

**§ 594.8 Fee for importing a vehicle pursuant to a determination by the Administrator.**

\* \* \* \* \*

(b) If a determination has been made pursuant to a petition, the fee for each vehicle is \$198. The direct and indirect costs that determine the fee are those set forth in §§ 594.7(b), (c), and (d).

(c) If a determination has been made on or after October 1, 2008, pursuant to the Administrator's initiative, the fee for each vehicle is \$125. \* \* \*

5. Section 594.9 is amended by revising paragraph (c) to read as follows:

**§ 594.9 Fee for reimbursement of bond processing costs.**

\* \* \* \* \*

(c) The bond processing fee for each vehicle imported on and after October 1, 2008, for which a certificate of conformity is furnished, is \$10.23.

5. Section 594.10 is amended by revising paragraph (d) to read as follows:

**§ 594.10 Fee for review and processing of conformity certificate.**

\* \* \* \* \*

(d) The review and processing fee for each certificate of conformity submitted on and after October 1, 2008 is \$14. However, if the vehicle covered by the certificate has been entered electronically with the U.S. Department of Homeland Security through the Automated Broker Interface and the registered importer submitting the certificate has an e-mail address, the fee for the certificate is \$6, provided that the fee is paid by a credit card issued to the registered importer. If NHTSA finds that the information in the entry or the certificate is incorrect, requiring further processing, the processing fee shall be \$48.

Issued on: July 25, 2008.

**Ronald L. Medford,**

*Senior Associate Administrator for Vehicle Safety.*

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

[Docket No. 071203794-8828-01]

RIN 0648-AW36

**Pacific Halibut Fisheries; Subsistence Fishing**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

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

**SUMMARY:** NMFS proposes regulations that amend the subsistence fishery rules for members of an Alaska Native tribe eligible to harvest Pacific halibut in waters in and off Alaska for customary and traditional use. The proposed change would correct the location listed in the regulations for the Village of Kanatak tribe and the International Pacific Halibut Commission (IPHC) halibut regulatory area (Area) in which members may subsistence fish. These regulations correctly define the headquarters and Area for the Village of Kanatak tribe. The action would change the tribe's headquarters from Egegik to Wasilla and the corresponding Area from 4E to Area 3A. The intent of the correction is to remove restrictions on participation of tribal members in traditional subsistence fisheries for Pacific halibut by aligning the tribe's headquarters with its actual location in Wasilla.

**DATES:** Comments must be received no later than September 3, 2008.

**ADDRESSES:** Send comments to Sue Salvesson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified by "RIN 0648-AW36" by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal website at <http://www.regulations.gov>.
- Mail: P. O. Box 21668, Juneau, AK 99802.
- Fax: (907) 586-7557.
- Hand delivery to the Federal Building: 709 West 9th Street, Room 420A, Juneau, AK.

All comments received are a part of the public record and will be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (e.g., name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter "N/A" in the required fields, if you wish to remain anonymous). Attachments to electronic comments must be in Microsoft Word, Excel, WordPerfect, or Adobe portable document file (pdf) formats to be accepted.

Copies of the Categorical Exclusion (CE) and Regulatory Impact Review

(RIR) prepared for this action may be obtained from the NMFS Alaska Region, P.O. Box 21668, Juneau, Alaska 99802, Attn: Ellen Sebastian, Records Officer; in person at NMFS Alaska Region, 709 West 9th Street, Room 420A, Juneau, Alaska; and via the Internet at the NMFS Alaska Region website at <http://www.noaa.fakr.gov>.

**FOR FURTHER INFORMATION CONTACT:** Peggy Murphy, 907-586-7228.

**SUPPLEMENTARY INFORMATION:****Background and Need for Action**

The United States and Canada participate in the International Pacific Halibut Commission (IPHC) and promulgate regulations governing the Pacific halibut (*Hippoglossus stenolepis*) fishery under the authority of the Northern Pacific Halibut Act of 1982 (Halibut Act). Regulations governing the allocation and catch of halibut in U.S. convention waters that are in agreement with the Halibut Act may be developed by the North Pacific Fishery Management Council (Council). Regulations recommended by the Council must be approved by the Secretary of Commerce before being implemented through the National Marine Fisheries Service (NMFS). The Council prepared an environmental assessment/regulatory impact review (EA/RIR) for subsistence halibut fisheries, in January 2003, and NMFS published the final rule to implement subsistence halibut regulations in April 2003 (68 FR 18145). The Alaska Native tribe, Village of Kanatak is recognized in the regulations as an organized tribal entity with its tribal headquarters located in Egegik, Alaska within halibut regulatory area 3A. However, the tribe's headquarters are actually located in Wasilla, Alaska in halibut regulatory area 4E. The initial assignment of the tribal headquarters location to Egegik was incorrect.

The lists of rural communities and native tribes recommended by the Council and approved by the Secretary for subsistence fishing eligibility were derived from positive customary and traditional findings for halibut and bottomfish made by the Alaska State Board of Fisheries (BOF) prior to the Alaska Supreme Court decision, *McDowell v. State*, 785 P.2d 1 (Alaska 1989). The Council retains exclusive authority to recommend changes to the list of communities § 300.65(g)(1) and Alaska Native tribes § 300.65(g)(2) with customary and traditional uses of Pacific halibut. Residents and tribal members who believe that their rural or tribal place was incorrectly left out of the subsistence eligibility listing for

communities or Alaska Native tribes, or who are seeking eligibility for the first time, are encouraged to seek a customary and traditional finding from the BOF before petitioning the Council.

### The Proposed Action

In June 2007, the Council received a request from the Kanatak Tribal Council to have its fishing area corrected from Area 4E to Area 3A, because the current, erroneous, listing has prevented the same tribal members from participating in traditional subsistence fisheries. The Council recognized this difference and responded by recommending an amendment to § 300.65(g)(2) to change the listing for the Village of Kanatak's headquarters from Egegik to Wasilla and update the corresponding halibut regulatory area from Area 4E to Area 3A. The intent of the correction is to remove restrictions on individual participation by aligning the tribe's headquarters with its actual location in Wasilla.

Individual persons are eligible to harvest subsistence halibut if they are rural residents of a community or a member of an Alaska Native tribe with customary and traditional uses of halibut. Communities and tribes are listed in tables by Halibut Regulatory Areas at § 300.65(g)(1) and (2), respectively. A person subsistence fishing for halibut also must hold a valid Subsistence Halibut Area Registration Certificate (SHARC) in that person's name issued by NMFS. An individual holding a SHARC that resides in a rural area may harvest subsistence halibut in all waters in and off Alaska except for areas designated as non-subsistence areas. The four non-subsistence areas specified in regulation at § 300.65(h)(3) are the Ketchikan, Juneau, Anchorage/-Matsu/-Kenai, and Valdez non-subsistence areas (see Figures 2 through 5 to subpart E of part 300). Under this action, there would be no change to rural eligibility criteria to subsistence fish for halibut in any halibut regulatory area in waters in and off the State of Alaska.

A non-rural Alaska resident or a resident of another state who is a member of a tribe that is located in a rural area is limited to subsistence fishing for halibut only in his or her area of tribal membership (§ 300.65(h)(4)(i) and (ii)). The "area of tribal membership" is defined at § 300.65(h)(4)(iii) as "rural areas of the [IPHC] regulatory area or of the Bering Sea closed area in which the Alaska Native tribal headquarters is located." The area of tribal membership for the Kanatak tribe is currently Area 4E. The action would align the Village of Kanatak's tribal headquarters with its

actual location in Wasilla in Area 3A and effectively changes area restrictions on some members of the tribe to conduct subsistence halibut fishing. The proposed action is expected to redistribute some tribal members' harvesting effort from Area 4E to fishing areas in Area 3A. Waters in Area 3A include two non-subsistence areas that are closed to subsistence fishing: the Anchorage-Matsu-Kenai non-rural area and the Valdez non-rural area.

Moving the place of the Kanatak tribal headquarters to Wasilla is expected to increase customary and traditional uses of halibut by individual members of the tribe in Area 3A. Wasilla is a community in the Anchorage-Matsu-Kenai non-rural area within Area 3A where a majority of Kanatak tribal members reside. Non-rural and non-resident members of the Kanatak tribe may increase subsistence halibut use in Area 3A because they would have greater access to subsistence fishing areas through Anchorage, central Alaska's main transportation hub that is connected to road systems throughout much of Area 3A.

The action would improve accuracy of current regulations, and the quality of subsistence halibut information for non-rural tribal members, by correctly recognizing the location of the tribe's headquarters in Wasilla. This correction improves area specific data collected by the State of Alaska subsistence halibut survey and analyzed for reporting subsistence harvest and effort in Alaska.

### Classification

Regulations governing the U.S. fisheries for Pacific halibut are developed by the International Pacific Halibut Commission (IPHC), the Pacific Fishery Management Council, the North Pacific Fishery Management Council (Council), and the Secretary of Commerce. Section 5 of the Northern Pacific Halibut Act of 1982 (Halibut Act, 16 U.S.C. 773c) allows the Regional Council having authority for a particular geographical area to develop regulations governing the allocation and catch of halibut in U.S. Convention waters as long as those regulations do not conflict with IPHC regulations. The proposed action is consistent with the Council's authority to allocate halibut catches among fishery participants in the waters in and off Alaska.

Executive Order 13175 of November 6, 2000 (25 U.S.C. 450 note), the Executive Memorandum of April 29, 1994 (25 U.S.C. 450 note), and the American Indian and Alaska Native Policy of the U.S. Department of Commerce (March 30, 1995) outline the responsibilities of NMFS in matters

affecting tribal interests. Section 161 of Public Law (P.L.) 108-199 (188 Stat. 452), as amended by section 518 of P.L. 109-447 (118 Stat. 3267), extends the consultation requirements of E.O. 13175 to Alaska Native corporations. NMFS has special obligations to consult and coordinate with tribal governments and Alaska Native Claims Settlement Act (ANCSA) corporations on a government-to-government basis. This rule affects individual members of the Village of Kanatak tribe, but not the tribe itself, and the village of Kanatak is not recognized as an ANCSA corporation. NMFS recognizes the importance of communication and during the process of developing the proposed action, NMFS consulted with the Alaska Native Subsistence Halibut Working Group in December 2007 and the Kanatak Tribal Administrator in January 2008.

The proposed rule was determined to be not significant for the purposes of Executive Order (E.O.) 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this action, if adopted, would not have a significant economic impact on a substantial number of small entities.

### Basis and purpose of rule

The United States and Canada participate in the International Pacific Halibut Commission (IPHC) and promulgate regulations governing the Pacific halibut (*Hippoglossus stenolepis*) fishery under the authority of the Northern Pacific Halibut Act of 1982 (Halibut Act). Regulations governing the allocation and catch of halibut in U.S. convention waters that are in agreement with the Halibut Act may be developed by the North Pacific Fishery Management Council (Council). The Secretary of Commerce must approve regulations recommended by the Council before implementation by the National Marine Fisheries Service (NMFS). The Council prepared an environmental assessment/regulatory impact review (EA/RIR) for subsistence halibut fisheries, in January 2003, and NMFS published the final rule to implement subsistence halibut regulations in April 2003 (68 FR 18145). The Alaska Native tribe, Village of Kanatak is recognized in the regulations as an organized tribal entity with its tribal headquarters located in Egegik, Alaska within halibut regulatory area 3A. However, the tribe's headquarters are actually located in Wasilla, Alaska in halibut regulatory area 4E. The initial assignment of the tribal headquarters location to Egegik was incorrect.

In June 2007, the Council received a request from the Kanatak Tribal Council to have its fishing area corrected from Area 4E to Area 3A, because the current, erroneous, listing has prevented the same tribal members from participating in traditional subsistence fisheries. The Council recognized this difference and responded by

recommending an amendment to § 300.65(g)(2) to change the listing for the Village of Kanatak's headquarters from Egegik to Wasilla and update the corresponding halibut regulatory area from Area 4E to Area 3A. The intent of the correction is to remove restrictions on individual participation by aligning the tribe's headquarters with its actual location in Wasilla.

Individual persons are eligible to harvest subsistence halibut if they are rural residents of a community or a member of an Alaska Native tribe with customary and traditional uses of halibut. Communities and tribes are listed in tables by Halibut Regulatory Areas at § 300.65(g)(1) and (2), respectively. A person subsistence fishing for halibut also must hold a valid Subsistence Halibut Area Registration Certificate (SHARC) in that person's name issued by NMFS. An individual holding a SHARC that resides in a rural area may harvest subsistence halibut in all waters in and off Alaska except for areas designated as non-subsistence areas. The four non-subsistence areas specified in regulation at § 300.65(h)(3) are the Ketchikan, Juneau, Anchorage/-Matsu/-Kenai, and Valdez non-subsistence areas (see Figures 2 through 5 to subpart E of part 300). Under this action, there would be no change to rural eligibility criteria to subsistence fish for halibut in any halibut regulatory area in waters in and off the State of Alaska.

A non-rural Alaska resident or a resident of another state who is a member of a tribe that is located in a rural area is limited to subsistence fishing for halibut only in his or her area of tribal membership (§ 300.65(h)(4)(i) and (ii)). The "area of tribal membership" is defined at § 300.65(h)(4)(iii) as "rural areas of the [IPHC] regulatory area or of the Bering Sea closed area in which the Alaska Native tribal headquarters is located." The area of tribal membership for the Kanatak tribe is currently Area 4E. The action would align the Village of Kanatak's tribal headquarters with its actual location in Wasilla in Area 3A and effectively changes area restrictions on some members of the tribe to conduct subsistence halibut fishing. The proposed action is expected to redistribute some tribal members' harvesting effort from Area 4E to fishing areas in Area 3A. Waters in Area 3A include two non-subsistence areas that are closed to subsistence fishing: the Anchorage-Matsu-Kenai non-rural area and the Valdez non-rural area.

Moving the place of the Kanatak tribal headquarters to Wasilla is expected to increase customary and traditional uses of halibut by individual members of the tribe in Area 3A. Wasilla is a community in the Anchorage-Matsu-Kenai non-rural area within Area 3A where a majority of Kanatak tribal members reside. Non-rural and non-resident members of the Kanatak tribe may increase subsistence halibut use in Area 3A because they would have greater access to subsistence fishing areas through Anchorage, central Alaska's main transportation hub that is connected to road systems throughout much of Area 3A.

#### *Factual Basis for the Certification*

##### *Description and estimate of the number of small entities to which the rule applies*

The action would not directly regulate any small entities. Small entities have the same definition as small business, small organizations, and small government jurisdictions in Section 601(3)-(5) of the Regulatory Flexibility Act (RFA) of 1980. Instead, the action would directly regulate individual persons who are not considered small entities within the meaning of the RFA.

An individual member of the Village of Kanatak tribe would be directly regulated by the action if he or she is: (a) a non-rural resident of Alaska or a resident of a state other than Alaska; and (b) subsistence fishing for halibut (§ 300.65(h)(4)(i)-(iii)). Even though there are typically a number of individuals in a tribe they are regulated as individual persons and not collectively as evidenced by the distinction of residency. The Village of Kanatak would be the only Alaska Native tribe whose non-rural and non-resident members would be directly regulated by the proposed rule.

All of the persons that would be directly regulated by the action are natural persons. The subsistence halibut regulation at § 300.65(g)(2) specifies that "A person is eligible to harvest subsistence halibut if he or she is a member of an Alaska Native tribe with customary and traditional uses of halibut listed [in the table in this paragraph]." The Village of Kanatak is listed in the table and individual members of the tribe are recognized as natural persons eligible to harvest subsistence halibut. Moreover, all of the members of the Kanatak Tribe are natural persons as direct descendants of individuals counted in a census carried out in Kanatak in 1924 (Olivier, pers. comm.). The regulations further specify at § 300.61 that halibut caught for subsistence purposes are defined as halibut caught by a rural resident or a member of an Alaska Native tribe for direct personal or family consumption as food, sharing for personal or family consumption as food, or customary trade. While there is no clear requirement in the regulations that a "rural resident" or a "member of an Alaska Native tribe" be a natural person, the regulations clearly anticipate that they will be.

The definition of small entity, distinction of individual tribal members, and declaration of natural persons combined provide the factual basis for asserting no small entities are directly regulated by the action.

##### *Description and estimate of economic impact on small entities by entity size and industry*

No small entities are directly regulated by the proposed rule. Therefore, there are no economic impacts on directly regulated small entities.

##### *Criteria used to evaluate whether the rule would impose impacts on "a substantial number of small entities"*

The criteria used to determine whether or not small entities are directly regulated by this action are the definitions of a small business, small organization, small governmental jurisdiction, and small entity

in 601(3), (4), (5), and (6) of the RFA, and the definition of a business concern at 13 CFR 121.105.

##### *Criteria used to evaluate whether the rule would impose "significant economic impacts"*

Because this action will not directly regulate any small entities, no criteria were necessary to make a determination of whether or not the action would have significant economic impacts on directly regulated entities.

##### *Description of and basis for assumptions used*

The finding that no small entities would be directly regulated by this action is based on the definition of small entities in the RFA and implementing regulations, a determination that only individual members of the Kanatak Tribe would be directly regulated, and a determination that all individual tribal members are natural persons, and not entities, as contemplated by the statute and regulations. As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

Because there will not be a substantial impact on a significant number of small entities, an initial regulatory flexibility analysis is not required and none has been prepared.

#### **List of Subjects for 50 CFR Part 300**

Alaska, Alaska Natives, Fisheries, Fishing, Pacific halibut fisheries, Tribes.

Dated: July 29, 2008.

#### **Samuel D. Rauch III**

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

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

#### **PART 300—INTERNATIONAL FISHERIES REGULATIONS**

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 § 300.65, in paragraph (g)(2):

A. In the table for Halibut Regulatory Area 3A, add in alphabetical order an entry for "Wasilla".

B. In the table for Halibut Regulatory Area 4E, revise the entry for "Egegik".

The addition and revision read as follows.

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

*	*	*	*	*
(g)	*	*	*	
(2)	*	*	*	

**Halibut Regulatory Area 3A**

**Halibut Regulatory Area 4E**

Place with Tribal Headquarters	Organized Tribal Entity
*****	
Wasilla	Village of Kanatak
*****	

Place with Tribal Headquarters	Organized Tribal Entity
*****	
Egegik	Egegik Village
*****	

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