

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

Radio broadcasting.

Federal Communications Commission.

**John A. Karousos,***Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 98-5931 Filed 3-6-98; 8:45 am]

BILLING CODE 6712-01-P

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

[MM Docket No. 98-23, RM-9226]

**Radio Broadcasting Services; Bozeman, MT****AGENCY:** Federal Communications Commission.**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition filed by Bozeman Educational Access Radio proposing the allotment of Channel 240C3 to Bozeman, Montana, and the reservation of the channel for noncommercial educational use. The channel can be allotted to Bozeman without a site restriction at coordinates 45-40-48 and 111-02-18.

**DATES:** Comments must be filed on or before April 20, 1998, and reply comments on or before May 5, 1998.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: William R. Smith, President, Bozeman Educational Access Radio, Post Office Box 283, Bozeman, Montana 59771-0283.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 98-23, adopted February 18, 1998, and released February 27, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857-3800, facsimile (202) 857-3805.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

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

Radio broadcasting.

Federal Communications Commission.

**John A. Karousos,***Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 98-5936 Filed 3-6-98; 8:45 am]

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

[Docket No. 980225048-8048-01; I.D. 021898B]

RIN 0648-AK58

**Pacific Halibut Fisheries; Retention of Undersized Halibut in Regulatory Area 4E**

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

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

**SUMMARY:** NMFS issues a proposed rule that would allow the retention of undersized halibut (halibut less than 32 inches, 81.3 centimeters (cm) with the head on; or halibut less than 24 inches, 61 cm) caught with authorized commercial gear in International Pacific Halibut Commission (IPHC) Regulatory Area 4E for personal use. Commercial sale of undersized halibut would remain prohibited. This action is necessary to implement the recommendation of the North Pacific Fishery Management Council (Council) to allow the legal harvest of undersized halibut by persons using Community Development Quota (CDQ) in Regulatory Area 4E. This action is intended to provide for the continued existence of the customary and traditional food practices of indigenous inhabitants by allowing them to retain all halibut caught with deployed gear in Regulatory Area 4E.

**DATES:** Comments must be received by March 24, 1998.

**ADDRESSES:** Comments must be sent to Sue Salvesson, Assistant Administrator for Sustainable Fisheries, Sustainable Fisheries Division, Alaska Region, NMFS, 709 West 9th Street, Room 453, Juneau, AK 99801, or P.O. Box 21668, Juneau, AK 99802, Attention: Lori J. Gravel. Copies of the Environmental Assessment/Regulatory Impact Review (EA/RIR) for this action may be obtained from the above address.

**FOR FURTHER INFORMATION CONTACT:** John Lepore, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** The Convention between the United States and Canada for the Preservation of the Halibut Fishery of the North Pacific Ocean and the Bering Sea (Convention), signed at Ottawa, Ontario, Canada, on March 2, 1953, and amended by a Protocol Amending the Convention, signed at Washington, DC, United States of America, on March 29, 1979, authorizes the IPHC to promulgate regulations for the conservation and management of the Pacific halibut fishery. These regulations must be approved by the Secretary of State of the United States pursuant to section 4 of the Northern Pacific Halibut Act (Halibut Act, 16 U.S.C. 773-773k) that executes the above Convention. The Halibut Act, in section 5, provides that the Regional Fishery Management Council having authority for the geographical area concerned may recommend management measures governing Pacific halibut catch in U.S. Convention waters that are in addition to, but not in conflict with, regulations of the IPHC. Section 5 of the Halibut Act also provides that the Secretary of Commerce (Secretary) shall have the general responsibility to carry out the Convention between the United States and Canada and that the Secretary shall adopt such regulations as may be necessary to carry out the purposes and objectives of the Convention and the Halibut Act. The Secretary's authority has been delegated to the Assistant Administrator for Fisheries, NOAA (AA).

In 1996, the Council was requested by Alaska Native tribal organizations to review the prohibition on retaining undersized halibut caught with authorized commercial gear. This request was made on behalf of Western Alaska Natives who retained undersized halibut harvested along with CDQ halibut of commercial length. Traditionally, Western Alaska Natives of Yupik descent keep all fish caught and endeavor to utilize this fish to the fullest extent possible. This practice is in

keeping with their traditional belief that the fish, as well as the stock of fish to which a captured fish is returned, is irreparably harmed by its capture and release.

In September 1996, the Council received a NMFS report about enforcement issues related to halibut fishing practices of Western Alaska Natives. In October 1996, staff from the Council, NMFS, NOAA General Counsel, and the Alaska Department of Fish and Game met with Alaska Native tribal representatives to exchange information on the Council process for developing fishing regulations that would recognize traditional fishing customs. In December 1996, the Council established a Halibut Subsistence Committee (Committee) to review undersized halibut retention and other issues related to subsistence fishing for halibut. The Committee met in January 1997 and provided its recommendations to the Council in February 1997. After receiving the Committee's recommendations, the Council initiated preparation of an EA/RIR for a regulatory amendment to allow for subsistence fishing for halibut. In April 1997, the Council approved release of the EA/RIR for public review. In June 1997, although the Council tabled the majority of halibut subsistence issues until February 1998, it recommended that regulations be developed that would allow the retention of undersized halibut caught with authorized commercial gear in Regulatory Area 4E for personal use.

#### **Size limits for Pacific halibut in Area 4E**

Current regulations require that all undersized halibut caught with authorized commercial gear be released. This requirement conflicts with the customary and traditional halibut fishing practices of Western Alaska Natives of Yupik descent. The proposed action would revise current halibut fishing regulations to allow the retention of undersized halibut caught with authorized commercial gear in Regulatory Area 4E for personal use. Staff for the IPHC informed the Council that the IPHC would probably not object to the proposed action because the limited amount of removals retained for personal use from the commercial CDQ fishery in Regulatory Area 4E has little effect on the halibut resource. In 1997, the total allowable catch (TAC) of halibut for Regulatory Area 4E was 260,000 lb (117.9 mt). This amount was less than 3 percent of the combined TAC for Regulatory Area 4A through E (9,000,000 lb (4,082.3 mt), and less than .0005 percent of the combined TAC for

all regulatory areas in and off Alaska (53,000,000 lb) (24,040.4 mt). These percentages illustrate the negligible impact the retention of undersized halibut in Regulatory Area 4E would have on the stock.

Also, all halibut in Regulatory Area 4E are allocated to the CDQ Program, unlike other areas where the TAC is divided between the Individual Fishing Quota (IFQ) Program and the CDQ Program. The exclusive nature of the Regulatory Area 4E allocation will eliminate potential difficulties in distinguishing between IFQ and CDQ halibut when enforcing the minimum size limit for IFQ halibut.

At its annual meeting in Anchorage, AK during the week of January 26, 1998, the IPHC relaxed its existing regulations on the minimum size retention limit to allow CDQ fishers in Area 4E to land undersized halibut caught with commercial gear for subsistence use. This proposed rule would allow the retention of undersized halibut in Area 4E as recommended by the Council in accordance with the Halibut Act and adopted by the IPHC.

#### **Classification**

The Council prepared an EA/RIR for this rule that describes the management background, the purposes and need for action, the management action alternatives, and the environmental and the socio-economic impacts of the alternatives. A copy of the EA/RIR can be obtained from NMFS (see ADDRESSES).

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities as follows:

The proposed action would allow current Community Development Quota (CDQ) participants in Area 4E (88 fishermen), all of whom are small entities, to retain halibut that now must be discarded because of size limitations. This revision would provide a benefit to the 88 fishermen who participate in Area 4E CDQ fisheries. Without this revision, undersized halibut caught while prosecuting the CDQ halibut fishery in Area 4E would have to be discarded. This result would pose a hardship on Area 4E participants for two reasons. First, most participants are indigenous inhabitants of Yupik descent who believe that discarding fish captured indicates ingratitude to the causal agent that provided the fish. Second, most participants live a subsistence lifestyle and could use discarded fish for personal use. Allowing participants to keep undersized halibut during the prosecution of CDQ fisheries reduces the need for these

same participants to prosecute a separate subsistence fishery for personal use fish. This proposed action would have no effect on participants fishing in other regulatory areas or other fisheries.

As a result, a regulatory flexibility analysis was not prepared.

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

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

Fisheries, Fishing, Reporting and recordkeeping requirements, Treaties.

Dated: March 3, 1998.

**Rolland A. Schmittin,**

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

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

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

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

**Authority:** 16 U.S.C. 773 *et seq.*; 16 U.S.C. 951–961 and 971 *et seq.*; 16 U.S.C. 973–973r; 16 U.S.C. 2431 *et seq.*; 16 U.S.C. 3371–3378 *et seq.*; 16 U.S.C. 3636(b); 16 U.S.C. 5501 *et seq.*; and 16 U.S.C. 1801 *et seq.*

2. In § 300.63, paragraph (c) is proposed to be added to read as follows:

#### **§ 300.63 Catch sharing plans and domestic management measures.**

\* \* \* \* \*

(c) A person may take and retain halibut in Area 4E that are smaller than the size limit specified in the annual management measures published pursuant to § 300.62, provided that no person may sell or barter such halibut.

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#### **DEPARTMENT OF COMMERCE**

#### **National Oceanic and Atmospheric Administration**

#### **50 CFR Part 600**

[030398C]

#### **Magnuson Act Provisions; Essential Fish Habitat**

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

**ACTION:** Proposed recommendations for Essential Fish Habitat; notice of public hearings and request for public comments.

**SUMMARY:** NMFS requests public comments on proposed