


MEMORANDUM

TO: Council, AP, and SSC Members

FROM: Clarence G. Pautzke  
Executive Director 

DATE: January 8, 1991

SUBJECT: Halibut Management

**ACTION REQUIRED**

Comment to Secretary of Commerce on proposed regulations for halibut Area 4E.

**BACKGROUND**

In December, the Council reviewed a draft analysis of alternative management strategies for the halibut fishery in IPHC Area 4E. The Council voted to recommend to the Secretary that Area 4E be geographically divided into north and south sub-areas with separate catch shares for each sub-area from the total 4E catch limit. The Council's recommended alternative calls for 70% of the total catch limit to be apportioned to the north sub-area and 30% to the south sub-area. There is also a provision that requires 50% of any unharvested quota from the north sub-area to be transferred to the south sub-area on August 1.

The regulatory package has been forwarded to the Secretary and the proposed rule will soon be published in the FEDERAL REGISTER. A copy is under item C-2(a) for your review and comment.

Billing Code 3510-22

DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
50 CFR Part 301  
[Docket No.                    ]  
RIN: xxx-xxx

Pacific Halibut Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce

ACTION: Proposed Rule and request for comments.

SUMMARY: NOAA issues a proposed rule to implement certain allocative regulations governing fishing for halibut in Regulatory Area 4E in the eastern Bering Sea and Bristol Bay, as recommended by the North Pacific Fishery Management Council (Council). The primary purpose and intended effect of this action is to assure the Nelson Island and Nunivak Island halibut fisheries a specific share of the 4E catch limit while allowing a test fishery in Bristol Bay.

DATES: Comments on the proposed rule and supporting documents, especially the environmental assessment, regulatory impact review, and initial regulatory flexibility analysis (EA/RIR/IRFA), are invited until [insert date 30 days after filing with the Office of the Federal Register].

ADDRESSES: Comments should be addressed to Steven Pennoyer, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska 99802-1668. Copies of the EA/RIR/IRFA

may be obtained by contacting the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, Alaska 99510, (telephone 907-271-2809).

FOR FURTHER INFORMATION CONTACT: Jay J. C. Ginter, Fishery Management Biologist, NMFS, 907-586-7229.

SUPPLEMENTARY INFORMATION: The fishery for Pacific halibut (Hippoglossus stenolepis) off the coasts of Alaska, British Columbia, Washington, Oregon, and California is governed by the Convention for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and the Bering Sea (Convention) signed by the United States and Canada in 1953. The Convention is carried out by the International Pacific Halibut Commission (IPHC). In 1977, the Secretary of State, in cooperation with the Secretary of Commerce (Secretary), determined that the Convention was inconsistent with the purposes and policies of the Magnuson Fishery Conservation and Management Act (Magnuson Act, P.L. 94-265). Consequently, the United States and Canada amended the Convention in 1979. The Northern Pacific Halibut Act of 1982 (Halibut Act, P.L. 97-176) was subsequently enacted to give effect to the 1979 Protocol.

Until 1987, all regulations governing the Pacific halibut fishery were developed by the IPHC and, for United States fishermen, recommended to the Secretary of State for implementation in Title 50 of the U.S. Code of Federal Regulations, Part 301. However, Section 5(c) of the Halibut Act provides for the appropriate Regional Fishery Management Council under the Magnuson Act to develop regulations, including limited access regulations, governing the United States portion of Convention waters and applicable to nationals or vessels of the

United States, which are in addition to, and not in conflict with, regulations adopted by the IPHC.

In 1987, this provision was interpreted by NOAA to mean that regulations having domestic allocation of the Pacific halibut resource as a primary purpose will be developed by the Council with respect to Alaska and by the Pacific Fishery Management Council with respect to Washington, Oregon, and California. Regulations having biological conservation as a primary purpose will continue to be developed by the IPHC. This policy does not necessarily prevent both Regional Councils from developing biological conservation regulations that are in addition to and not in conflict with IPHC regulations. Neither does the policy necessarily prevent the IPHC from developing regulations that have secondary domestic allocation effects.

To determine the need for domestic allocation of Pacific halibut, the Council solicited regulatory proposals from the general public, other agencies and staff between August 15 and September 15, 1990. The Council received 18 such proposals which were reviewed and evaluated by the Council's Halibut Management Team (MT) and the Halibut Regulatory Amendment Advisory Group (RAGG). At its meeting of September 24-29, 1990, the Council reviewed recommendations of the MT and RAAG and decided to take no action on the proposals. Instead, the Council decided to request the IPHC to establish separate regulatory areas along the same geographical boundaries of Area 4E that existed in 1990 (55 FR 21876 and 21877, May 30, 1990), and to prescribe catch limits and seasons for these areas. The IPHC staff indicated in October, however, that the IPHC will likely decline taking the requested action. Therefore, the Council, at its meeting of December 3-7, 1990, decided to recommend a regulatory amendment for Area 4E.

The MT prepared a draft EA/RIR/IRFA that assesses the potential environmental and economic effects of reasonable regulatory alternatives to the proposed measure including the status quo (or no change) alternative as required by the National Environmental Policy Act of 1969, Executive Order 12291 and NOAA policy. A notice of availability of this document was published in the FEDERAL REGISTER [insert FR citation]. Copies of this draft EA/RIR may be requested from the Council at the address listed above. Comments on how any of the alternatives may affect the human environment are especially requested.

At its December, 1990, meeting, the Council considered public testimony and the recommendations of its Advisory Panel and Scientific and Statistical Committee. The Council then voted to adopt the proposed measure as its preferred alternative and recommend its implementation to the Secretary. A description of and the reasons for the proposed halibut fishery management measure that would be implemented by this action follow.

The proposed regulatory change would (1) divide Area 4E into north and south subareas at a line established for the 1990 fishery by an interim rule (55 FR 21877, May 30, 1990), (2) apportion 70 percent of the catch limit for Area 4E to the north subarea and 30 percent to the south subarea, and (3) divide 50 any unharvested catch share in the north subarea on August 1 between the north and south subareas. Specifically, a new paragraph is proposed to be added to § 301.9 that would specify the coordinates of a line dividing Area 4E, and limit catch in that part of Area 4E south and east of the line to no more than 30 percent of the overall catch limit for Area 4E. An exception also would be added providing that 50 percent of the unharvested catch limit remaining on August 1 in the portion of Area 4E that is north and west of the dividing line will be available for

harvest in the portion of Area 4E that is south and east of the line.

The principal reason for this proposed action, and the objective of the Council, is to assure the Nelson Island and Nunivak Island halibut fisheries a specific share of the catch limit for Area 4E while allowing a test fishery in Bristol Bay. The Nelson/Nunivak halibut fishery is conducted from small boats which are limited in their catching capacity, range, fuel availability, and by weather conditions. In the six-year period of 1984 through 1989, the halibut harvest in Area 4E has averaged about 38,000 pounds, but landings have varied over this period from 90,000 (in 1987) to 9,000 pounds (in 1988). Much of this harvest has been made by non-local or "outside" boats that are larger and more efficient than local boats. Outside boats are those that do not land their entire halibut catch in Area 4E. Current halibut fishing regulations provide some competitive advantage to the local boats.

For the 1990 fishing year, the IPHC expanded Area 4E to the south and east into Bristol Bay to allow a test fishery in an area that previously had been closed to halibut fishing (55 FR 21876, May 30, 1990). To prevent a potentially large number of boats in the new Bristol Bay portion of Area 4E from harvesting a disproportionate share of the 4E catch limit, the Secretary published an interim rule (55 FR 21877, May 30, 1990) that divided the area and established a separate catch limit for the Bristol Bay or south subarea. The IPHC is not expected to change the boundary of Area 4E back to its pre-1990 configuration. Therefore, The Council decided to continue the same catch share protection for the Nelson/Nunivak or north subarea fishery as existed in 1990 under the interim rule.

The only difference between the proposed action recommended

by the Council and the 1990 interim rule is the provision for dividing the north subarea catch share that is unharvested on August 1 between the two subareas. This provision is intended to prevent a significantly large unharvested catch share in the north subarea due to the various limitations faced by the Nelson/Nunivak fishery. No reciprocating transfer of harvest opportunity from the south subarea to the north subarea is proposed because the south subarea catch share could constrain the Bristol Bay fishery while the north subarea catch share is unlikely to constrain the Nelson/Nunivak fishery.

The Secretary intends to make a final decision on this action after reviewing the EA/RIR and all public comments on it and this proposed rule. If approved by the Secretary, the resulting final rule would be in effect before the beginning of the 1991 halibut fishing season.

#### Classification

This proposed rule is published under section 5 (c) of the Halibut Act and may only be implemented with the approval of the Secretary. At this time the Secretary has not determined that this proposed rule is consistent with the Halibut Act and other applicable law. The Secretary, in making that determination, will take into account the data, views and comments received during the comment period.

The Council prepared an EA in combination with a RIR and IRFA for this regulatory amendment and considered the potential environmental impacts as a result of this rule. A copy of the EA/RIR/IRFA may be obtained from the Council at the address above and comments on it are requested.

The Assistant Administrator for Fisheries, NOAA (Assistant

Administrator) determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. This determination is based on the EA/RIR/IRFA. Based on the same document, the Assistant Administrator also concludes that this proposed rule, if adopted, may have significant effects on small entities.

This rule does not contain any collection-of-information requirement subject to the Paperwork Reduction Act, nor contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

The Council determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal management program of Alaska. This determination has been submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act.

**List of Subjects in 50 CFR Part 301**

Fisheries, Treaties, Reporting and recordkeeping requirements

Dated:

---

[Signed by responsible NMFS official]

For reasons set out in the preamble, 50 CFR 301 is proposed to be amended as follows:



**PART 301 - [AMENDED]**

1. The authority citation for Part 301 continues to read as follows:

Authority: 5 U.S.T. 5; T.I.A.S. 2900; 16 U.S.C. 773-773k.

2. In § 301.9, paragraph (g) is renumbered paragraph (h), and a new paragraph (g) is added to read as follows:

§ 301.9 Catch limits.

\* \* \* \* \*

(g) Notwithstanding paragraph (a) of this section, the portion of Area 4E that is south and east of a line from 58°21'2" N. latitude, 163°00'00" W. longitude to Cape Newenham (at 58°30'00" N. latitude, 162°10'25" W. longitude) shall be closed to fishing for halibut when the Commission determines that 30 percent of the catch limit for Area 4E has been taken from this portion of Area 4E, except that 50 percent of the unharvested catch limit remaining on August 1 in the portion of Area 4E that is north and west of this line will be available for harvest in the portion of Area 4E that is south and east of this line, subject to the other provisions of this part.

\* \* \* \* \*

J. Ginter, 12-30-90, 91HALB.PR  
Revised 1-4-91  
Word count 2008