards have not been collected, an analysis using the size composition of the landed catch or from IPHC survey data could have been used for illustrative purposes to describe the relative differences between the alternatives.

Response: The EA/RIR/IRFA discussed problems associated with estimating the amount of discards, including the lack of information about the size composition of halibut released in the sport fishery and a lack of information about angler preferences concerning the size of fish caught. The analysis also provided a qualitative discussion about whether discards from this action were likely to increase or decrease in comparison to the traditional two-fish bag limit. Data were not available for the EA/RIR/IRFA to quantitatively evaluate the magnitude of changes in the size composition of halibut released in the sport fishery under the final rule. Length data collected in the IPHC survey and ADF&G creel survey represent halibut harvested in the charter fishery under the traditional two-fish bag limit. Given that anglers highgrade the size of halibut harvested under the traditional two-fish bag limit, the size composition of released fish is likely smaller than harvested halibut. Hence, the IPHC length frequency data may not provide a baseline representation of fish released under the traditional two fish bag limit. The lack of an accurate baseline from which to compare the size frequency is further compounded by unknown behavioral responses to the rule. For these reasons, the EA/RIR/IRFA did not provide a point estimate for the number of halibut discarded in the charter fishery.

Comment 24: The EA/RIR/IRFA is not adequate because it does not contain an analysis for a one-fish bag limit.

Response: In formulating alternatives for the EA/RIR/IRFA, NMFS considered and rejected options that reduced the daily bag limit for anglers fishing from a charter vessel. The preamble to the proposed rule provides a detailed explanation about why the one-fish bag limit was rejected as an alternative for analysis. In summary, a reduced bag limit would impose a considerable economic burden on the charter sector that could be mitigated by maintaining the traditional two-fish bag limit. Charter operators commenting on the IPHC recommended action indicated that it was important for their business to maintain a two-fish bag limit. NMFS rejected an alternative for one-fish bag limit because: (1) it likely would not reduce the economic burden on the charter industry; and (2) a comparable harvest reduction could be achieved with alternatives that maintained a two-fish bag limit in the charter fishery.

Comment 25: Failure to reduce halibut harvest to the GHL will result in overfishing of the halibut resource and is thus in violation of the Convention and Halibut Act.

Response: This rule is designed to reduce the charter vessel harvest of halibut in Area 2C to a level comparable to the IPHC-recommended one-fish bag limit. The IPHC recommended a reduction in the harvest of halibut by the charter vessel sector to achieve its conservation and management goals pursuant to the Halibut Act and Convention. The EA/RIR/FRFA concludes that the expected level of halibut removals from the charter vessel fishery after this rule is implemented will not significantly impact the sustainability of the halibut stock. Therefore, a reduction of the Area 2C charter vessel halibut harvest to a level comparable to the IPHC-recommended action is not likely to result in overfishing of the halibut resource, regardless of whether the GHL is achieved or exceeded.

Comment 26: The final rule introduces management complexity to the charter fishery without a reliable catch accounting program.

Response: The final rule does not require additional data collection. ADF&G currently has an extensive data collection program for Alaska recreational fisheries including halibut. Because sport fishery landings happen over long periods, throughout most hours of the day, and at hundreds of access points including private lodges, ADF&G uses a variety of assessment methods including on-site creel surveys, and offsite methods including logbooks and postal surveys. In 2006, the ADF&G resumed collection of halibut harvest data in charter logbooks to gather data on halibut harvest specific to individual businesses and vessels. In addition, several measures were implemented to ensure accurate reporting of halibut harvest. These measures included (1) requiring reporting of fishing license numbers and numbers of halibut kept and released by individual anglers, (2) validation of the numbers of halibut offloaded by creel survey technicians whenever possible, (3) increased logbook inspections by deputized ADF&G staff, (4) increased review of submitted logbooks and follow-up calls to charter operators to resolve missing or misreported information, and (5) a mail survey of a random sample of clients to compare their reported harvest to logbook data recorded by operators. The evaluation of logbook data quality is ongoing.

Comment 27: The EA/RIR/IRFA does not analyze the impact the final rule will have on crews, processors, and coastal communities.

Response: The EA/RIR/IRFA provides an analysis of the potential socioeconomic impacts on commercial fishermen, charter guides, their customers, and other parties. This information is summarized in table 22 of the analysis.

Comment 28: The problem statement fails to identify impacts on commercial fishermen, subsistence users, non-guided sport anglers, the non-angler public, and coastal communities that result from the charter sector's harvest of halibut in excess of the GHL.

Response: The goal of this action is reduce halibut harvest in the Area 2C charter fishery to a level that is comparable to the IPHC-recommended action while lessening the negative impacts of that action on the charter industry, its sport fishing clients, the coastal communities that serve as home ports for this fishery, and on fisheries for other species. This goal does not include lessening the impact on subsistence users, non-guided sport anglers, or commercial fishermen,

although that may be an indirect effect. This rule is not designed to change current regulations that govern the subsistence fishery or non-guided sport fishery, including personal bag and harvest limits. Commercial fishermen were not included in the problem statement because this action does not change the regulations associated with the commercial fishery nor does it establish an annual allocation of halibut for the commercial and sport fisheries. While a harvest reduction in the charter sport fishery may benefit the commercial fishery in the future, this rule is intended to meet the management goals of the IPHC, and in doing so, the charter sport fishery is the entity directly regulated by this final rule.

Comment 29: The creel survey, postal survey, and logbook data collected by ADF&G and used in the EA/RIR/IRFA do not accurately estimate halibut removals or the average weight of halibut harvested in the charter fishery.

Response: The EA/RIR/IRFA for this final action uses sport fishing data collected by ADF&G through its postal survey, logbook program, and creel survey program. These data comprise the best scientific information available for the EA/RIR/IRFA and are appropriate for use in estimating the impact of the final rule on the charter halibut and commercial sectors. These data collection programs all use statistical methods accepted by the scientific community to collect and extrapolate sport fishing information, including the disclosure of known statistical biases and verification of data collection methodology.

Comment 30: The preferred alternative will not result in a level of savings that is comparable to the IPHC-recommended action because the second fish harvested by most anglers is not 32 inches (81.3 cm).

Response: The 32–inch (81.3 cm) maximum size limit proposed in the final action applies to persons who harvest two halibut regardless of the order in which those fish are caught. If a person harvests only one halibut, it may be of any size. Thus, a person may choose whether the first or second halibut harvested is 32 inches (81.3 cm) or less.

The reduction in guided sport harvests described in the EA/RIR/IRFA was determined by multiplying the proportion of halibut taken as a second fish by the proportion of harvest weight associated with halibut that would have been under the 32–inch (81.3 cm) size restriction in this final rule. The analysis did not predict the probability of harvesting one or two fish and instead assumed persons would maximize the size of their first halibut and harvest the smaller 32–inch (81.3 cm) halibut as their second fish. Using this assumption, the analysis shows that approximately 518,000 lb (233,100 kg) of halibut would not be harvested in the Area 2C charter vessel fishery under this rule.

Comment 31: The weight estimates for the Area 2C charter fishery are not accurate and should not be used in the EA/RIR/IRFA because they do not represent a random sample of harvested halibut.

Response: See response to comment 29.

Comment 32: The proposed rule is misleading because it insinuates growth in the charter vessel sector without providing supporting information.

Response: The preamble of the proposed rule on page 1073 under the heading ''Recent Harvests of Halibut in Areas 3A and 2C'' states: '' In Area 2C, based on ADF&G sport fishing survey data, the charter vessel harvest in 2003 was one percent under the GHL, but in 2004 and 2005, it was 22 percent and 36 percent over the GHL, respectively. In 2006, based on sport fishing survey data [,] the GHL for Area 2C was projected to be exceeded by 42 percent, or 596,000 lb (270.3 mt).'' The preamble does not discuss the average annual increase of charter harvest since 1995. However, information that is provided in the background section of the EA/RIR/IRFA shows that the guided sport harvest of halibut in Area 2C has increased from approximately 0.986 million lb (443,700 kg) in 1995 to 2.028 million lbs (912,600 kg) in 2007. In addition to increased harvests in the charter fishery for halibut, the number of trips, businesses, vessels, and the number of second trips per day has increased since 2004.

Comment 33: The description of the fishery CEY in the preamble to the proposed rule as it relates to the commercial catch limit is incorrect because the commercial catch limit is not equal to the fishery CEY and bycatch and wastage are commercial removals.

Response: The preamble to the proposed rule states that the IPHC subtracts estimates of all non-commercial removals (sport, subsistence, bycatch, and wastage) from the total CEY. The remaining CEY, after removals are subtracted, is the maximum catch or ''fishery CEY'' for an area's directed commercial fixed gear fishery. The description in the preamble is not accurate because while the commercial catch limit for the fixed gear fishery may be set below the fishery CEY, it may exceed the fishery CEY. IPHC staff recommendations are based on estimates for the fishery CEY, but may be higher or lower depending on a number of biological, statistical, and policy considerations. Similarly, the IPHC commissioners final quota decisions for the commercial fishery may be higher or lower than the fishery CEY.

In addition, the description in the preamble of the proposed rule does not accurately indicate that bycatch and wastage are non-commercial removals. These removal categories are a result of commercial fisheries operating in Convention waters.

Comment 34: The description of the relationship between the total CEY and halibut removals in the preamble to the proposed rule is not correct. The preamble incorrectly states that: ''As conservation of the halibut resource is the overarching goal of the IPHC, it attempts to include all sources of fishing mortality of halibut within the total CEY.'' The preamble is not correct because the IPHC accounts for commercial wastage and bycatch of halibut 32 inches (81.3 cm) or smaller in the exploitation rate, which is applied before the total CEY is calculated.

Response: NMFS agrees that halibut under 32 inches (81.3 cm) caught as bycatch and wastage are accounted for in the exploitation rate that is used to determine the total CEY. On an annual basis, the IPHC deducts projected halibut removals resulting from bycatch, wastage, sport fishing, and subsistence from the total CEY. The total CEY is the product of an area-specific harvest rate and the exploitable (recruited) biomass. Only the bycatch and wastage of halibut 32 inches (81.3 cm) or greater are deducted from the total CEY.

Comment 35: The proposed rule should not be adopted because it will not achieve the GHL or result in a long-term solution to the allocation issues between the commercial sector and charter halibut sector.

Response: The purpose and need for this final rule is to reduce halibut harvest in the charter vessel sector in Area 2C to levels that are comparable to the IPHC-recommended one-fish bag limit. Based on the 2006 harvest level for the charter vessel sector in Area 2C, the IPHC-recommended action was determined to result in a reduction between 397,000 lb (180.1 mt) and 432,000 lb (195.9 mt). This level of reduction would not reduce harvest to the GHL, which was exceeded by approximately 596,000 lb (270.3 mt) in 2006. Management measures designed to achieve the GHL and resolve long-term allocation issues are being

developed currently by the Council. NMFS supports the Council's continued efforts to develop a long-term solution to the allocation issues between the commercial and charter vessel sectors.

Comment 36: The proposed rule is a misuse of the GHL because downward adjustments to the GHLs are only to be taken when there is a decline in Pacific halibut abundance. The GHL should stair-step with increases in halibut abundance.

Response: This rule was not designed to change either the 2007 GHL published in the **Federal Register** (72 FR 12771, March 19, 2007) or the GHL regulations at 50 CFR 300.65. The GHL ''stair steps'' down only during periods when the CEY established by the IPHC falls below benchmark levels in the GHL regulation. To change the GHL regulations would require separate rulemaking.

Comment 37: The proposed rule discriminates between Alaska resident and non-Alaska resident anglers because a large portion of anglers fishing from a charter vessel in Area 2C are not Alaska residents. Discriminating between residents of different states violates the Halibut Act Section 773c and the Magnuson-Stevens Act National Standard 4.

Response: This final rule does not discriminate between U.S. citizens based on their state of residence because the regulations apply equally to Alaska residents and non-Alaska residents who harvest halibut from a charter vessel in Area 2C. This action is consistent with the Halibut Act, based upon rights and obligations in existing Federal law, and reasonably calculated to promote conservation.

Comment 38: The proposed regulation is in violation of the Halibut Act and Convention because it treats recreational halibut anglers fishing from a charter vessel differently than halibut anglers not fishing from a charter vessel.

Response: The Halibut Act and Convention does not prevent the Secretary from tailoring a management action so that it addresses the concern that prompted action in a reasonable manner. This management action was designed to address the current allocation problem between the halibut charter fishery and the commercial fishery and does not directly address other user groups, i.e., non-guided anglers and subsistence users. The reason for this action is clearly indicated in the preamble to the proposed and final rules. Therefore, this rule is consistent with the Halibut Act and Convention.

Comment 39: The EA/RIR/IRFA incorrectly concludes that impacts from the final action on groundfish stocks, notably the Demersal Shelf Rockfish Assemblage (DSR) and lingcod, will not be significant. The proposed action will increase the mortality on species other than halibut because anglers will catch these species while targeting halibut.

Response: The EA/RIR/IRFA indicated that this action is not expected to significantly increase the mortality of DSR and lingcod over that which would have been experienced under the traditional two-fish bag limit for halibut. Moreover, the EA/RIR/IRFA indicates that these groundfish stocks are managed by the State of Alaska and Federal governments using biological benchmarks that prompt agency response to constrain harvest to maintain sustainable stocks.

Comment 40: The EA/RIR/IRFA fails to note that the preliminary catch estimate for DSR harvested in the charter fishery that is provided in the analysis has been updated by ADF&G.

Response: The EA/RIR/IRFA used a preliminary estimate in the December 2006 Stock Assessment and Fishery Evaluation Report of 64 mt of directed harvest and 7 mt of discard mortality in the Area 2C sport fishery. In January 2007 ADF&G updated its discard estimate for the sport fishery from about 7 mt to 9 mt. The EA/RIR/IRFA has been corrected to reflect the ADF&G correction for DSR harvest in the sport fishery.

Comment 41: The EA/RIR/IRFA incorrectly states that overall lingcod harvest has been stable for the sport fishery in Area 2C.

Response: The EA/RIR/IRFA states that lingcod harvests in recent years have remained stable under strict regulations on the sport fishery imposed by the State. Table 4 in the draft EA/RIR/IRFA did not include harvest estimates for 2005. Table 4 has been updated in the EA/RIR/FRFA to show that 16,281 lingcod were harvested in 2005. Inclusion of the 2005 lingcod harvest data show that lingcod harvest in the sport fishery has increased since 2002.

Comment 42: The EA/RIR/IRFA did not analyze a sufficient range of alternatives, including length limits, slot limits, or boat limit on the number of halibut harvested.

Response: The EA/RIR/IRFA analyzed a range of reasonable alternatives that would achieve the purpose and need of the action in this final rule. As stated in the preamble to the proposed rule, the purpose and need for this action is to reduce harvest in the charter vessel halibut fishery in Area 2C to level that is comparable to the IPHC-recommended one-fish bag limit, but in a manner that produces smaller adverse impacts on the charter fishery, its sport fishing clients, the coastal communities that serve as home ports for this fishery, and on fisheries for other species. The alternatives considered provide a range tailored to the purpose and need for this final action, which focused on maintaining the opportunity for a sport angler to harvest two halibut per day. The alternatives also provide a wide range of limits on the size of halibut harvested, including length limits that span the distribution of halibut currently caught in the sport fishery.

Comment 43: The retention requirement associated with the proposed rule will create pollution problems at the dock where charter operators offload fish and clients. It will also increase the burden on charter operators because of an increase in the amount of time to properly dispose of carcasses.

Response: This rule would require charter operators to retain halibut carcasses intact onboard the charter vessel until fillets are offloaded. This regulation will likely increase the number of carcasses brought back to the dock in some ports and may thus increase the burden on ports and charter operations to dispose of carcasses. The current carcass disposal practices by charter operators is largely unknown. Anecdotal information suggests that some ports require charter operators to properly dispose of carcasses on land or at sea. In addition, it may be common practice for charter operators to bring whole halibut back to ports that do not have a port offal policy. The EA/RIR/IRFA concludes that the costs associated with carcass disposal may be placed on charter operators if discard is prohibited by the port authority or such casts may be spread more widely if the port authority provides discard services.

Comment 44: The proposed action will increase the harvest of large female halibut because anglers will attempt to maximize the size of one of their two halibut. An increase in the harvest of halibut that have a higher fecundity will endanger the halibut stock.

Response: The EA/RIR/IRFA considers the IPHC catch accounting and stock assessment process and concludes, based on the IPHC management measures, that the final action would not have a significant impact on the halibut stock.

The comment presumes that harvesting large female halibut will substantially decrease egg production and the resultant abundance of juvenile halibut. In 1999, the IPHC reviewed options for a maximum size limit of 60 inches (150 cm) in the commercial

fishery and concluded that, based on the research at the time, it did not add substantial production to the stock. Applying the limit to the sport fishery would show even smaller production benefits given the harvest attained by the sport fishery is substantially smaller than the level of commercial harvest and this action only applies to Area 2C. The halibut stock is managed as a single population throughout its entire range.

Comment 45: The proposed action does not address the potential for the near-shore depletion of halibut.

Response: The best scientific information available is not clear whether nearshore depletions exists and, if so, about the causes, magnitude, and geographical distribution of nearshore depletion of halibut. This final rule is not expected to significantly impact the sustainability of the halibut stock. As discussed in the EA/RIR/IRFA, the IPHC sets catch limits for the commercial fishery in proportion to the amount of halibut that may be sustainably removed. This harvest philosophy protects against overharvest and spreads fishing effort over the entire range for halibut to prevent regional depletion. Small scale local depletion is not expected to have a significant biological effect on the resource as a whole. Egg and larval drift and subsequent migration by young halibut cause significant mixing within the population. Ultimately, counter migration and local movement tend to fill in areas with low halibut density, although continued high exploitation may maintain or cause small, but temporary, localized depletions. However, information about local biomass, immigration and emigration rates, seasonal changes, and the relationship of these factors with environmental characteristics are not available on a geographical resolution that would provide information about small areas that may experience local depletion in Area 2C.

Comment 46: The EA/RIR/IRFA did not discuss enforcement and data collection issues associated with this final action.

Response: The RIR analysis provides a detailed discussion about enforcement issues associated with this final action. The analysis indicates that enforcement of this action would require on-the-water or dockside counting and measurement of harvested halibut by enforcement officers. For these reasons, enforcement of the bag and size limit would require regular visits by enforcement officers to areas where halibut harvested on charter vessels are landed. These include remote areas such as lodges as well as urbanized areas such as Sitka, Ketchikan, and Juneau. No reporting requirements are associated with this action.

Comment 47: The final regulation will be difficult to enforce in situations with multiple anglers because enforcement cannot attribute individual halibut harvested on a charter vessel to a specific person.

Response: Determining the number of halibut harvested by a person fishing from a charter vessel is difficult because halibut may be distributed among anglers, resulting in more successful anglers harvesting more than two halibut to maximize the collective daily bag limit for licensed anglers onboard the charter vessel. This practice is often referred to as a ''boat limit'' and is not legal because anglers are harvesting more halibut than their bag limit. The RIR analysis discusses this issue and indicates that these situations require NOAA Office of Law Enforcement (OLE) or the U.S. Coast Guard to investigate allegations of bag limit violations through interviews, direct observation of fishing or other techniques. Enforcing the two-fish bag limit in this rule will be no more difficult than enforcing the previous two-fish bag limit.

Comment 48: The proposed rule should not be adopted because the minimum size limit and associated harvest reduction in this final action will negatively impact the charter industry, including non-charter businesses that rely on revenue generated from the charter industry.

Response: An important objective of this action is to reduce the Area 2C guided sport halibut harvest to a level comparable to the IPHC-recommended action in a manner that has less adverse impact than the IPHC-recommended one-fish bag limit would have had on the charter fishery, its sport fishing clients, the coastal communities that serve as home ports for the charter fishery, and on fisheries for other species. The RIR/IRFA provides a detailed discussion on the potential economic impacts of this action. In summary, this rule is expected to reduce the charter vessel harvest of halibut, but may also reduce short run profit levels or create short run losses for operators when compared with the previous two-fish bag limit. The charter industry may lose revenue if the number of clients declines as a result of the regulation. Charter operators also may incur increased costs associated with disposing of halibut carcasses, due to the requirement of retaining carcasses until fillets are offloaded from the charter vessel. Guides may pass carcass disposal costs to their clients, depending on market conditions.

In selecting a preferred alternative, NMFS considered the economic impacts of all alternatives in the RIR/IRFA. Three alternatives resulted in harvest reduction that was comparable to the IPHC-recommended action: (1) a minimum size limit of 45 inches (114.3 cm) on one of two harvested halibut; (2) the action in this final rule; and (3) a maximum size limit of 35 inches (88.9 cm) on one of two harvested halibut. The economic impacts from alternative (1) were expected to be greater than the action in alternative (2) because halibut greater than 45 inches (114.3 cm) are not abundant in some geographical areas. A maximum size limit of 35 inch (88.9 cm) on one of two harvested halibut also resulted in the appropriate level of harvest reduction. However, the difference between the 32 inch and 35 inch (88.9 cm) maximum size limit is relatively small and subject to statistical confidence ranges of unknown size and therefore did not justify changing the preferred alternative. Thus, this final rule achieves the stated objectives for the action, while simultaneously recognizing potential adverse economic impacts that may accrue to directly affected small entities and taking all practicable steps to reduce impacts.

Comment 49: The proposed rule should impose restrictions on the commercial fishing sector, including reducing commercial bycatch levels and the commercial set-line quota.

Response: This rule is not designed to impose further restrictions on commercial fisheries that take halibut. The commercial fishery for halibut and the commercial fishery for groundfish that take halibut as bycatch to the harvest of other species are strictly limited to a specified amount of halibut mortality. Unlike the charter vessel fishery for halibut, these commercial fisheries are closed when their limits are reached.

Comment 50: The IPHC-recommended action for the Area 2C and Area 3A charter fishery should have been approved by the Secretary of State in concurrence with the Secretary.

Response: A detailed explanation of the reasons for disapproval of the IPHC-recommended one-fish bag limit in the preamble to the proposed rule (72 FR 17071, April 6, 2007) and the annual management measures for the halibut fishery (72 FR 11792, March 14, 2007). In brief, the IPHC-recommended action was disapproved because control of the charter vessel harvests of halibut is more appropriately done by domestic agencies and could be achieved by a combination of ADF&G and NMFS regulatory actions.

Comment 51: This final action will not address harvest by ''self-guided'' anglers that are provided a vessel and fishing knowledge by a fishing operation, but do not have a hired operator.

Response: This final rule will apply only to anglers fishing from a charter vessel. A charter vessel is defined at 50 CFR 300.61 as a vessel used for hire in sport fishing for halibut, but not including a vessel without a hired operator. Self-guided trips do not have a hired operator and are thus not subject this final rule. The harvest of halibut by independent anglers has been relatively stable in recent years. It has not demonstrated the growth rates of the charter vessel sector. Therefore, self-guided anglers were not considered part of the problem addressed by this rule.

Comment 52: The EA/RIR/IRFA indicates that DSR harvest could be managed under the overfishing level (OFL) even if harvest exceeded the allowable biological catch (ABC).

Response: The EA/RIR/IRFA does not imply that the DSR stocks should be managed to OFL, in fact, it states that removals of DSR because of this rule would likely not exceed the ABC or OFL. The purpose of an EA is to determine the potential impacts the alternatives may have on the human environment and if those impact are significant. The EA/RIR/IRFA indicates that in 2006, DSR stocks were well under their harvest and biological benchmarks for the sport and commercial fisheries. The biological benchmarks are the ABC and the OFL. The ABC is an annual sustainable target harvest (or range of harvests) for a stock complex, determined by the Council's Plan Team and the Scientific and Statistical Committee during the assessment process. It is derived from the status and dynamics of the stock, environmental conditions, and other ecological factors, given the prevailing technological characteristics of the fishery. The target reference point is set below the limit reference point for overfishing and is precautionary. The OFL is a limit reference point set annually for a stock or stock complex during the assessment process. Overfishing occurs whenever a stock or stock complex is subjected to a rate or level of fishing mortality that jeopardizes the capacity of a stock or stock complex to produce maximum sustained yield (MSY) on a continuing basis. Operationally, overfishing occurs when the harvest exceeds the OFL. Thus, the OFL is a valid biological reference point indicating that the stock cannot maintain long-term sustainability without a reduction in harvest.

Comment 53: The five-percent discard mortality estimate in the EA/RIR/IRFA does not account for halibut that were caught and released multiple times.

Response: The discard estimate in Appendix A of the EA/RIR/FRFA is based on a survey of the scientific literature about discard mortality rates in the charter fishery, harvest data from the Area 2C, and anecdotal information about the prevalence of circle hooks in the charter fishery. This information in the EA/RIR/IRFA is based on the best available scientific information. Data is not available that would provide a reliable estimate about the number of times a halibut is caught in the halibut fishery and the amount of time between capture. .

Comment 54: In calculating the estimated harvest reduction, the EA/RIR/IRFA inappropriately uses the average weight of halibut harvested in the recreational fishery in 2006 rather than an average weight calculated using multiple years.

Response: The principle goal of this rule is to achieve a harvest reduction that is comparable to the IPHC-recommended action. In making its recommendation, the IPHC used the average weight of halibut harvested in the charter fishery in 2006 to predict the level of harvest that may occur in 2007. Thus, the EA/RIR/IRFA used the same weight measurement as used by the IPHC to predict removals in the sport fishery. Use of the 2006 average weight is consistent with the goal of the analysis.

Comment 55: The final rule should require the use of circle hooks on halibut charter vessels because this hook type has been shown in the scientific literature to reduce the mortality of discarded fish.

Response: NMFS considered requiring the use of circle hooks in the halibut charter vessel fishery for halibut. A circle hook requirement was considered not practical for several reasons: (1) NMFS has the authority to regulate the methods used to harvest halibut but not other species commonly caught on a charter vessel; (2) the requirement would apply only to halibut because it would be impossible to determine whether a person was targeting halibut or a different species (e.g., lingcod, shark, or rockfish); and (3) halibut that would ordinarily be harvested using non-circle hook gear while targeting other species would need to be released. Hence, this may increase the discard mortality of halibut. In addition, anecdotal evidence described in the EA/RIR/IRFA suggests that the use of circle hooks is already prevalent in the charter fishery. In an effort to improve its discard morality estimate, ADF&G will be collecting information about the prevalence of circle hook use in the 2007 charter fishery.

Comment 56: The proposed rule should provide notice to the public that NMFS may annually adjust harvest control measures to prevent charter harvest from exceeding the GHL.

Response: This rule is not designed to manage the charter vessel fishery halibut in Area 2C to its GHL on an annual basis. NMFS believes it is important that management measures for the charter halibut fishery be developed by the Council. This final rule was developed by NMFS independent of the Council because management measures developed by the Council to reduce harvest in the charter vessel halibut fishery could not be implemented in time for the 2007 fishing season. NMFS does not anticipate that this final rule would be adjusted on an annual basis.

Comment 57: The proposed rule should not be implemented because ADF&G regulations prohibiting skipper and crew fish in Area 2C have not had time to reduce harvest.

Response: The prohibition on skipper and crew fishing in Area 2C was first implemented in 2006. This measure resulted in a harvest reduction estimated to be approximately 84,000 lb (381 mt), which reduced the amount that the GHL was exceeded from 47 percent to 42 percent. The same level of reduction is expected for the 2007 charter fishery. Thus, the prohibition in Area 2C of skipper and crew fishing on charter vessels was not considered sufficient to control charter vessel harvest of halibut in 2007 to the level recommended by the IPHC.

Comment 58: The proposed rule is arbitrary and capricious because the Secretary must have a recommendation from the Council to promulgate a rule that determines an allocation for a sector. The Council's policy is that harvest of halibut by the charter vessel sector may not exceed the GHL. The proposed rule selected a new allocation for the charter vessel fishery for halibut without Council input or technical and public review and is thus in violation of Federal law.

Response: See response to comment 2.

Comment 59: The EA/RIR/IRFA does not discuss the management history of the GHL, including the Council intent to trigger management measures when exceeded.

Response: The EA/RIR/IRFA does provide a detailed discussion about the

management history of the GHL on page 3.

Comment 60: The proposed rule fails to mention the economic effect on the commercial industry when halibut in excess of the GHL is harvested by the charter vessel sector.

Response: This action is not designed to reduce halibut harvest in the charter sector to the GHL. The purpose of this action is to reduce the harvest of halibut in the charter vessel sector to a level that is comparable to the IPHC-recommended action. The impacts of that action was analyzed and the economic impacts of exceeding the GHL was not because it was not relevant to this rulemaking.

Changes From the Proposed Rule

No changes are made in this final rule from the proposed rule.

Classification

This final rule does not require recordkeeping or reporting requirements, or duplicate, overlap, or conflict with any Federal rules. 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 Secretary's authority to implement allocation measures for the management of the halibut fishery.

Included in this final rule is a 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 analysis completed in support of this action. A copy of the FRFA is available from the NMFS Alaska Region Office (see **ADDRESSES**). The preamble of the proposed rule for this action includes 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 as well as the objectives and legal basis for the action are contained in the preamble to this final 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, the majority of comments from the charter industry that did not support the action indicated that the action would cause economic hardship on the charter vessel industry. These comments indicated that the action would result in a reduction of revenue (reduced clients) for Area 2C charter operators and businesses that rely on the charter industry. Comments received from the commercial sector generally indicated that halibut harvest above the GHL would reduce the amount of halibut available to the commercial industry and this reduction would cause economic hardship for IFQ quota holders, their crew, seafood consumers, processors, and the communities that rely on the commercial fishing industry. For detailed summary of the comments received, refer to the section of this final rule 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 final rule will apply is provided in the FRFA (SEE **ADDRESSES**) and the IRFA summary contained in the Classification section of the proposed rule for this action (72 FR 17071, April 6, 2007) and is not repeated here.

Steps Taken to Minimize Economic Impacts on Small Entities

This final rule limits the harvest of halibut by sport anglers fishing from a charter vessel in Area 2C to a daily limit of two halibut, except one halibut shall not be larger than 32 inches (81 cm) as measured from the head to the middle of the caudal fin. This final rule is expected to achieve the level of harvest reduction needed by the IPHC to meet its management goals while reducing potential adverse impacts on the charter fishery, its sport fishing clients, the coastal communities that serve as home ports for this fishery, and on fisheries for other species. This final rule is expected to reduce the halibut harvest in the Area 2C charter fishery by approximately 518,000 lb (235.0 mt), which is comparable to a harvest reduction of between 397,000 lb (180.1 mt) and 432,000 lb (195.9 mt) that is associated with the IPHC-recommended action. This final rule also requires charter vessel operators to retain intact carcasses of halibut until all fillets are offloaded from the charter vessel. The potential economic impacts of these measures are described in detail in the IRFA and the IRFA summary contained in the Classification section of the proposed rule.

In summary, this final rule will have different effects on the charter and commercial sectors, and persons relying on those industries. This regulation is expected to reduce the overall harvests in the charter fishery, and may reduce growth of the charter sector. In the short run, the charter industry may experience a reduction in revenues and profit levels due to a reduction in the demand for charter services, although the extent of this outcome is unknown. In the medium to long term, charter businesses are likely to exit the industry, so the prices and profits of the remaining operations may tend to recover towards previous levels, although the equilibrium level cannot be estimated at present. Charter operations may incur costs if they are required by port authorities to change current disposal methods for halibut offal. The extent of these costs are unknown. In some situations, the costs may be borne by the charter operator and in others the cost may be distributed by the port authority. This regulation will also impose a burden on charter vessel operators to measure some halibut before landing.

While not directly regulated by this action, the commercial industry may realize positive economic benefit from this action. For the commercial industry, this action is expected to reduce the amount of halibut harvested by the charter sector, which may increase future commercial quota levels and associated revenues generated from the quota. An increase in revenue in the commercial fishery also may increase consumer surplus for seafood consumers, and have a positive economic impact on persons and communities that are relatively more involved with the commercial sector than charter sector.

This action incorporates several provisions specifically intended to reduce the potential economic and operational burden on small entities, relative to the other alternatives considered. Other alternatives considered for this action that would have resulted in a comparable reduction to the IPHC-recommended action include a regulation that would allow anglers to harvest two halibut if one halibut was greater than 45 inches (114.3 cm) in head-on length. This provision was rejected for two primary reasons: (1) operators may be required to incur physical risk associated with measuring a large halibut; (2) some locations in Southeast Alaska may have a small abundance of larger fish that would result in the regulation effectively being a one-fish bag limit. Another alternative that would have met the harvest reduction goal is a regulation that would have allowed anglers to harvest two halibut, except one must be smaller than 35 inches (88.9 cm), in head-on length. This alternative was rejected for the reasons

explained in the preamble to this final rule. NMFS also considered and rejected a one-fish bag limit for inclusion in the EA/RIR/IRFA. However, for the reasons explained in the preamble to the proposed rule, this option was not considered reasonable because it would defeat part of the purpose of this action to reduce economic impacts on the charter vessel and related businesses.

The no action alternative would have no direct impact on small entities. Under this alternative, current regulations for the charter sport fishery would not be changed. This would not meet the objectives of this action which were to achieve a harvest reduction that is comparable to the one-fish bag limit recommended for Area 2C.

For the previous described reasons, this final rule meets the objectives of this action while recognizing the potential adverse economic impacts that may accrue to directly regulated small entities, and taking all practical means to limit these impacts. NMFS is not aware of any alternatives in addition to those considered for this action that would practicably achieve a harvest reduction comparable to the IPHC-recommended action while limiting the potential negative economic impacts on the charter industry, its sport fishing clients, and coastal communities that serve as home ports for this fishery, and on fisheries for other species.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 state 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 will explain the actions a small entity is required to take to comply with the rule or group of rules.

NMFS will post a small entity compliance guide on the Internet at *https://www.fakr.noaa.gov* and provide the compliance guide to sport anglers through ADF&G. The guide and this final rule will be available upon request (see **ADDRESSES**).

This final rule is effective on filing with the Office of the **Federal Register**. The 30-day delayed effectiveness period required by the Administrative Procedure Act, if applied to this final rule, would substantially reduce it ability to fulfill its conservation and management objectives. These objectives are NOAA Fisheries' attempt to fulfill its international treaty obligations regarding the management of Pacific halibut. This action is intended to achieve a reduction in Area 2C charter halibut harvest that is comparable to the reduction that would have resulted from the bag limit reduction recommended by the IPHC, the international body authorized to make recommendations to the domestic parties (United States and Canada) of the Convention. Estimates of halibut poundage reduction in the Area 2C charter vessel fishery were based on an assumption that this final rule would be effective for the full charter fishing season of June, July, and August.

Furthermore, the determination by the Secretaries of State and Commerce to implement these management measures by domestic regulations did not occur until March 1, 2007. NOAA Fisheries published a proposed rule on April 6, 2007, with a public comment period that closed on April 23, 2007. NOAA Fisheries received a large number of detailed comments from the public representing divergent points of view. The need to provide meaningful analysis and responses to these comments prevented NOAA Fisheries from publishing the final rule with enough time to allow for a 30-day delayed effectiveness period and a June 1 effective date.

As stated above, if this final rule is not effective by June 1, 2007, the conservation and management objectives of this action will be jeopardized. The analysis indicates that approximately 25 percent of the halibut harvested by the charter sector occurs in June. Therefore, if this rule is not effective during the month of June, approximately 25 percent of the reduction that this rule was designed to achieve will not occur, frustrating the IPHC and NOAA Fisheries' conservation and management objectives in Area 2C and resulting in potential economic harm to the commercial halibut sector. Therefore, the Assistant Administrator for Fisheries, NOAA, finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3).

List of Subjects in 50 CFR Part 300

Fisheries, Fishing, Reporting and recordkeeping requirements, Treaties.

Dated: May 30, 2007.

Samuel D. Rauch III

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

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

PART 300—INTERNATIONAL FISHERIES REGULATIONS

Subpart E—Pacific Halibut Fisheries

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

Authority: 16 U.S.C. 773–773k.

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

§ 300.61 Definitions.

* * * * *

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

* * * * *

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

* * * * *

■ 3. In § 300.65, paragraphs (d) through (k) are redesignated as paragraphs (e) through (l), respectively, and new paragraph (d) is added to read as follows:

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

* * * * *

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

* * * * *

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

§ 300.66 Prohibitions.

* * * * *

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

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