

for any such shipment that, on the date of publication, was in transit to the United States on board a vessel operating as a common carrier.

(4) *Removal of import restrictions.* Upon a determination by the Secretary of Commerce that an identified nation that was not certified positively has satisfactorily met the conditions in this subpart and that nation has been positively certified, the provisions of § 300.205 shall no longer apply. The Secretary of Commerce, with the concurrence of the Secretary of State and in cooperation with the Secretary of Treasury, will notify such nations and will file with the Office of the Federal Register for publication notification of the removal of the import restrictions effective on the date of publication.

**§ 300.206 Alternative procedures for IUU fishing activities.**

(a) The alternative procedures in this section apply to the certification of fish or fish products from a nation identified under § 300.202 in the event that the Secretary cannot reach a certification determination for such identified nation by the time of the next biennial report. These alternative procedures shall not apply to fish or fish products from identified nations that have received either a negative or a positive certification under this subpart. Under these alternative procedures, the Secretary of Commerce may allow entry of fish or fish products on a shipment-by-shipment, shipper-by-shipper, or other basis as long as the following conditions are met.

(b) To qualify for the alternative certification procedures, NMFS must determine that:

(1) The vessel has not engaged in IUU fishing in violation of an international fishery management agreement to which the U.S. is a party; or

(2) The vessel is not identified by an international fishery management organization as participating in IUU fishing activities.

(c) Fish or fish products offered for entry under this section must be accompanied by a completed documentation of admissibility form, which is available from NMFS. Such documentation must be submitted to NMFS by electronic facsimile (fax), or once available, via the Internet, to a number or website designated by NMFS. The documentation of admissibility must be executed by a duly authorized official of the country named in the finding and the documentation of admissibility must be validated by a responsible official(s) designated by NMFS.

**§ 300.207 Alternative procedures for bycatch of PLMRs.**

(a) The alternative procedures in this section apply to the certification of fish or fish products from a nation identified under § 300.203 in the event that the Secretary cannot reach a certification determination for such identified nation by the time of the next biennial report. These alternative procedures shall not apply to fish or fish products from identified nations that have received either a negative or a positive certification under this subpart. Under these alternative procedures, the Secretary of Commerce may allow entry of fish or fish products on a shipment-by-shipment, shipper-by-shipper, or other basis as long as the following conditions are met.

(b) To qualify for the alternative certification procedures, NMFS must determine that imports were harvested by practices that do not result in bycatch of a protected marine species, or were harvested by practices that:

(1) Are comparable to those of the United States, taking into account different conditions, and which, in the case of pelagic longline fisheries, the regulatory program of an identified nation includes mandatory use of circle hooks, careful handling and release equipment, and training and observer programs; and

(2) Include the gathering of species specific data that can be used to support international and regional stock assessments and conservation efforts for protected living marine resources.

(c) Fish or fish products offered for entry under this section must be accompanied by a completed documentation of admissibility form, which is available from NMFS. Such documentation must be submitted to NMFS by electronic facsimile (fax), or once available, via the Internet, to a number or website designated by NMFS. The documentation of admissibility must be executed by a duly authorized official of the country named in the finding and the documentation of admissibility must be validated by a responsible official(s) designated by NMFS.

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 300**

[Docket No. 0812311655-81657-01]

**RIN 0648-AX44**

**Pacific Halibut Fisheries; Catch Sharing Plan**

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

**ACTION:** Proposed rule.

**SUMMARY:** NMFS proposes to approve and implement changes to the Pacific Halibut Catch Sharing Plan (Plan) for the International Pacific Halibut Commission's (IPHC or Commission) regulatory Area 2A off Washington, Oregon, and California (Area 2A). NMFS proposes to implement the portions of the Plan and management measures that are not implemented through the IPHC, which includes tribal regulations and the sport fishery allocations and management measures for Area 2A. These actions are intended to enhance the conservation of Pacific halibut, to provide greater angler opportunity where available, and to protect yelloweye rockfish and other overfished groundfish species from being incidentally caught in the halibut fisheries.

**DATES:** Comments on the proposed changes to the Plan and on the proposed domestic Area 2A halibut management measures must be received no later than 5 p.m., local time on February 1, 2009.

**ADDRESSES:** Copies of the Plan and Regulatory Impact Review (RIR)/Initial Regulatory Flexibility Analysis (IRFA) are available from D. Robert Lohn, Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115-0070. Electronic copies of the Plan, including proposed changes for 2009, and of the draft RIR/IRFA are also available at the NMFS Northwest Region website: <http://www.nwr.noaa.gov>, click on "Groundfish & Halibut."

You may submit comments, identified by RIN 0648-AX44, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal <http://www.regulations.gov>
- Fax: 206-526-6736, Attn: Sarah Williams.
- Mail: D. Robert Lohn, Administrator, Northwest Region,

NMFS, Attn: Sarah Williams, 7600 Sand Point Way NE, Seattle, WA 98115-0070.

Instructions: All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, 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 will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

**FOR FURTHER INFORMATION CONTACT:**  
Sarah Williams, telephone (206)526-4646.

**SUPPLEMENTARY INFORMATION:** The Northern Pacific Halibut Act (Halibut Act) of 1982, at 16 U.S.C. 773c, gives the Secretary of Commerce (Secretary) general responsibility for implementing the provisions of the Halibut Convention between the United States and Canada (Halibut Convention). It requires the Secretary to adopt regulations as may be necessary to carry out the purposes and objectives of the Halibut Convention and the Halibut Act. Section 773c of the Halibut Act authorizes the regional fishery management councils to develop regulations governing the Pacific halibut catch in their corresponding U.S. Convention waters that are in addition to, but not in conflict with, regulations of the IPHC. Each year between 1988 and 1995, the Pacific Fishery Management Council (Pacific Council) developed a catch sharing plan in accordance with the Halibut Act to allocate the total allowable catch (TAC) of Pacific halibut between treaty Indian and non-treaty harvesters and among non-treaty commercial and sport fisheries in Area 2A.

In 1995, NMFS implemented the Pacific Council-recommended long-term Plan (60 FR 14651, March 20, 1995). In each of the intervening years between 1995 and the present, minor revisions to the Plan have been made to adjust for the changing needs of the fisheries. The Plan allocates 35 percent of the Area 2A TAC to Washington treaty Indian tribes in Subarea 2A-1 and 65 percent to non-tribal fisheries in Area 2A.

The allocation to non-tribal fisheries is divided into three shares, with the Washington sport fishery (north of the Columbia River) receiving 36.6 percent, the Oregon/California sport fishery

receiving 31.7 percent, and the commercial fishery receiving 31.7 percent. The commercial fishery is further divided into a directed commercial fishery that is allocated 85 percent of the commercial allocation and an incidental catch in the salmon troll fishery that is allocated 15 percent of the commercial allocation. The directed commercial fishery in Area 2A is confined to southern Washington (south of 46°53.30' N. lat.), Oregon, and California. North of 46°53.30' N. lat. (Pt. Chehalis), the Plan allows for incidental halibut retention in the primary limited entry longline sablefish fishery when the overall Area 2A TAC is above 900,000 lb (408.2 mt). The Plan also divides the sport fisheries into six geographic subareas, each with separate allocations, seasons, and bag limits.

The Area 2A TAC will be set by the IPHC at its annual meeting on January 13-16, 2009, in Vancouver, BC. Preliminary estimates of the Area 2A TAC are lower than the 2008 TAC. NMFS requests public comments on the Pacific Council's recommended modifications to the Plan and the proposed domestic fishing regulations by February 6, 2009. This allows the public the opportunity to consider the final Area 2A TAC before submitting comments on the proposed rule. The States of Washington and Oregon will conduct public workshops shortly after the IPHC meeting to obtain input on the sport season dates. After the final Area 2A TAC is known and after NMFS reviews public comments and comments from the states, NMFS will issue a final rule for the Area 2A Pacific halibut fisheries concurrent with its publication of the IPHC regulations for the 2009 Pacific halibut fisheries.

#### **Pacific Council Recommended Changes to the Plan and Domestic Fishing Regulations**

Each year, the states (Washington Department of Fish and Wildlife (WDFW) and Oregon Department of Fish and Wildlife (ODFW)) and the tribes with treaty fishing rights for halibut consider whether changes to the Plan are needed or desired by their fishery participants. Fishery managers from the states hold public meetings before both the September and November Pacific Council meetings to get public input on revisions to the Plan. At the September 2008 Pacific Council meeting, NMFS, WDFW and ODFW recommended several changes to the Plan, and the tribes announced that they had no proposals for revising the Plan in 2009. Following the meeting, the states again reviewed their proposals with the public and drafted their

recommended revisions for review and recommendation by the Pacific Council.

At its November 3-7, 2008, meeting in San Diego, CA, the Pacific Council considered the results of state-sponsored workshops on the proposed changes to the Plan, NMFS-proposed changes to the Plan, and public comments, and made final recommendations for modifications to the Plan and implementing regulations as follows:

1. Remove the provision that divides the Washington North Coast subarea quota between May and June;

2. Change the Washington North Coast subarea to a 2-day per week fishery, Thursday and Saturday, from a 3-day per week fishery;

3. Change the June re-opening date in the Washington North Coast subarea to the first Thursday in June, from the status-quo of the first Tuesday and Thursday after June 16;

4. Clarify that the nearshore set-aside in the Washington South Coast subarea is 10 percent of the subquota, or 2,000 pounds, whichever is less, rather than a straight 10 percent of the subquota;

5. Set the Washington South Coast subarea to open the first Sunday in May and continue to be open on Sundays and Tuesdays in May, except that beginning the third week in May the fishery would be open on Sunday only until the quota for the primary season is reached. Under status-quo the fishery was open 2 days a week until the quota was achieved;

6. Set the nearshore fishery in the Washington South Coast subarea as a 3-day per week fishery, open Thursday, Friday, and Saturday, in addition to days on which the primary fishery is open, during the primary season. After the primary season, the nearshore fishery is open Thursday through Sunday. Under status-quo the nearshore fishery was open only after the primary fishery was closed, leaving a large amount of unfished quota, in 2008 only 158 pounds out of the 4460 pound quota was caught;

7. Specify that in addition to the South Coast Yelloweye Rockfish Conservation Area (YRCA), recreational fishing for groundfish and halibut will be prohibited in the newly created Westport Offshore YRCA;

8. Change the Columbia River subarea spring fishery to a 3-day per week fishery, open Thursday, Friday and Saturday, until 70 percent of the subarea allocation is taken or until the third Sunday in July, whichever is earlier. Under status-quo this was a 7-day per week fishery;

9. Specify that in the Oregon Central Coast subarea Pacific cod may be

retained with a halibut on the vessel during the all-depth openings. Under status-quo Pacific cod retention was not allowed. The change is intended to make retention consistent in the areas north and south of Cape Falcon and Pacific cod are rarely encountered south of Cape Falcon;

10. Add the Nooksack tribe to the definition of "Treaty Indian tribes" in the Federal regulations;

11. Add the Nooksack tribal fishing area boundaries to the Federal regulations.

#### Proposed Changes to the Plan

NMFS is proposing to approve the Pacific Council recommendations and to implement the above-described changes by making the following changes to the current Plan, which can be found at <http://www.nwr.noaa.gov/Groundfish-Halibut/Pacific-Halibut/Index.cfm>:

In section (f) of the Plan, Sport Fisheries, revise section (1)(ii), Washington north coast subarea, to read as follows:

This sport fishery subarea is allocated 62.2 percent of the first 130,845 lb (59.4 mt) allocated to the Washington sport fishery, and 32 percent of the Washington sport allocation between 130,845 lb (59.4 mt) and 224,110 lb (101.7 mt) except as provided in section (e)(3) of this Plan. This subarea is defined as all U.S. waters west of the mouth of the Sekiu River, as defined above in paragraph (f)(1)(i), and north of the Queets River (47°31.70' N. lat.). The management objective for this subarea is to provide a quality recreational fishing opportunity during May and June. The fishery will open on the first Thursday between May 9 and 15, and continue 2 days per week (Thursday, and Saturday) in May as scheduled pre-season, unless there is a quota management closure. If there is no quota management closure in May, the fishery will reopen on the first Thursday of June as an all depth fishery on Thursdays and Saturdays as long as sufficient quota remains. This schedule allows adequate public notice of any inseason action before each Thursday opening. If there is not sufficient quota for an all-depth day, the fishery would reopen in the nearshore areas described below:

A. WDFW Marine Catch Area 4B, which is all waters west of the Sekiu River mouth, as defined by a line extending from 48°17.30' N. lat., 124°23.70' W. long. north to 48°24.10' N. lat., 124°23.70' W. long., to the Bonilla-Tatoosh line, as defined by a line connecting the light on Tatoosh Island, WA, with the light on Bonilla Point on Vancouver Island, British Columbia (at 48°35.73' N. lat.,

124°43.00' W. long.) south of the International Boundary between the U.S. and Canada (at 48° 29.62' N. lat., 124° 43.55' W. long.), and north of the point where that line intersects with the boundary of the U.S. territorial sea.

B. Shoreward of the recreational halibut 30-fm boundary line, a modified line approximating the 30 fm depth contour from the Bonilla-Tatoosh line south to the Queets River. Coordinates for the closed area will be specifically defined annually in Federal halibut regulations published in the **Federal Register**.

No sport fishing for halibut is allowed after September 30. If the fishery is closed prior to September 30, and there is insufficient quota remaining to reopen the nearshore areas for another fishing day, then any remaining quota may be transferred inseason to another Washington coastal subarea by NMFS via an update to the recreational halibut hotline. The daily bag limit in all fisheries is one halibut per person with no size limit.

Recreational fishing for groundfish and halibut is prohibited within the North Coast Recreational Yelloweye Rockfish Conservation Area (YRCA). The North Coast Recreational YRCA is a C-shaped area off the northern Washington coast and is defined by straight lines connecting latitude and longitude coordinates. Coordinates for the North Coast Recreational YRCA are specified in groundfish regulations at 50 CFR 660.390 and will be specifically defined annually in federal halibut regulations published in the **Federal Register**.

In section (f) of the Plan, Sport Fisheries, revise section (iii), Washington south coast subarea, to read as follows: This sport fishery is allocated 12.3 percent of the first 130,845 lb (59.4 mt) allocated to the Washington sport fishery, and 32 percent of the Washington sport allocation between 130,845 lb (59.4 mt) and 224,110 lb (101.7 mt) (except as provided in section (e) (3) of this Plan). This subarea is defined as waters south of the Queets River (47°31.70' N. lat.) and north of Leadbetter Point (46°38.17' N. lat.). The structuring objective for this subarea is to maximize the season length, while maintaining a quality fishing experience. The south coast subarea quota will be allocated as follows: 10% or 2,000 pounds, whichever is less, will be set aside for the nearshore fishery with the remaining amount allocated to the primary fishery. The fishery will open on the first Sunday in May. The primary fishery will be open two days per week, Sunday and Tuesday, in all areas,

except where prohibited. Starting the third week in May, the primary fishery will be open on Sundays only until the quota for the primary fishery season is reached or September 30, whichever is earlier. If there is insufficient quota remaining to reopen the primary fishery for another fishing day, the remaining primary fishery quota will be added to the nearshore quota. The nearshore fishery takes place, in the area from 47°25.00' N. lat. south to 46°58.00' N. lat. and east of 124°30.00' W. long. During the primary season the nearshore fishery will be open three days per week, Thursday, Friday and Saturday, in addition to any days on which the primary fishery is open. Subsequent to the closure of the primary fishery, the nearshore fishery will continue on Thursdays, Fridays, Saturdays and Sundays until the remaining quota is projected to be taken. If the fishery is closed prior to September 30, and there is insufficient quota remaining to reopen the nearshore areas for another fishing day, then any remaining quota may be transferred inseason to another Washington coastal subarea by NMFS via an update to the recreational halibut hotline. The daily bag limit is one halibut per person, with no size limit.

Recreational fishing for groundfish and halibut is prohibited within two YRCAs off Washington's southern coast. The South Coast Recreational YRCA and the Westport Offshore YRCA are defined by straight lines connecting latitude and longitude coordinates. Coordinates for these Recreational YRCAs are specified in groundfish regulations at 50 CFR 660.390 and will be specifically defined annually in Federal halibut regulations published in the **Federal Register**.

In section (f) of the Plan, Sport Fisheries, revise the fourth sentence of section (iv), Columbia River subarea, to read as follows: The fishery will open on the first Thursday in May or May 1 if it is a Friday or Saturday, 3 days per week, Thursday through Saturday until 70 percent of the subarea allocation is taken or until the third Sunday in July, whichever is earlier.

In section (f) of the Plan, Sport Fisheries, revise the last sentence in the first paragraph in section (v), Oregon central coast, to read as follows: During days open to all-depth halibut fishing, no groundfish may be taken and retained, possessed or landed, except sablefish and Pacific cod when allowed by groundfish regulations, if halibut are on board the vessel.

#### Proposed 2008 Sport Fishery Management Measures

NMFS is proposing sport fishery management measures that are

necessary to implement the Plan in 2009. The 2009 TAC for Area 2A will be determined by the IPHC at its annual meeting on January 13–16, 2009, in Vancouver, BC. Because the final 2009 TAC has not yet been determined, these proposed sport fishery management measures use the IPHC staff's preliminary 2009 Area 2A TAC recommendation of 860,000 lb (390 mt), which is lower than the 2008 TAC of 1,220,000 lb (553 mt). Where season dates are not indicated, those dates will be provided in the final rule, following determination of the 2009 TAC and consultation with the states and the public. In Section 8 of the annual domestic management measures, "Fishing Periods", paragraph (2) is proposed to read as follows:

(1) \* \* \*

(2) Each fishing period in the Area 2A directed fishery shall begin at 0800 hours and terminate at 1800 hours local time on (*insert season dates*) unless the Commission specifies otherwise.

In section 26 of the annual domestic management measures, "Sport Fishing for Halibut," paragraph 1(a)-(b) will be updated with 2009 total allowable catch limits in the final rule. In section 26 of the annual domestic management measures, "Sport Fishing for Halibut" paragraph (8) is proposed to read as follows:

(8) \* \* \*

(a) The area in Puget Sound and the U.S. waters in the Strait of Juan de Fuca, east of a line extending from 48°17.30' N. lat., 124°23.70' W. long. north to 48°24.10' N. lat., 124°23.70' W. long., is not managed in-season relative to its quota. This area is managed by setting a season that is projected to result in a catch of 54,384 lb (24.6 mt).

(i) The fishing season in eastern Puget Sound (east of 123°49.50' W. long., Low Point) is (*insert season dates*), and the fishing season in western Puget Sound (west of 123°49.50' W. long., Low Point) is (*insert season dates*), 5 days a week (Thursday through Monday).

(ii) The daily bag limit is one halibut of any size per day per person.

(b) The quota for landings into ports in the area off the north Washington coast, west of the line described in paragraph (2)(a) of section 26 and north of the Queets River (47°31.70' N. lat.), is 104,985 lb (92.8 mt).

(i) The fishing seasons are:

(A) Commencing on May 14 and continuing 2 days a week (Thursday, and Saturday) until 104,985 lb (92.8 mt) are estimated to have been taken and the season is closed by the Commission or until May 24.

(B) If sufficient quota remains the fishery will reopen on June 4 in the

entire north coast subarea, continuing 2 days per week (Thursday and Saturday) until there is not sufficient quota for another full day of fishing and the area is closed by the Commission. When there is insufficient quota remaining to reopen the entire north coast subarea for another day, then the nearshore areas described below will reopen for 2 days per week (Thursday and Saturday), until the overall quota of 104,985 lb (92.8 mt) is estimated to have been taken and the area is closed by the Commission, or until September 30, whichever is earlier. After May 24, any fishery opening will be announced on the NMFS hotline at 800-662-9825. No halibut fishing will be allowed after May 24 unless the date is announced on the NMFS hotline. The nearshore areas for Washington's North Coast fishery are defined as follows:

(1) WDFW Marine Catch Area 4B, which is all waters west of the Sekiu River mouth, as defined by a line extending from 48°17.30' N. lat., 124°23.70' W. long. north to 48°24.10' N. lat., 124°23.70' W. long., to the Bonilla-Tatoosh line, as defined by a line connecting the light on Tatoosh Island, WA, with the light on Bonilla Point on Vancouver Island, British Columbia (at 48°35.73' N. lat., 124°43.00' W. long.) south of the International Boundary between the U.S. and Canada (at 48°29.62' N. lat., 124°43.55' W. long.), and north of the point where that line intersects with the boundary of the U.S. territorial sea.

(2) Shoreward of the recreational halibut 30-fm boundary line, a modified line approximating the 30-fm depth contour from the Bonilla-Tatoosh line south to the Queets River. The recreational halibut 30-fm boundary line is defined by the following coordinates in the order listed:

(1) 48°24.79' N. lat., 124°44.07' W. long.;

(2) 48°24.80' N. lat., 124°44.74' W. long.;

(3) 48°23.94' N. lat., 124°44.70' W. long.;

(4) 48°23.51' N. lat., 124°45.01' W. long.;

(5) 48°22.59' N. lat., 124°44.97' W. long.;

(6) 48°21.75' N. lat., 124°45.26' W. long.;

(7) 48°21.23' N. lat., 124°47.78' W. long.;

(8) 48°20.32' N. lat., 124°49.53' W. long.;

(9) 48°16.72' N. lat., 124°51.58' W. long.;

(10) 48°10.00' N. lat., 124°52.58' W. long.;

(11) 48°05.63' N. lat., 124°52.91' W. long.;

(12) 47°56.25' N. lat., 124°52.57' W. long.;

(13) 47°40.28' N. lat., 124°40.07' W. long.; and

(14) 47°1.70' N. lat., 124°37.03' W. long.

(ii) The daily bag limit is one halibut of any size per day per person.

(iii) Recreational fishing for groundfish and halibut is prohibited within the North Coast Recreational Yelloweye Rockfish Conservation Area (YRCA). It is unlawful for recreational fishing vessels to take and retain, possess, or land halibut taken with recreational gear within the North Coast Recreational YRCA. A vessel fishing in the North Coast Recreational YRCA may not be in possession of any halibut. Recreational vessels may transit through the North Coast Recreational YRCA with or without halibut on board. The North Coast Recreational YRCA is a C-shaped area off the northern Washington coast intended to protect yelloweye rockfish. The North Coast Recreational YRCA is defined by straight lines connecting the following specific latitude and longitude coordinates in the order listed:

(1) 48°18.00' N. lat.; 125°18.00' W. long.;

(2) 48°18.00' N. lat.; 124°59.00' W. long.;

(3) 48°11.00' N. lat.; 124°59.00' W. long.;

(4) 48°11.00' N. lat.; 125°11.00' W. long.;

(5) 48°04.00' N. lat.; 125°11.00' W. long.;

(6) 48°04.00' N. lat.; 124°59.00' W. long.;

(7) 48°00.00' N. lat.; 124°59.00' W. long.;

(8) 48°00.00' N. lat.; 125°18.00' W. long.;

and connecting back to 48°18.00' N. lat.; 125°18.00' W. long.

(c) The quota for landings into ports in the area between the Queets River, WA (47°31.70' N. lat.) and Leadbetter Point, WA (46°38.17' N. lat.), is 39,694 lb (18 mt).

(i) This subarea is divided between the all-waters fishery (the Washington South coast primary fishery), and the incidental nearshore fishery in the area from 47°25.00' N. lat. south to 46°58.00' N. lat. and east of 124°30.00' W. long. (the Washington South coast, northern nearshore area). The south coast subarea quota will be allocated as follows: 37,693 lb (17.1 mt), for the primary fishery, and 2,000 lb (1.8 mt), for the nearshore fishery. The primary fishery commences on May 3 and continues 2 days a week (Sunday and Tuesday) until May 24. Beginning on May 24 the primary fishery will be open 1 day per

week (Sunday) until the quota for the south coast subarea primary fishery is taken and the season is closed by the Commission, or until September 30, whichever is earlier. The fishing season in the nearshore area commences on May 3 and, during the primary season, continues 3 days a week (Thursday, Friday and Saturday) in addition to the days open in the primary fishery. Subsequent to closure of the primary fishery the nearshore fishery is open on Thursdays, Fridays, Saturdays and Sundays, until 39,694 lb (18 mt) is projected to be taken by the two fisheries combined and the fishery is closed by the Commission or September 30, whichever is earlier. If the fishery is closed prior to September 30, and there is insufficient quota remaining to reopen the northern nearshore area for another fishing day, then any remaining quota may be transferred in-season to another Washington coastal subarea by NMFS via an update to the recreational halibut hotline.

(ii) The daily bag limit is one halibut of any size per day per person.

(iii) Recreational fishing for groundfish and halibut is prohibited within the South Coast Recreational YRCA and Westport Offshore YRCA. It is unlawful for recreational fishing vessels to take and retain, possess, or land halibut taken with recreational gear within the South Coast Recreational YRCA and Westport Offshore YRCA. A vessel fishing in the South Coast Recreational YRCA and/or Westport Offshore YRCA may not be in possession of any halibut. Recreational vessels may transit through the South Coast Recreational YRCA and Westport Offshore YRCA with or without halibut on board. The South Coast Recreational YRCA and Westport Offshore YRCA are areas off the southern Washington coast intended to protect yelloweye rockfish. The South Coast Recreational YRCA is defined by straight lines connecting the following specific latitude and longitude coordinates in the order listed:

- (1) 46°58.00' N. lat., 124°48.00' W. long.;
  - (2) 46°55.00' N. lat., 124°48.00' W. long.;
  - (3) 46°55.00' N. lat., 124°49.00' W. long.;
  - (4) 46°58.00' N. lat., 124°49.00' W. long.;
- and connecting back to 46°58.00' N. lat., 124°48.00' W. long.

The Westport Offshore YRCA is defined by straight lines connecting the following specific latitude and longitude coordinates in the order listed:

- (1) 46°54.30' N. lat., 124°53.40' W. long.;
  - (2) 46°54.30' N. lat., 124°51.00' W. long.;
  - (3) 46°53.30' N. lat., 124°51.00' W. long.;
  - (4) 46°53.30' N. lat., 124°53.40' W. long.;
- and connecting back to 46°54.30' N. lat., 124°53.40' W. long.

(d) The quota for landings into ports in the area between Leadbetter Point, WA (46°38.17' N. lat.) and Cape Falcon, OR (45°46.00' N. lat.), is 14,427 lb (6.5 mt).

(i) The fishing season commences on May 1, and continues 3 days a week (Thursday, Friday and Saturday) until 10,099 lb (4.6 mt) are estimated to have been taken and the season is closed by the Commission or until July 19, whichever is earlier. The fishery will reopen on August 7 and continue 3 days a week (Friday through Sunday) until 4,328 lb (1.96 mt) have been taken and the season is closed by the Commission, or until September 30, whichever is earlier. Subsequent to this closure, if there is insufficient quota remaining in the Columbia River subarea for another fishing day, then any remaining quota may be transferred in-season to another Washington and/or Oregon subarea by NMFS via an update to the recreational halibut hotline. Any remaining quota would be transferred to each state in proportion to its contribution.

(ii) The daily bag limit is one halibut of any size per day per person.

(iii) Pacific Coast groundfish may not be taken and retained, possessed or landed, except sablefish and Pacific cod when allowed by Pacific Coast groundfish regulations, when halibut are on board the vessel.

(e) The quota for landings into ports in the area off Oregon between Cape Falcon (45°46.00' N. lat.) and Humbug Mountain (42°40.50' N. lat.), is 163,027 lb (73.94 mt).

(i) The fishing seasons are:

(A) The first season (the "inside 40-fm" fishery) commences May 1 and continues 7 days a week through October 31, in the area shoreward of a boundary line approximating the 40-fm (73-m) depth contour, or until the sub-quota for the central Oregon "inside 40-fm" fishery (13,042 lb 5.9 mt) or any in-season revised subquota is estimated to have been taken and the season is closed by the Commission, whichever is earlier. The boundary line approximating the 40-fm (73-m) depth contour between 45°46.00' N. lat. and 42°40.50' N. lat. is defined by straight lines connecting all of the following points in the order stated:

- (1) 45°46.00' N. lat., 124°04.49' W. long.;
- (2) 45°44.34' N. lat., 124°05.09' W. long.;
- (3) 45°40.64' N. lat., 124°04.90' W. long.;
- (4) 45°33.00' N. lat., 124°04.46' W. long.;
- (5) 45°32.27' N. lat., 124°04.74' W. long.;
- (6) 45°29.26' N. lat., 124°04.22' W. long.;
- (7) 45°20.25' N. lat., 124°04.67' W. long.;
- (8) 45°19.99' N. lat., 124°04.62' W. long.;
- (9) 45°17.50' N. lat., 124°04.91' W. long.;
- (10) 45°11.29' N. lat., 124°05.19' W. long.;
- (11) 45°05.79' N. lat., 124°05.40' W. long.;
- (12) 45°05.07' N. lat., 124°05.93' W. long.;
- (13) 45°03.83' N. lat., 124°06.47' W. long.;
- (14) 45°01.70' N. lat., 124°06.53' W. long.;
- (15) 44°58.75' N. lat., 124°07.14' W. long.;
- (16) 44°51.28' N. lat., 124°10.21' W. long.;
- (17) 44°49.49' N. lat., 124°10.89' W. long.;
- (18) 44°44.96' N. lat., 124°14.39' W. long.;
- (19) 44°43.44' N. lat., 124°14.78' W. long.;
- (20) 44°42.27' N. lat., 124°13.81' W. long.;
- (21) 44°41.68' N. lat., 124°15.38' W. long.;
- (22) 44°34.87' N. lat., 124°15.80' W. long.;
- (23) 44°33.74' N. lat., 124°14.43' W. long.;
- (24) 44°27.66' N. lat., 124°16.99' W. long.;
- (25) 44°19.13' N. lat., 124°19.22' W. long.;
- (26) 44°15.35' N. lat., 124°17.37' W. long.;
- (27) 44°14.38' N. lat., 124°17.78' W. long.;
- (28) 44°12.80' N. lat., 124°17.18' W. long.;
- (29) 44°09.23' N. lat., 124°15.96' W. long.;
- (30) 44°08.38' N. lat., 124°16.80' W. long.;
- (31) 44°08.30' N. lat., 124°16.75' W. long.;
- (32) 44°01.18' N. lat., 124°15.42' W. long.;
- (33) 43°51.60' N. lat., 124°14.68' W. long.;
- (34) 43°42.66' N. lat., 124°15.46' W. long.;
- (35) 43°40.49' N. lat., 124°15.74' W. long.;

(36) 43°38.77' N. lat., 124°15.64' W. long.;

(37) 43°34.52' N. lat., 124°16.73' W. long.;

(38) 43°28.82' N. lat., 124°19.52' W. long.;

(39) 43°23.91' N. lat., 124°24.28' W. long.;

(40) 43°20.83' N. lat., 124°26.63' W. long.;

(41) 43°17.96' N. lat., 124°28.81' W. long.;

(42) 43°16.75' N. lat., 124°28.42' W. long.;

(43) 43°13.98' N. lat., 124°31.99' W. long.;

(44) 43°13.71' N. lat., 124°33.25' W. long.;

(45) 43°12.26' N. lat., 124°34.16' W. long.;

(46) 43°10.96' N. lat., 124°32.34' W. long.;

(47) 43°05.65' N. lat., 124°31.52' W. long.;

(48) 42°59.66' N. lat., 124°32.58' W. long.;

(49) 42°54.97' N. lat., 124°36.99' W. long.;

(50) 42°53.81' N. lat., 124°38.58' W. long.;

(51) 42°50.00' N. lat., 124°39.68' W. long.;

(52) 42°49.14' N. lat., 124°39.92' W. long.;

(53) 42°46.47' N. lat., 124°38.65' W. long.;

(54) 42°45.60' N. lat., 124°39.04' W. long.;

(55) 42°44.79' N. lat., 124°37.96' W. long.;

(56) 42°45.00' N. lat., 124°36.39' W. long.;

(57) 42°44.14' N. lat., 124°35.16' W. long.;

(58) 42°42.15' N. lat., 124°32.82' W. long.; and

(59) 42°40.50' N. lat., 124°31.98' W. long.;

(B) The second season (spring season), which is for the “all-depth” fishery, is open on (*insert dates beginning with May 1*). The projected catch for this season is 112,488 lb (51 mt). If sufficient unharvested catch remains for additional fishing days, the season will re-open. Dependent on the amount of unharvested catch available, the potential season re-opening dates will be: (*insert dates no later than July 31*). If NMFS decides in-season to allow fishing on any of these re-opening dates, notice of the re-opening will be announced on the NMFS hotline (206) 526-6667 or (800) 662-9825. No halibut fishing will be allowed on the re-opening dates unless the date is announced on the NMFS hotline.

(C) If sufficient unharvested catch remains, the third season (summer

season), which is for the “all-depth” fishery, will be open on (*insert dates beginning with August 1*) or until the combined spring season and summer season quotas in the area between Cape Falcon and Humbug Mountain, OR, totaling 37,496 lb (17 mt), are estimated to have been taken and the area is closed by the Commission, or October 31, whichever is earlier. NMFS will announce on the NMFS hotline in July whether the fishery will re-open for the summer season in August. No halibut fishing will be allowed in the summer season fishery unless the dates are announced on the NMFS hotline. Additional fishing days may be opened if a certain amount of quota remains after August 9 and August 23. If after August 9, greater than or equal to 60,000 lb (27.2 mt) remains in the combined all-depth and inside 40-fm (73-m) quota, the fishery may re-open every Friday through Sunday, beginning August 14–16, and ending October 31. If after September 6, greater than or equal to 30,000 lb (13.6 mt) remains in the combined all-depth and inside 40-fm (73-m) quota, and the fishery is not already open every Friday through Sunday, the fishery may re-open every Friday through Sunday, beginning September 11–13, and ending October 31. After September 6, the bag limit may be increased to two fish of any size per person, per day. NMFS will announce on the NMFS hotline whether the summer all-depth fishery will be open on such additional fishing days, what days the fishery will be open and what the bag limit is.

(ii) The daily bag limit is one halibut of any size per day per person, unless otherwise specified. NMFS will announce on the NMFS hotline any bag limit changes.

(iii) During days open to all-depth halibut fishing, no Pacific Coast groundfish may be taken and retained, possessed or landed, except sablefish and Pacific cod, when allowed by Pacific Coast groundfish regulations, if halibut are on board the vessel.

(iv) When the all-depth halibut fishery is closed and halibut fishing is permitted only shoreward of a boundary line approximating the 40-fm (73-m) depth contour, halibut possession and retention by vessels operating seaward of a boundary line approximating the 40-fm (73-m) depth contour is prohibited.

(v) Recreational fishing for groundfish and halibut is prohibited within the Stonewall Bank YRCA. It is unlawful for recreational fishing vessels to take and retain, possess, or land halibut taken with recreational gear within the Stonewall Bank YRCA. A vessel fishing

in the Stonewall Bank YRCA may not be in possession of any halibut.

Recreational vessels may transit through the Stonewall Bank YRCA with or without halibut on board. The Stonewall Bank YRCA is an area off central Oregon, near Stonewall Bank, intended to protect yelloweye rockfish. The Stonewall Bank YRCA is defined by straight lines connecting the following specific latitude and longitude coordinates in the order listed:

(1) 44°37.46 N. lat., 124°24.92 W. long.;

(2) 44°37.46 N. lat., 124°23.63 W. long.;

(3) 44°28.71 N. lat., 124°21.80 W. long.;

(4) 44°28.71 N. lat., 124°24.10 W. long.;

(5) 44°31.42 N. lat., 124°25.47 W. long.;

and connecting back to 44°37.46 N. lat., 124°24.92 W. long.

(f) The area south of Humbug Mountain, Oregon (42°40.50' N. lat.) and off the California coast is not managed in-season relative to its quota. This area is managed on a season that is projected to result in a catch of 5,316 lb (2.4 mt).

(i) The fishing season will commence on May 1 and continue 7 days a week until October 31.

(ii) The daily bag limit is one halibut of any size per day per person.

#### Classification

This action has been determined to be not significant for purposes of Executive Order 12866.

NMFS has prepared an RIR/IRFA on the proposed changes to the Plan and annual domestic Area 2A halibut management measures. Copies of these documents are available from NMFS (see **ADDRESSES**). NMFS prepared an IRFA that describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. The IRFA is available from NMFS (see **ADDRESSES**). A summary of the IRFA follows:

A fish-harvesting business is considered a “small” business by the Small Business Administration (SBA) if it has annual receipts not in excess of \$4.0 million. For related fish-processing businesses, a small business is one that employs 500 or fewer persons. For wholesale businesses, a small business is one that employs not more than 100 people. For marinas and charter/party boats, a small business is one with annual receipts not in excess of \$6.5

million. All of the businesses that would be affected by this action are considered small businesses under Small Business Administration guidance.

The proposed changes to the Plan, which allocates the catch of Pacific halibut among users in Washington, Oregon and California, would:

(1) Remove the provision that divides the Washington North Coast subarea quota between May and June; (2) Change the Washington North Coast subarea to a 2-day per week fishery, Thursday and Saturday, from a 3-day per week fishery; (3) Change the June re-opening date in the Washington North Coast subarea to the first Thursday in June, from the status-quo of the first Tuesday and Thursday after June 16; (4) Clarify that the nearshore set-aside in the Washington South Coast subarea is 10 percent of the subquota, or 2,000 pounds, whichever is less, rather than a straight 10 percent of the subquota; (5) Set the Washington South Coast subarea to open the first Sunday in May and continue to be open on Sundays and Tuesdays in May, except that beginning on the third week in May the fishery would be open on Sunday only until the quota for the primary season is reached. Under status-quo the fishery was open 2 days a week until the quota was achieved; (6) Set the nearshore fishery in the Washington South Coast subarea as a 3-day per week fishery, open Thursday, Friday, and Saturday, during and after the primary season. Under status-quo the nearshore fishery was open only after the primary fishery was closed, leaving a large amount of unfished quota, in 2008 only 158 pounds out of the 4460 pound quota was caught; (7) Specify that in addition to the South Coast Yelloweye Rockfish Conservation Area (YRCA), recreational fishing for groundfish and halibut will be prohibited in the newly created Westport Offshore YRCA; (8) Change the Columbia River subarea spring fishery to a 3-day per week fishery, open Thursday, Friday and Saturday, until 70 percent of the subarea allocation is taken or until the third Sunday in July, whichever is earlier. Under status-quo this was a 7-day per week fishery; (9) Specify that in the Oregon Central Coast subarea Pacific cod may be retained with a halibut on the vessel during the all-depth openings. Under status-quo Pacific cod retention was not allowed. The change is intended to make retention consistent in the areas north and south of Cape Falcon and Pacific cod are rarely encountered south of Cape Falcon; (10) Add the Nooksack tribe to the definition of "Treaty Indian

tribes" in the federal regulations; (11) Add the Nooksack tribal fishing area boundaries to the federal regulations. NMFS also proposes to implement the portions of the Plan and management measures that are not implemented through the IPHC, which includes the sport fishery management measures for Area 2A. These actions are intended to enhance the conservation of Pacific halibut, to provide greater angler opportunity where available, and to protect yelloweye rockfish and other overfished groundfish species from incidental catch in the halibut fisheries.

As mentioned in the preamble, WDFW held state meetings and crafted alternatives to adjust management of the sport halibut fisheries in their state. These alternatives were then narrowed by the state and brought to the Council at the Council's September and November 2008 meetings. Generally, by the time the alternatives reach the Council, and because they have been through the state public review process, they are narrowed down into the proposed action and status quo. The Council and the States considered the full range of alternatives that could have similarly improved angler enjoyment of an participation in the fisheries while simultaneously protecting halibut and co-occurring groundfish species from overharvest.

In 2008, 570 vessels were issued IPHC licenses to retain halibut. IPHC issues licenses for: the directed commercial fishery in Area 2A, including licenses issued to retain halibut caught incidentally in the primary sablefish fishery (296 licenses in 2008); incidental halibut caught in the salmon troll fishery (135 licenses in 2008); and the charterboat fleet (139 licenses in 2008). No vessel may participate in more than one of these three fisheries per year. Individual recreational anglers and private boats are the only sectors that are not required to have an IPHC license to retain halibut.

Specific data on the economics of halibut charter operations is unavailable. However, in January 2004, the Pacific States Marine Fisheries Commission (PSMFC) completed a report on the overall West Coast charterboat fleet. In surveying charterboat vessels concerning their operations in 2000, the PSMFC estimated that there were about 315 charterboat vessels in operation off Washington and Oregon. In 2000, IPHC licensed 130 vessels to fish in the halibut sport charter fishery. Comparing the total charterboat fleet to the 130 and 142 IPHC licenses in 2000 and 2007, respectively, approximately 41 to 45 percent of the charterboat fleet could

participate in the halibut fishery. The PSMFC has developed preliminary estimates of the annual revenues earned by this fleet and they vary by size class of the vessels and home state. Small charterboat vessels range from 15 to 30 ft (4.572 to 9.144 m), and typically carry 5 to 6 passengers. Medium charterboat vessels range from 31 to 49 ft (9.44 to 14.93 m) in length and typically carry 19 to 20 passengers. (Neither state has large vessels of greater than 49 ft (14.93 m) in their fleet.) Average annual revenues from all types of recreational fishing, whalewatching and other activities ranged from \$7,000 for small Oregon vessels to \$131,000 for medium Washington vessels. Estimates from the RIR show the recreational halibut fishery generated approximately \$2.5 million in personal income to West Coast communities, while the non-tribal commercial halibut fishery generated approximately \$2.2 million in income impacts. Because these estimated impacts for the entire halibut fishery overall are less than the SBA criteria for individual businesses, these data confirm that charterboat and commercial halibut vessels qualify as small entities under the Regulatory Flexibility Act (RFA).

These changes are authorized under the Pacific Halibut Act, implementing regulations at 50 CFR 300.60 through 300.65, and the Pacific Council process of annually evaluating the utility and effectiveness of Area 2A Pacific halibut management under the Plan. Given the TAC, the proposed sport management measures implement the Plan by managing the recreational fishery to meet the differing fishery needs of the various areas along the coast according to the Plan's objectives. The measures will be very similar to last year's management measures. The changes to the Plan and domestic management measures are minor changes and are intended to help prolong the halibut season, provide increased recreational harvest opportunities, or clarify sport fishery management for fishermen and managers. There are no large entities involved in the halibut fisheries; therefore, none of these changes to the Plan and domestic management measures will have a disproportionate negative effect on small entities versus large entities.

These changes do not include any reporting or recordkeeping requirements. These changes will also not duplicate, overlap or conflict with other laws or regulations. Consequently, these changes to the Plan and annual domestic Area 2A halibut management measures are not expected to meet any of the RFA tests of having a



“significant” economic impact on a “substantial number” of small entities. Nonetheless, NMFS has prepared an IRFA. Through this proposed rule, NMFS is requesting comments on these conclusions.

Pursuant to Executive Order 13175, the Secretary recognizes the sovereign status and co-manager role of Indian tribes over shared Federal and tribal fishery resources. At section 302(b)(5), the Magnuson-Stevens Fishery Conservation and Management Act establishes a seat on the Pacific Council for a representative of an Indian tribe with federally recognized fishing rights from California, Oregon, Washington, or Idaho.

The U.S. Government formally recognizes that the 13 Washington Tribes have treaty rights to fish for Pacific halibut. In general terms, the quantification of those rights is 50 percent of the harvestable surplus of Pacific halibut available in the tribes’ usual and accustomed (U and A) fishing areas (described at 50 CFR 300.64). Each of the treaty tribes has the discretion to administer their fisheries and to establish their own policies to achieve program objectives. Accordingly, tribal allocations and regulations, including the proposed changes to the Plan, have been developed in consultation with the

affected tribe(s) and, insofar as possible, with tribal consensus.

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

Fishing, Fisheries, and Indian fisheries.

Dated: January 7, 2009.

**Samuel D. Rauch III,**

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

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

#### PART 300—INTERNATIONAL FISHERIES REGULATIONS

1. In § 300.61, the definition of “Treaty Indian tribes” is proposed to read as follows:

##### § 300.61 Definitions.

\* \* \* \* \*

*Treaty Indian tribes* means the Hoh, Jamestown S’Klallam, Lower Elwha S’Klallam, Lummi, Makah, Port Gamble S’Klallam, Quileute, Quinault, Skokomish, Suquamish, Swinomish, Tulalip, and Nooksack tribes.

2. In § 300.64, the following entry is added to the table in alphabetical order to read as follows:

##### § 300.64 Fishing by U.S. treaty Indian tribes.

\* \* \* \* \*

Tribe	Boundaries
* *	* * *
Nooksack	Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in <i>United States v. Washington</i> , 384 F. Supp. 312 (W.D. Wash. 1974), and particularly at 459 F. Supp. 1049, to be places at which the Nooksack Tribe may fish under rights secured by treaties with the United States.
* *	* * *

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