

## DRAFT FOR SECRETARIAL REVIEW

# Regulatory Amendment to Modify Regulations Governing Submission of Halibut Charter Logbooks

## Regulatory Impact Review / Initial Regulatory Flexibility Analysis

January 2010

**Lead Agency**

National Oceanic and Atmospheric Administration  
National Marine Fisheries Service  
Alaska Regional Office  
Juneau, Alaska

**Responsible Official**

Robert D. Mecum  
Acting Regional Administrator  
Alaska Regional Office

**For Further Information Contact**

Ben Muse  
National Marine Fisheries Service  
P.O. Box 21668  
Juneau, AK 99802  
907-586-7228

**Abstract:** This document contains a Regulatory Impact Review (RIR), and an Initial Regulatory Flexibility Analysis (IRFA) evaluating regulatory changes to guided charter logbook reporting requirements. The changes revise restrictions, bring consistency to state and federal requirements, and are expected to impose *de minimus* costs. The analyses in this document address the requirements of Executive Order 12866 and the Regulatory Flexibility Act (RFA).

Blank page.

## Executive Summary

This analysis evaluates the impacts of the proposed action to modify federal requirements for guided charter logbook submission in IPHC Areas 2C and 3A. The analyses in this document address the requirements of Executive Order 12866 and the Regulatory Flexibility Act (RFA). The statutory authority for this action is the Northern Pacific Halibut Act of 1982 (as amended).

Pacific halibut is an unusual resource in that halibut management in both state and federal waters is an international and federal responsibility under the Halibut Act. Annual catch quotas are determined by the International Pacific Halibut Commission (IPHC), and federal responsibility for halibut management extends to halibut stocks and fishing activity within state waters. In order to manage halibut effectively, international and federal managers need information on halibut fishing effort and harvest by all user groups, including the guided sport charter sector of the fishery.

In order to avoid wasteful and burdensome duplicative surveys of and reporting by industry, NMFS depends on information gathered by the State of Alaska, in its ongoing surveys of sport charter fishermen. This information has been used by the IPHC to set annual catch quotas. The Council and NMFS employed it to evaluate the impact of measures to reduce Area 2C guided sport harvests, the impact of limited entry in Areas 2C and 3A, and the impact of the proposed catch sharing plan. ADF&G staff base annual status reports on the fishery to the IPHC and North Pacific Fisheries Management Council in part on these data.

The objectives of the proposed rule are to address (1) inconsistencies between federal and State of Alaska requirements for the submission of the ADF&G Saltwater Sport Fish Charter Logbook, and (2) recent changes to the logbook reporting format. This action will only affect halibut charters operating in IPHC Area 2C and Area 3A.

The changes revise reporting requirements, bring consistency to state and federal requirements, and are expected to impose *de minimus* costs. The only substantive change (i.e., modification of regulatory limits on directly regulated entities) relaxes requirements on the location and time frame for submission of logbooks, following trips.

Based on logbook data, NMFS estimates that 404 business entities will be directly regulated by this action in Area 2C, and that 450 business entities will be directly regulated by this action in Area 3A. At this writing, the Secretary of Commerce is implementing a limited entry program for guided charter sport halibut fisheries in Areas 2C and 3A. When this occurs, NMFS expects that the number of business entities directly regulated by the present action would be 231 in Area 2C and 296 in Area 3A.

The largest of these companies, which are lodges, may be large entities under SBA standards, but that determination cannot be empirically confirmed at present. All of the other charter operations would likely be considered small entities, based upon SBA criteria, since they are believed to have gross revenues of less than \$7.0 million on an annual basis, from all sources, including affiliates.

The analysis did not identify any new “projected reporting, record keeping and other compliance requirements” associated with the proposed FMP amendment and regulatory changes. This analysis did not reveal any Federal rules that duplicate, overlap, or conflict with the proposed action. There is no alternative to the proposed action with a smaller burden on directly regulated small entities.

**Blank page**

# Regulatory Impact Review

## Introduction

This Regulatory Impact Review (RIR) evaluates the costs and benefits of an action to make minor modifications to regulations governing the submission of logbooks by guided halibut charter fishermen in International Pacific Halibut Commission (IPHC) Areas 2C and 3A.

This RIR is required under Presidential Executive Order (E.O.) 12866 (58 *FR* 51735, September 30, 1993). The requirements for all regulatory actions specified in E.O. 12866 are summarized in the following statement from the order:

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

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

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

## Statutory Authority

Federal agencies share management of Pacific halibut *Hippoglossus stenolepis*. The domestic fishery is managed by the IPHC, as provided by the Convention Between the United States and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and the Bering Sea (Convention) and the Northern Pacific Halibut Act of 1982 (Halibut Act). The Act authorizes the North Pacific Fishery Management Council (Council) to:

*“...develop regulations governing the United States portion of Convention waters, including limited access regulations, applicable to nationals or vessels of the United States, or both which are in addition to and not in conflict with regulations adopted by the Commission. Such regulations shall only be implemented with the approval of the Secretary, shall not discriminate between residents of different States, and shall be consistent with the limited*

*entry criteria set forth in Section 303(b)(6) of the Magnuson Act. If it becomes necessary to allocate or assign halibut fishing privileges among various United States fishermen, such allocation shall be fair and equitable to all such fishermen, based upon the rights and obligation in existing Federal law, reasonably calculated to promote conservation, and carried in such manner that no particular individual, corporation, or other entity acquires an excessive share of the halibut fishing privileges...”*

In general, the language in the Magnuson-Stevens Fisheries Conservation and Management Act (MSA), the Halibut Act, and the Convention have been interpreted to assign responsibility to the Council on halibut management issues concerning allocations and limited entry. As reported by McCaughran and Hoag (1992), the Halibut Act granted authority to the Secretary of Commerce through the Councils to allocate fishing privileges among U.S. fishermen. The Council did not become involved in halibut management until NOAA decided that the Commission should no longer consider regulations that relate to domestic allocation. An exchange of letters between NOAA and a Washington State congressman left the division in authority ambiguous. Therefore, an agreement was reached among the IPHC, Pacific and North Pacific Councils, and NMFS that all conservation issues be carried out by the IPHC and that purely domestic allocation decisions be made by the Councils (McCaughran and Hoag 1992).

## **Problem Statement**

Meyer and Power (2009) describe the State of Alaska’s charter logbook program:

The Alaska Department of Fish and Game (ADF&G) Division of Sport Fish initiated the mandatory charter boat logbook program in 1998. The logbook program followed from Alaska Board of Fisheries regulations requiring annual registration of sport fishing guides and businesses, and logbook reporting. The logbook and registration program was intended to provide information on actual participation and harvest by individual charter vessels and businesses in various regions of the state. This information was needed by the Board of Fisheries for allocation and management of Chinook (king) salmon, rockfish, and lingcod, and by the North Pacific Fisheries Management Council (NPFMC or “Council” hereafter) for allocation of halibut.

Since 1998, the logbook design has undergone annual revisions, driven primarily by changing information needs, especially with respect to halibut and rockfish. Halibut data were collected each year during the period 1998–2001, dropped during the period 2002–2005, and resumed in 2006. Additional fields and requirements were added or removed in recent years to help facilitate management and enforcement of the charter halibut fishery. Rockfish data collection was changed to collect information on yelloweye rockfish specifically to address demersal shelf rockfish management issues in Southeast Alaska.

Charter logbooks are issued to licensed businesses only. Each charter vessel is registered when the logbook is issued, and operators are provided registration stickers and statistical area maps. Each logbook contains 50 pages (with pressure-sensitive copies) upon which to record data, along with detailed instructions, including an example of a completed logbook page. The ADF&G phone number is printed on each page in case operators have questions. Pages are perforated and pre-printed with the ADF&G address for mailing. The instructions explain when logbook reports have to be completed and provide requirements and deadlines for submission. A schedule of logbook due dates is printed inside the front cover of each logbook.

The following information was required to be reported for each calendar day of each vessel-trip during the period 2006–2008:

- Business and guide license number, and guide signature,
- Date of trip: In 2006 this was the date that the fish were offloaded from the vessel (signaling the end of a trip. For a multi-day trip, each day's data would have the date of the last day of the trip.
- In 2007 and 2008, the calendar date of each day of fishing was reported.
- Port or site where fish were off-loaded.
- Primary statistical areas fished for bottomfish and salmon (maps supplied with logbooks),
- Number of boat-hours fished for bottomfish and salmon,
- Page number (if multiple logbook pages were required),
- License number of all licensed anglers (or "youth" designation for anglers under 16),
- Residency of clients (no residency data for crew or comps),
- Designate whether anglers are crew (all years) or comps (2007–2008).
- Record for each angler: numbers of king salmon kept and released that were under and over 28 inches total length; numbers of coho salmon kept and released; numbers of sockeye, pink and chum salmon kept; numbers of halibut, lingcod, pelagic rockfish, yelloweye rockfish, and all other rockfish kept and released; number of salmon shark kept (and released in 2006 only); and numbers of all other species kept (optional field).

Halibut is an unusual resource in that its management in both state and federal waters is an international and federal responsibility under the Halibut Act. Annual catch quotas are determined by the International Pacific Halibut Commission, and federal responsibility for halibut management extends to halibut stocks and fishing activity within state waters. In order to manage halibut effectively, international and federal managers need information on halibut fishing effort and harvest by all user groups, including the guided sport charter sector of the fishery.

In order to avoid duplicative surveys of, and reporting by, industry, NMFS depends on information gathered by the State of Alaska in its ongoing surveys of sport charter fishermen. This information has been used by the IPHC to set annual catch quotas, and by the Council and NMFS to evaluate the impact of measures to reduce Area 2C guided sport harvests, the impact of limited entry in Areas 2C and 3A, and the impact of the proposed catch sharing plan. ADF&G staff base annual status reports on the fishery to the IPHC and North Pacific Fisheries Management Council in part on these data.

Federal regulations at 50 CFR 300.65 require charter vessel operators fishing in Areas 2C and 3A to comply with the ADF&G logbook reporting requirements.

The objectives of the proposed rule are to (1) correct inconsistencies between federal and State of Alaska requirements for the submission of the ADF&G Saltwater Sport Fish Charter Logbook, and (2) address recent changes to the logbook reporting format. This action will only affect halibut charter operators in IPHC Area 2C and Area 3A.

## **Description of the Alternatives**

Alternative 1: No action

Alternative 2: Modify regulations to make them consistent with state practice.

Under the action alternative, the following changes would be made to regulations at 300.65:

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

\* \* \* \* \*

(d) *Charter vessels in Area 2C and Area 3A* —(1) *General requirements* —(i) *Logbook submission*. For a charter vessel fishing trip ending April 5 through December 31, during which halibut were caught and retained, Alaska Department of Fish and Game Saltwater Sport Fishing Charter Trip Logbook data sheets must be submitted to the Alaska Department of Fish and Game, Division of Sport Fish, 333 Raspberry Road, Anchorage, AK 99518-1599, and postmarked or received no more than seven-14 calendar days after the end of that a charter vessel fishing trip. Logbook sheets for a charter vessel fishing trip ending February 1 through April 4, during which halibut were retained, must be submitted to the Alaska Department of Fish and Game and postmarked or received no later than April 12.

(ii) The charter vessel guide is responsible for complying with the reporting requirements of this paragraph (d). The employer of the charter vessel guide is responsible for ensuring that the charter vessel guide complies with the reporting requirements of this paragraph (d).

(iii) In the Alaska Department of Fish and Game (ADF&G) Saltwater Sport Fishing Charter Trip Logbook, record the primary ADF&G statistical area where halibut were caught and retained during each charter vessel fishing trip. If halibut were caught and retained in IPHC Regulatory Area 2C and Area 3A during the same charter vessel fishing trip, then a separate logbook data sheet must be used for each regulatory area to record the halibut caught and retained within that regulatory area.

(2) *Charter vessels in Area 2C* —(i) *Daily bag limit*. The number of halibut caught and retained by each charter vessel angler in Area 2C is limited to no more than one halibut per calendar day.

(ii) *Charter vessel guide and crew restriction*. A charter vessel guide, a charter vessel operator, and any crew member of a charter vessel must not catch and retain halibut during a charter fishing trip.

(iii) *Line limit*. The number of lines used to fish for halibut onboard a vessel must not exceed six or the number of charter vessel anglers, whichever is less.

(iv) *Recordkeeping and reporting requirements in Area 2C*. Each charter vessel angler and charter vessel guide onboard a vessel in Area 2C must comply with the following recordkeeping and reporting requirements (see paragraphs (d)(2)(iv)(A) and (B) of this section):

(A) *Charter vessel angler signature requirement*. At the end of a charter vessel fishing trip, each charter vessel angler who retains halibut caught in Area 2C must acknowledge that his or her information and the number of halibut retained (kept) are recorded correctly by signing the ~~back of the~~ Alaska Department of Fish and Game Saltwater Sport Fishing Charter Trip Logbook data sheet on the line ~~number~~ that corresponds to the angler's information ~~on the front of the logbook data sheet~~.

(B) *Charter vessel guide requirements*. For each charter vessel fishing trip in Area 2C, during which halibut were caught and retained, the charter vessel guide must record the following information (see paragraphs (d)(2)(iv)(B)( 1 ) through ( 68 ) of this section) in the Alaska Department of Fish and Game Saltwater Sport Fishing Charter Trip Logbook:

~~( 1 ) Business owner license number~~. The sport fishing operator business license number issued by the Alaska Department of Fish and Game to the charter vessel guide or the charter vessel guide's employer.

~~( 12 ) Guide license number~~. The Alaska Department of Fish and Game sport fishing guide license number held by charter vessel guide who certified the logbook data sheet.

~~( 23 ) Date~~. Month and day for each charter vessel fishing trip taken. A separate logbook data sheet is required for each charter vessel fishing trip if two or more trips were taken on the same day. A

separate logbook data sheet is required for each calendar day that halibut are caught and retained during a multi-day trip.

~~(4) Regulatory area fished. Circle the regulatory area (Area 2C or Area 3A) where halibut were caught and retained during each charter vessel fishing trip. If halibut were caught and retained in Area 2C and Area 3A during the same charter vessel fishing trip, then a separate logbook data sheet must be used to record halibut caught and retained for each regulatory area.~~

~~(5) Angler sport fishing license number and printed name. Before a charter vessel fishing trip begins, record for each charter vessel angler the Alaska Sport Fishing License number for the current year, resident permanent license number, or disabled veteran license number, and print the name of each paying and nonpaying charter vessel angler onboard that will fish for halibut. Record the name of each angler not required to have an Alaska Sport Fishing License or its equivalent.~~

~~(6) Number of halibut retained. For each charter vessel angler, record the number of halibut caught and retained during the charter vessel fishing trip.~~

~~(7) Signature. At the end of a charter vessel fishing trip, acknowledge that the recorded information is correct by signing the logbook data sheet.~~

~~(8) Angler signature. The charter vessel guide is responsible for ensuring that charter vessel anglers comply with the signature requirements at paragraph (d)(2)(iv)(A) of this section.~~

~~(3) Recordkeeping and reporting requirements in Area 3A. For each charter vessel fishing trip in Area 3A, the charter vessel guide must record the regulatory area (Area 2C or Area 3A) where halibut were caught and retained by circling the appropriate area in the Alaska Department of Fish and Game Saltwater Sport Fishing Charter Trip Logbook. If halibut were caught and retained in Area 2C and Area 3A during the same charter vessel fishing trip, then a separate logbook data sheet must be used to record halibut caught and retained for each regulatory area.~~

\* \* \* \* \*

The purpose of this action is to align state and federal regulations. Thus, no additional alternatives that would meet the objectives of this action have been identified.

## Cost and Benefit analysis

Most of the proposed regulatory changes are minor clerical modifications, revising federal requirements as to where on the logbook form to report certain types of information. In these cases, federal requirements currently diverge from state instructions and the modifications will eliminate that divergence. This will minimize the risk of confusion and facilitate efficient reporting of these data.

Only one of the proposed changes will modify restrictions placed on regulated entities, and this relaxes federal requirements, while making them consistent with state requirements. Whereas, under current federal regulations, logbook sheets must be submitted within seven days to the ADF&G office at 333 Raspberry Road, under the proposed modification, the logbooks must be submitted to the ADF&G (with no restriction on place) within 14 days of trips completed on or after April 5, through December 31, during which halibut were retained. Sheets for trips completed on or after February 1, through April 4, must be received by April 12. This places federal regulations in accord with state regulations that allow logbooks to be submitted to any ADF&G office. State logbook instructions specify dates for submission of logbooks, completed during any given week. The state also has an April 12 deadline for submission of logbooks completed from February 1 through April 4. Except for the mid-April date for early year trips, these dates fall a week after the closing date of each fishing week and, thus, 14 days after the start of each

fishing week. Therefore, the relaxation of the federal submission deadline from seven to 14 days will not be more restrictive than state rules for a fishing trip completed at any time during the week.

Other changes add, subtract, or rearrange text, in order to make the regulations clearer. The addition of § 300.65(d)(1)(iii) pulls together text currently in § 300.65(d)(2)(iv)(B)(4) and § 300.65(d)(3). If the ADF&G charter logbook maps have not been revised before the Secretary of Commerce approves the final rule for this action and it is published, then § 300.65(d)(1)(iii) would not be added, and § 300.65(d)(2)(iv)(B)(4) and § 300.65(d)(3) would be suspended and would not be amended until these maps are updated.

This action will impose *de minimus* costs on charter fishing operations, and may provide some benefits by reducing the potential for confusion deriving from conflicting regulatory language. In turn, this may increase efficiency and lower costs of collecting these data. It will not create administrative, fisheries management, nor enforcement difficulties or costs for IPHC, NPFMC, NMFS, or ADF&G. It will create consistency between state and federal regulations.

## Initial Regulatory Flexibility Analysis

### Introduction

This IRFA evaluates the impacts on directly regulated small entities of the proposed action to modify federal requirements for guided charter logbook submission in IPHC Areas 2C and 3A.

This IRFA addresses the statutory requirements of the Regulatory Flexibility Act (RFA) of 1980, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (5 U.S.C. 601-612).

The RFA, first enacted in 1980, was designed to place the burden on the government to review all regulations to ensure that, while accomplishing their intended purposes, they do not unduly inhibit the ability of small entities to compete. The RFA recognizes that the size of a business, unit of government, or nonprofit organization frequently has a bearing on its ability to comply with a Federal regulation. Major goals of the RFA are (1) to increase agency awareness and understanding of the impact of their regulations on small business, (2) to require that agencies communicate and explain their findings to the public, and (3) to encourage agencies to use flexibility and to provide regulatory relief to small entities. The RFA emphasizes predicting impacts on small entities as a group distinct from other entities and on the consideration of alternatives that may minimize the impacts while still achieving the stated objective of the action.

On March 29, 1996, President Clinton signed the Small Business Regulatory Enforcement Fairness Act. Among other things, the new law amended the RFA to allow judicial review of an agency's compliance with the RFA. The 1996 amendments also updated the requirements for a final regulatory flexibility analysis, including a description of the steps an agency must take to minimize the significant (adverse) economic impacts on small entities. Finally, the 1996 amendments expanded the authority of the Chief Counsel for Advocacy of the SBA to file *amicus* briefs in court proceedings involving an agency's alleged violation of the RFA.

In determining the scope or "universe" of the entities to be considered in an IRFA, NMFS generally includes only those entities that can reasonably be expected to be **directly regulated** by the proposed action. If the effects of the rule fall primarily on a distinct segment, or portion thereof, of the industry (*e.g.*, user group, gear type, geographic area), that segment would be considered the universe for the

purpose of this analysis. NMFS interprets the intent of the RFA to address negative economic impacts, not beneficial impacts, and thus such a focus exists in analyses that are designed to address RFA compliance.

Data on cost structure, affiliation, and operational procedures and strategies in the fishing sectors subject to the proposed regulatory action are insufficient, at present, to permit preparation of a “factual basis” upon which to certify that the preferred alternative does not have the potential to result in “significant economic impacts on a substantial number of small entities” (as those terms are defined under RFA). Because, based on all available information, it is not possible to “certify” this outcome, should the proposed action be adopted, a formal IRFA has been prepared and is included in this package for Secretarial review.

## What is required in an IRFA?

Under 5 U.S.C., Section 603(b) of the RFA, each IRFA is required to contain:

- A description of the reasons *why action* by the agency *is being considered*;
- A succinct statement of the *objectives of, and the legal basis for, the proposed rule*;
- A description of and, where feasible, *an estimate of the number of small entities to which the proposed rule will apply* (including a profile of the industry divided into industry segments, if appropriate);
- A description of the projected *reporting, recordkeeping and other compliance requirements* of the proposed rule, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record;
- An identification, to the extent practicable, of all relevant *Federal rules that may duplicate, overlap or conflict with the proposed rule*;
- *A description of any significant alternatives to the proposed rule* that accomplish the stated objectives of the proposed action, consistent with applicable statutes, and that would minimize any significant adverse economic impact of the proposed rule on small entities. Consistent with the stated objectives of applicable statutes, the analysis shall discuss significant alternatives, such as:
  1. The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;
  2. The clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities;
  3. The use of performance rather than design standards;
  4. An exemption from coverage of the rule, or any part thereof, for such small entities.

## What is a small entity?

The RFA recognizes and defines three kinds of small entities: (1) small businesses, (2) small non-profit organizations, and (3) small government jurisdictions.

Small businesses. Section 601(3) of the RFA defines a “small business” as having the same meaning as “small business concern” which is defined under Section 3 of the Small Business Act. “Small business” or “small business concern” includes any firm that is independently owned and operated and not

dominant in its field of operation. The SBA has further defined a “small business concern” as one “organized for profit, with a place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials or labor...A small business concern may be in the legal form of an individual proprietorship, partnership, limited liability company, corporation, joint venture, association, trust or cooperative, except that where the firm is a joint venture there can be no more than 49 percent participation by foreign business entities in the joint venture.”

The SBA has established size criteria for all major industry sectors in the United States, including fish harvesting and fish processing businesses. A business involved in fish harvesting is a small business if it is independently owned and operated and not dominant in its field of operation (including its affiliates) and if it has combined annual receipts not in excess of \$4.0 million for all its affiliated operations worldwide. A seafood processor is a small business if it is independently owned and operated, not dominant in its field of operation, and employs 500 or fewer persons on a full-time, part-time, temporary, or other basis, at all its affiliated operations worldwide. A business involved in both the harvesting and processing of seafood products is a small business if it meets the \$4.0 million criterion for fish harvesting operations. Finally a wholesale business servicing the fishing industry is a small business if it employs 100 or fewer persons on a full-time, part-time, temporary, or other basis, at all its affiliated operations worldwide.

A business involved in providing fishing charter services is a small business if it is independently owned and operated and not dominant in its field of operation and if it has combined annual receipts not in excess of \$7.0 million.<sup>1</sup>

The SBA has established “principles of affiliation” to determine whether a business concern is “independently owned and operated.” In general, business concerns are affiliates of each other when one concern controls or has the power to control the other or a third party controls or has the power to control both. The SBA considers factors such as ownership, management, previous relationships with or ties to another concern, and contractual relationships, in determining whether affiliation exists. Individuals or firms that have identical or substantially identical business or economic interests, such as family members, persons with common investments, or firms that are economically dependent through contractual or other relationships, are treated as one party with such interests aggregated when measuring the size of the concern in question. The SBA counts the receipts or employees of the concern whose size is at issue and those of all its domestic and foreign affiliates, regardless of whether the affiliates are organized for profit, in determining the concern’s size. However, business concerns owned and controlled by Indian Tribes, Alaska Regional or Village Corporations organized pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601), Native Hawaiian Organizations, or Community Development Corporations authorized by 42 U.S.C. 9805 are not considered affiliates of such entities, or with other concerns owned by these entities solely because of their common ownership.

---

<sup>1</sup> This industry may fall into one of three NAICS industry sectors and all three have a \$7 million threshold. The sectors include North American Industry Classification System ( NAICS) category 721110 (“This industry comprises establishments primarily engaged in providing short-term lodging in facilities known as hotels, motor hotels, resort hotels, and motels. The establishments in this industry may offer food and beverage services, recreational services, conference rooms and convention services, laundry services, parking, and other services.”), NAICS 713990 (“This industry comprises establishments (except amusement parks and arcades; gambling industries; golf courses and country clubs; skiing facilities; marinas; fitness and recreational sports centers; and bowling centers) primarily engaged in providing recreational and amusement services.”), and NAICS 713930 (“This industry comprises establishments, commonly known as marinas, engaged in operating docking and/or storage facilities for pleasure craft owners, with or without one or more related activities, such as retailing fuel and marine supplies; and repairing, maintaining, or renting pleasure boats.”).

Affiliation may be based on stock ownership when (1) a person is an affiliate of a concern if the person owns or controls, or has the power to control 50 percent or more of its voting stock, or a block of stock which affords control because it is large compared to other outstanding blocks of stock, or (2) if two or more persons each owns, controls or has the power to control less than 50 percent of the voting stock of a concern, with minority holdings that are equal or approximately equal in size, but the aggregate of these minority holdings is large as compared with any other stock holding, each such person is presumed to be an affiliate of the concern.

Affiliation may be based on common management or joint venture arrangements. Affiliation arises where one or more officers, directors, or general partners control the board of directors and/or the management of another concern. Parties to a joint venture also may be affiliates. A contractor or subcontractor is treated as a participant in a joint venture if the ostensible subcontractor will perform primary and vital requirements of a contract or if the prime contractor is unusually reliant upon the ostensible subcontractor. All requirements of the contract are considered in reviewing such relationship, including contract management, technical responsibilities, and the percentage of subcontracted work.

Small non-profit organizations The RFA defines “small organizations” as any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

Small governmental jurisdictions The RFA defines small governmental jurisdictions as governments of cities, counties, towns, townships, villages, school districts, or special districts with populations of fewer than 50,000.

## **Why the action is being considered**

This action would eliminate inconsistencies between federal and State of Alaska rules governing the submission of guided charter fishery trip logbooks. The management of the halibut guided charter fishery in Alaska is an international and federal, rather than a state responsibility. However, to minimize the recordkeeping and reporting burden on guided charter operations, federal and international managers depend on fishing activity and harvest information collected by the State of Alaska through its charter logbook program.

## **The objectives of, and the legal basis for, the proposed rule**

The authority for the proposed action is described in detail in Section 1.3 of the RIR. In brief, the authority exists in the Northern Pacific Halibut Act of 1982.

The objectives of the proposed rule are to address (1) inconsistencies between federal and State of Alaska requirements for the submission of the ADF&G Saltwater Sport Fish Charter Logbook, and (2) recent changes to the logbook reporting format. It will only affect halibut charters in Area 2C and Area 3A.

## **A description, and estimate of the number, of small entities to which the proposed rule will apply**

The entities that will be directly regulated by this action are the guided charter operations harvesting halibut in Southeast Alaska (IPHC Area 2C) and South Central Alaska (IPHC Area 3A).

Based on logbook data, NMFS estimates that 404 business entities will be directed regulated by this action in Area 2C, and that 450 business entities will be directly regulated by this action in Area 3A. The

Secretary of Commerce has published a final rule that will implement limited entry in guided charter sport halibut fisheries in Areas 2C and 3A. NMFS expects that when this is fully implemented in 2011 the number of business entities directly regulated by this action would be 231 in Area 2C and 296 in Area 3A (NMFS 2009).

The largest of these companies, which are fishing lodges, may be considered large entities under SBA standards, but that determination cannot be empirically confirmed at present. All of the other charter operations would likely be considered small entities, based upon SBA criteria, since they would be expected to have gross revenues of less than \$7.0 million, on an annual basis, from all sources, including affiliates.

### **Recordkeeping and reporting requirements**

The IRFA should include “a description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record...”

The analysis did not identify any new “projected reporting, record keeping, and other compliance requirements” associated with the proposed FMP amendment and regulatory changes.

### **Federal rules that may duplicate, overlap, or conflict with proposed action**

An IRFA should include “An identification, to the extent practicable, of all relevant Federal rules that may duplicate, overlap or conflict with the proposed rule...”

This analysis did not reveal any Federal rules that duplicate, overlap, or conflict with the proposed action.

### **A description of any significant alternatives to the proposed rule**

An IRFA should “describe any significant alternatives to the proposed rule that accomplish the stated objectives of the proposed action, consistent with applicable statutes, and that would minimize any significant (implicitly adverse) economic impact of the proposed rule on small entities.”

There is no alternative to the proposed action with a smaller burden on directly regulated small entities.

## Contributors

Ben Muse, Ph.D.  
Industry Economist  
NMFS Sustainable Fisheries Division, Alaska Region  
907-586-7225

Lewis Queirolo, Ph.D.  
Regional Economist  
NMFS Alaska Region

## References

McCaughran, D.A. and S.H. Hoag. 1992. The 1979 Protocol to the Convention and Related Legislation. IPHC Tech. Rep. No. 26. 32 pp. International Pacific Halibut Commission. Seattle, WA.

Meyer, Scott and Bob Powers. 2009. Evaluation of Alaska Charter Logbook Data for 2006-2008. A Report to the North Pacific Fishery Management Council, October 2009. Alaska Department of Fish and Game, Division of Sport Fish. Anchorage. September 21, 2009. Accessed at [http://www.alaskafisheries.noaa.gov/npfmc/current\\_issues/halibut\\_issues/logbookeval909.pdf](http://www.alaskafisheries.noaa.gov/npfmc/current_issues/halibut_issues/logbookeval909.pdf) on December 4, 2009.

NMFS. 2009. Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis for a Regulatory Amendment to Limit Entry in the Halibut Charter Fisheries in IPHC Regulatory Areas 2C and 3A. National Marine Fisheries Service, Alaska Region. Juneau, AK. Forthcoming.