


MEMORANDUM

TO: Council, SSC and AP Members  
FROM:  Chris Oliver  
Executive Director  
DATE: September 24, 2003  
SUBJECT: Halibut Subsistence

ESTIMATED TIME  
4 HOURS

**ACTION REQUIRED**

- (a) Discuss halibut subsistence regulations.
- (b) Final action to include Ninilchik as an eligible community.
- (c) Discuss process for handling petitions from other communities.

**BACKGROUND**

Status of regulations

At its June 2003 meeting, the Enforcement Committee reported that NMFS Enforcement Division is allowing the sale of subsistence caught halibut up to the \$400 customary limit approved by the Council, even though it was clear that the Council intent was not to create a new commercial fishery. The Council requested that NOAA and Council staffs meet to confer on the issue of sale and barter of subsistence halibut. A report from that meeting is attached as Item C-6(a)(1).

The Enforcement Committee also reported on inconsistencies in State and Federal subsistence regulations regarding the disposition of rockfish caught while halibut subsistence fishing. The NMFS RAM Division contracted a report on this issue (Item C-6(a)(2)). It is unclear what action, if any, is needed at this time. The potential for inconsistent regulations was understood by the Council when they defined legal gear.

ADF&G Subsistence Division has been contracted by NMFS Alaska Region to implement a subsistence halibut harvest survey (Item C-6(a)(3)). Staff is available to provide a summary of the proposed survey, as requested by the Council in June 2003. A letter dated July 10, 2003 from the International Pacific Halibut Commission on subsistence halibut harvest monitoring is under Item C-6(a)(4).

A status report and request for additional clarifications on a draft proposed rule will be presented by NMFS staff (Item C-6(a)(5)). The rule implements the Council's April 2002 preferred alternative for revising the halibut subsistence program consistent with the Board of Fisheries recommendations to address the potential local effects of subsistence halibut fishery on halibut and rockfish populations.

Ninilchik

In September 2002, the Council received a proposal to include Ninilchik to the list of eligible rural places in regulations that authorize and manage the halibut subsistence fishery. The Council initiated an analysis

in December 2002 and scheduled final action for April 2003. The Council tabled the action because the petitioner had not received the required state or federal finding of eligibility. A letter from US Fish and Wildlife Services (USFWS) staff was received in May 2003 (Item C-6(b)(1)) and action was rescheduled. There are numerous additional Cook Inlet communities that could be included using the Federal Subsistence Board's (FSB) findings.

Eligibility criteria for communities and Federally-recognized Alaska Native Tribes were explicitly based on criteria used by the State of Alaska Board of Fisheries (BOF), but also referenced the Alaska National Interest Lands Conservation Act (ANILCA) to include Federally-qualified participants but did not identify them or where they could fish. As a result, Ninilchik was not listed as an eligible community because the Council's list of eligibility communities was based on State criteria, which deems the entire Kenai Peninsula as urban. The Council recognized that some rural communities (those not explicitly named in its initial list) may seek a finding of customary and traditional use of halibut and thereby secure subsistence eligibility for its non-Native residents. The Council specifically stated that such petitions will be reviewed by the Council after it receives a finding of customary and traditional use of halibut from the appropriate State or Federal bodies. A petition from a Ninilchik resident was received by the Council in September 2002. USFWS staff notified the petitioner in writing that it appears to meet that standard.

Under Alternative 2, the Council will consider whether to add Ninilchik (and Happy Valley residents) to its list of eligible communities for halibut subsistence use. If included, the Council must decide where these participants may fish (i.e., subject to the State non-subsistence area closure and an expanded closed area under draft proposed regulations or in any waters open to Federally-qualified participants). Adding Ninilchik would result in an additional 650 non-Native residents (and perhaps 497 Alaska Native and non-Native Happy Valley residents under an option) who could retain halibut for subsistence purposes. Over 90% of Ninilchik and Happy Valley households used halibut for food. A total of 34,000 total pounds of halibut were harvested, with an average of 85 lb. per household, and 32 lb. per person. In number of fish, residents harvested 2,079 halibut, or an average of 5.2 per household. Sport rod and reel and commercial longline gear comprised 95 and 5 percent, respectively, of halibut harvests. These harvests are not characterized by ADFG as subsistence use.

The analysis was mailed to the Council on September 8, 2003.

#### Petitions from other Communities

Since the subsistence halibut fishery opened, Council and NMFS staff have received numerous calls and e-mails from Alaska communities/residents who are ineligible for the program and are seeking inclusion. Most of these calls are from residents of rural places with fewer than 25 people, below the minimum for identification as a census designated place (e.g., Funter Bay on Admiralty Island, Herring Cove near Saxman, Port Tongass Village near Ketchikan). Other ineligible communities are census designated places near others that are eligible (e.g., Naukati Bay on Prince of Wales Island). Residents of Cooper Landing, and Nikolaevsk also wish to be included. An ineligible Tribe (Qutekcak Native Tribe) in Seward also seeks inclusion. Council staff requests clarification as to whether a "paper" petition must be received by an appropriate agency, or whether phone or email petitions are satisfactory.

The Alaska Board of Fisheries (BOF) and the Federal Subsistence Board (FSB) are two agencies that have agreed to provide recommendations to the Council on the customary and traditional use of halibut for communities that appeal for inclusion in the regulations defining the NMFS subsistence halibut fishery. The Joint Protocol Committee recommendations for how the State might address appeals are under Item B-4 supplemental. The BOF defined its appeals process at its October 3-5, 2003 work session (item C-6(c)(1)).

In its letter to the Council dated June 10, 2003 Item C-6(c)(2), USFWS staff identified the FSB's annual proposal cycle (January to March), regional advisory council meetings (September to October), which lead up to its annual meeting in December. However, many of the petitions will be handled by staff, who will apply the FSB's findings of customary and traditional use of fish for the geographic areas in which the petitioner resides, since those findings are not community based. A report prepared by Council staff in March 2003 (Item C-6(c)(3)), lists a number of communities that USFWS staff offered for consideration at the request of the Council. Note, however, that the list does not include numerous additional communities deemed rural by the FSB (Item C-6(c)(4)), but which are deemed urban by the BOF (for which petitions may be forthcoming). USFWS staff will be on hand to provide additional information.

Staff discussion regarding barter and sale of subsistence caught halibut  
July 10, 2003

Jeff Passer (Enforcement), John Kingeter (Enforcement), John Lepore (NOAA General Council), Jay Ginter (NMFS-Sustainable Fisheries), Phil Smith (NMFS Restricted Access Management), and Jane DiCosimo (Council) met on July 10, 2003 to discuss possible regulatory amendments to address the sale and barter of subsistence caught halibut. The staff met at the Council's request to address the June 2003 Enforcement Committee report. Specifically, the committee reported that NMFS Enforcement Division is allowing the sale of subsistence caught halibut up to the \$400 customary limit approved by the Council, even though it was clear that the Council intent was not to create a new commercial fishery.

The staff discussed the enforcement issue related to sale of subsistence halibut. Enforcement staff clarified that the Council understanding and intent that customary and traditional barter (for cash) was different than sale was no longer accepted by the Federal Subsistence Board. That is, any monetary exchange constitutes "sale."

The staff concluded the following possible regulatory changes could be considered by the Council:

1. Do not change the regulations, accept their ambiguity, and see if concerns are valid in the future
2. Amend the regulations by removing the "exception for \$400 cash sales" in 50 CFR 300.66(j). However, this is not consistent with current NPFMC intent.
3. FAA model: Specifically limit cash exchange for reimbursable fishing expenses identified in the regulations (such as bait, ice, fuel, gear loss, bare boat charter, etc.)  
This is an improvement over the status quo, but does not address enforcement issue of bare boat charters (See below).
4. Federal Subsistence Board model: Adopt new halibut subsistence regulations similar to new FSB regulations (50 CFR 100.27(c) & 36 CFR 242.27(c) as follows:
  - (11) *Transactions between rural residents.* Rural residents may exchange in customary trade subsistence-harvested fish, their parts, or their eggs, legally taken under the regulations in this part, for cash from other rural residents. The Board may recognize regional differences and define customary trade differently for separate regions of the State.
  - (12) *Transactions between a rural resident and others.* In customary trade, a rural resident may trade fish, their parts, or their eggs, legally taken under the regulations in this part, for cash from individuals other than rural residents if the individual who purchases the fish, their parts, or their eggs uses them for personal or family consumption. If you are not a rural resident, you may not sell fish, their parts, or their eggs taken under the regulations in this part. The Board may recognize regional differences and define customary trade differently for separate regions of the State.
  - (13) *No sale to, nor purchase by, fisheries businesses.* (i) You may not sell fish, their parts, or their eggs taken under the regulations in this part to any individual, business, or organization required to be licensed as a fisheries business under Alaska Statute, AS 43.75.011 or to any other business as defined under Alaska Statute 43.70.110(1) as part of its business transactions. (ii) If you are required to be licensed as a fisheries business under Alaska Statute AS 43.75.011 or are a business as defined under Alaska Statute 43.70.110(1), you may not purchase, receive, or sell fish, their parts, or their eggs taken under the regulations in this part as part of your business transactions.
5. Adopt the State of Alaska definition to redefine a charter vessel as state-licensed and restrict their use in the subsistence fishery to the owner and identified family members. Section 300.66(i) of the subsistence halibut regulations prohibit the retention of subsistence halibut that were harvested using a charter vessel. The sole element an enforcement officer must prove in a charter case is that the "operator was hired." Through creative compensation agreements (bare boat charters), a charter operator may be aboard his vessel but might not be "hired," so it is not considered a charter vessel and consequently there is no enforcement issue. Yet, it may look like a charter in all other ways. The ability of fishermen to endorse and unendorse their charter status (via their Commercial Fishing Entry Commission license) should be considered to prevent circumvention of this definition.

Norman A. Cohen  
204 N. Franklin St., Suite One  
Juneau, AK 99801

June 19, 2003

Jay Ginter  
National Marine Fisheries Service  
P.O. Box 21668  
Juneau, AK 99802

Re: Subsistence Halibut Fishery – Bycatch Issues

Dear Jay:

As requested by Phil Smith, I have reviewed the State of Alaska groundfish and bottomfish subsistence and personal use regulations to determine where they may place limitations on the conduct of the federal Subsistence Halibut Program. I have discussed the issues with the groundfish staff at ADF&G as well as with the Attorney General's office. The following are my conclusions:

1. In areas of state waters where there are customary and traditional uses of bottomfish or groundfish, or other finfish (the State uses different terms in their regulations), no gear limits, and no possession limits, the federal Subsistence Halibut Program can proceed without additional restrictions other than those contained in federal regulation. Examples of these areas include the Chignik, Alaska Peninsula, Aleutians, Bering Sea, and some areas in Southeast.
2. In areas of state waters where no customary and traditional uses of bottomfish, etc., have been made, then the fisher must return all bycatch to the water, whether dead or alive, unless some other provision applies. Consequently, in areas of Southeast where there are no customary and traditional determinations, there is an unlimited personal use fishery for bottomfish. A fisher who has a sport fish license in possession may retain all of the bycatch under the personal use rules in these areas. If the fisher does not have a sport fish license, then the bycatch must be returned to the water. Examples of these areas include the Petersburg, Wrangell, Stephen's Passage, and outside Yakutat Bay waters.
3. In areas of state waters where customary and traditional uses of bottomfish, etc., have been identified, but there are gear and possession limits for the bottomfish, then unless the fisher uses the gear specified for the bycatch, all of the bycatch must be returned to the water. If the proper gear is used, then the bycatch can be retained, but only to the level of the retention limits. For example, in Prince William Sound, in order to retain rockfish or lingcod, the halibut gear cannot have more than 5 hooks. If it has the legal halibut limit of 30 hooks, then the bycatch must be returned to the water. If it has the rockfish or lingcod limit of 5 hooks, then the fisher may retain the rockfish and lingcod up to the daily and possession limits of 2-

10 fish, any additional must be returned to the water. This situation occurs in Prince William Sound, Cook Inlet, and Kodiak waters.

I have prepared maps for each of the areas where there are bycatch limitations, which are the result of state regulations. I also have provided this information to the ADF&G Subsistence Division to see if they have any comments or draw any different conclusions. I have not heard any comments from them at this time.

If you have any questions or need further clarification, please contact me at your convenience.

Very truly yours,

Norman A. Cohen

cc: Phil Smith

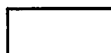
## Subsistence Halibut Fishery

Regulatory analysis of:

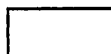
Non-subsistence areas



Bycatch retention restriction areas



Gear and possession restriction areas



### Chart 1 – Ketchikan

Ketchikan Closed Area – 50 CFR 300.65(g)(3)(i) – describes the closed area.

SE District 1 (Statistical Area 101) – 5 AAC 01.716 – no C&T finding for bottomfish

SE District 2 (Statistical Area 102) – 5 AAC 01.716(a)(12) – C&T finding in Kasaan Bay area only.

SE District 3 (Statistical Area 103) – 5 AAC 01.716(a)(14, 17) – C&T findings in District 3A, 3B, but not 3C.

SE District 4 (Statistical Area 104) – 5 AAC 01.716 – no C&T finding for bottomfish

SE areawide – 5 AAC 77.674 – Personal use fishing for bottomfish – no limits in areas where there are no C&T findings.

### Chart 2 – Petersburg/Sitka

SE District 5 (Statistical Area 105) – 5 AAC 01.716(a)(20) – C&T findings in the Point Baker area.

SE District 6 (Statistical Area 106) – 5 AAC 01.716(a)(20) – C&T findings in the Whale Pass area.

SE District 7 (Statistical Area 107) – 5 AAC 01.716 – no C&T finding for bottomfish

SE District 8 (Statistical Area 108) – 5 AAC 01.716 – no C&T finding for bottomfish

SE District 9 (Statistical Area 109) – 5 AAC 01.716(a)(9) – C&T findings in the Kake area.

SE District 10 (Statistical Area 110) – 5 AAC 01.716(a)(9) – C&T findings in the Kake area.

SE areawide – 5 AAC 77.674 – Personal use fishing for bottomfish – no limits in areas where there are no C&T findings.

### Chart 3 - Juneau

Juneau Closed Area – 50 CFR 300.65(g)(3)(ii) – describes the closed area.

SE District 11 (Statistical Area 111) – 5 AAC 01.716 – no C&T finding for bottomfish

SE District 12 (Statistical Area 112) – 5 AAC 01.716(a)(5) – C&T findings in the Angoon area.  
SE District 13(Statistical Area 113) – 5 AAC 01.716(a)(21) – C&T findings in the entire district.  
SE District 14 (Statistical Area 114) – 5 AAC 01.716(a)(5) – C&T findings in the Hoonah, Gustavus, Glacier Bay area.  
SE District 15 (Statistical Area 115) – 5 AAC 01.716(a)(1) – C&T findings in the district except in the Berner’s Bay to Point Sherman area.

SE areawide – 5 AAC 77.674 – Personal use fishing for bottomfish – no limits in areas where there are no C&T findings.

Chart 4 – Yakutat

SE District 16 (Statistical Area 116) – 5 AAC 01.666(2) – C&T findings in the Yakutat Bay area.

SE areawide – 5 AAC 77.674 – Personal use fishing for bottomfish – no limits in areas where there are no C&T findings.

→ Chart 7 – Cook Inlet/Prince William Sound

Valdez Closed Area – 50 CFR 300.65(g)(3)(iv) – describes the closed area.

Remainder of PWS District – 5 AAC 01.616(c) – C&T findings in Prince William Sound.  
Remainder of PWS District – 5 AAC 01.620(h) – gear limitation of 5 hooks.  
Remainder of PWS District – 5 AAC 01.645(d-e) – possession limits on rockfish and lingcod.

Anchorage Closed Area – 50 CFR 300.65(g)(3)(iii) – describes the closed area.

Cook Inlet – 5 AAC 01.566(a)(4) – C&T findings in areas outside of non-subsistence area.  
Cook Inlet – 5 AAC 01.570(m-n) - gear limitation of 5 hooks.  
Cook Inlet – 5 AAC 01.595(c-d) – possession limits on rockfish and lingcod.

Chart 8 – Kodiak

Kodiak – 5 AAC 01.536 – C&T findings in Kodiak District.  
Kodiak – 5 AAC 01.520 – gear limitation of 5 hooks.  
Kodiak – 5 AAC 01.545(b-c) - possession limits on rockfish and lingcod.

Remainder of State – No bycatch restrictions



**Subsistence Halibut Harvest Survey**  
**National Marine Fisheries Service &**  
**ADF&G Division of Subsistence**

AGENDA C-6(a)(3)  
 OCTOBER 2003

Fisher's Name (First, Middle, Last)		Date of Birth	
Mailing Address (Number and Street, City and State, Zip code)			
Community of Residence		Daytime Telephone	
Tribe (if you are on a tribal role)			
<b>Please answer each question to the best of your knowledge.</b>			
1. Did you subsistence fish for halibut during 2003? (Please check one)		YES	NO
2. How many halibut did you harvest with set hook gear while subsistence fishing during 2003? ("Set hook gear" is hook-and-line set with anchors and buoys. Please write in both the number and pounds of halibut.)			
2a. Number of halibut	2b. Pounds of halibut	2c. How many hooks did you usually set?	2d. Water body, bay, or sound
3. How many halibut did you harvest with hook-and-rod or hand-held lines while subsistence fishing during 2003? (Please write in both the number and pounds of halibut. Do not count fish reported in Question 6)			
3a. Number of halibut	3b. Pounds of halibut	3c. Water body, bay, or sound	
4. How many ling cod and rockfish did you harvest while subsistence halibut fishing during 2003? (Please write in the numbers of fish only.)			
4a. Number of ling cod		4b. Number of rockfish	
5. Did you sport fish for halibut during the year 2003? (Please check one)		YES	NO
6. How many halibut did you harvest while sport fishing during 2003? (Please write in both the number and pounds of halibut. Do not count fish reported in Question 3)			
6a. Number of halibut		6b. Pounds of halibut	
<b>Thank you! Please mail the completed survey to:</b>		<b>Questions?</b>	
<b>ADF&amp;G</b>		<b>Call 1-800-267-0000</b>	
<b>Division of Subsistence</b>			
<b>333 Raspberry Road</b>			
<b>Anchorage, AK 99518-1599</b>			

**PUBLIC REPORTING BURDEN STATEMENT**

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Sue Salvesson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802-1668 (Attn: Lori Durall).

**ADDITIONAL INFORMATION**

Before completing this form please note the following: 1) The NMFS may not conduct or sponsor this information request, and you are not required to respond to this information request, unless the form displays a currently valid OMB control number; 2) This information is being used to implement the Alaska Subsistence Halibut Program; 3) Federal law and regulations require and authorize NMFS to manage subsistence halibut program in Alaska; 4) Submission of this information is voluntary for all persons participating in directed fishing for Pacific halibut under the subsistence halibut program; 5) This information is used to monitor the subsistence halibut program under the Northern Pacific Halibut Act of 1982; 6) Responses to this information request are not confidential except for birthdate which is confidential under the Privacy Act.

COMMISSIONERS:

CLIFF ATLEO  
PORT ALBERNI, B.C.  
JAMES BALSIGER  
JUNEAU, AK  
RICHARD J. BEAMISH  
NANAIMO, B.C.  
RALPH G. HOARD  
SEATTLE, WA  
ANDREW SCALZI  
HOMER, AK  
JOHN SECORD  
VANCOUVER, B.C.

# INTERNATIONAL PACIFIC HALIBUT COMMISSION

ESTABLISHED BY A CONVENTION BETWEEN CANADA

AND THE UNITED STATES OF AMERICA

AGENDA C-6(a)(4)  
OCTOBER 2003

SEATTLE, WA 98145-2009

TELEPHONE  
(206) 834-1838

FAX:  
(206) 632-2983

July 10, 2003

Dr. James W. Balsiger, Administrator  
Alaska Region  
National Marine Fisheries Service  
P.O. Box 21668  
Juneau, AK 99802-1668

RECEIVED  
JUL 14 2003  
N.P.F.M.C.

Dear Jim,

The North Pacific Fishery Management Council (NPFMC) passed halibut subsistence regulations in 2002 and they were enacted via the Federal Register in 2003. The stated intent of the Council was to recognize and provide a legal framework for the existing practice of harvesting halibut for subsistence purposes. The Commission staff makes no comment on the allocation of halibut among user groups and that is purely within the purview of each country. However, during the development of regulations to implement the Council's intent, Commission staff expressed several concerns in a letter to Sue Salveson regarding the impact of the increased permissions for harvest under the regulations, as well as the adequacy of provisions for monitoring of the subsistence harvest. These concerns remain and have been accentuated by the progress of the subsistence program.

The subsistence regulations changed the legal definition of halibut possession significantly. We are concerned with the overall enforcement of the subsistence program and the legal possession of halibut. Although in most areas, both subsistence and commercial halibut cannot be on the same vessel, the subsistence regulations do not prohibit having subsistence halibut on a vessel with other, non-halibut, commercially-caught fish. We recognize that subsistence harvesters need to have the SHARC cards and the specified gear onboard, however, this permission does allow winter Pacific cod vessels and trawlers to possess halibut legally onboard the vessel. We also believe that vessels commercially fishing for State (non-limited entry) sablefish previously were required to report their halibut catch as IFQ even if one person onboard held IFQ quota shares. Under the new regulations it appears that the halibut could be reported as subsistence halibut if a person onboard holds a SHARC card and they presumably fished 30-hooks. If it is correct that commercial-caught fish and subsistence halibut can be on the same vessel it will be impossible for Enforcement to verify the origin of the halibut.

It is our understanding that subsistence halibut can be filleted onboard the vessel. While it is legal to fillet sport caught halibut, the bag limit of two fish means that there are fewer fish involved. It will be extremely difficult, if not impossible, to track numbers of fish accurately with the higher subsistence daily bag limit.

The NPFMC was silent on possession limit. Therefore, a 3-day trip would allow possession of three daily limits. For example, if three harvesters are fishing for three days they are legally allowed 180 halibut. Since no documentation such as a punch card, is required at the time of fishing, how will Enforcement determine the number of fishing days and therefore the legal number of fish allowed?

There is an overlap of allowance by IPHC regulations and the subsistence regulations that we will recommend resolving at the next Annual Meeting. IPHC regulations allow Areas 4D and 4E CDQ harvesters to retain halibut under 32 inches while CDQ fishing and the CDQ organization is required to

report harvest to IPHC by IPHC regulations. For this harvest, SHARC cards are not required. The same person not CDQ fishing would require a SHARC card while under subsistence regulations.

The subsistence fishery regulations allow significant permissions for subsistence harvest over those that had been allowed previously, both for harvest limits and gears. In most central and eastern areas of Alaska, subsistence harvest was not conducted historically using longline gear, but with rod and reel. We also believe this increase in fishing power will lead to increased participation and the progress of SHARC registration in 2003 supports this concern. These increased allowances make it essential that an effective monitoring program is implemented. We are concerned with the abilities to accurately survey individuals for catch accounting post-season, especially with the new fishing permissions and bag limits. We believe a new group of users will be harvesting under subsistence regulations in areas where previous removals were permitted only under recreational harvest regulations.

In light of these concerns, we request the following:

- A review of monitoring and estimation procedures for subsistence harvest in order to assure accurate accounting of subsistence removals
- Establishment of a possession limit for subsistence harvest
- A review with NOAA Enforcement and Coast Guard on the ability to accurately estimate number of halibut from fillets
- Rationalization of IPHC and NMFS regulations concerning possession of subsistence halibut aboard vessels having other commercially-caught fish aboard
- Rationalization of IPHC and NMFS regulations concerning retention of sublegal halibut in IPHC Areas 4D and 4E

Our primary responsibility is management of the halibut resource and we believe the procedures for subsistence monitoring and enforcement should be consistent with those in place for other stock removals. Our staff contact for these items is Heather Gilroy (ext. 206 or [heather@iphc.washington.edu](mailto:heather@iphc.washington.edu)) and we look forward to addressing these issues with you and your staff.

Sincerely,



Bruce M. Leaman  
Executive Director

cc: Chris Oliver, NPFMC  
IPHC Commissioners  
Jeff Passer, NOAA Office for Enforcement, Juneau  
Capt. Rich Preston, 17<sup>th</sup> Coast Guard District

Federal Subsistence Halibut Regulations: Part 2.1

**A Discussion of Issues Pertinent to Drafting Proposed Regulations  
Implementing Changes to the Halibut Subsistence Policy  
Adopted by the  
North Pacific Fishery Management Council**

September 29, 2003

A. L. "Bubba" Cook  
Sustainable Fisheries Division, Alaska Region  
National Marine Fisheries Service  
Juneau, Alaska

The practice of subsistence harvest of fish and wildlife permeates the cultural fabric of Alaska Native and the rural Alaskan lifestyle. Subsistence harvest of natural resources represents a customary and traditional practice that predates modern conveniences and remains necessary in many Alaska Native villages and non-native rural communities that possess limited alternative food resources.

In October 2000, the North Pacific Fishery Management Council (Council) adopted a policy providing for a subsistence halibut fishery, which recognized the fishery as distinct from commercial and sport fisheries and provided measures for controlling the conduct of the fishery. In suggesting and implementing a rule designed to monitor the subsistence harvest of halibut, the Council expressly recognized the customary and traditional practice of Alaska Natives and non-natives in rural areas to harvest halibut for non-commercial and non-economic use. In April 2002, the Council unanimously adopted modifications to the original October 2000 action to address concerns identified by the State of Alaska Board of Fisheries about the potential local effects of subsistence halibut fishing on halibut and rockfish populations. The Council also adopted modifications to its original policy regarding the retention of subsistence halibut with Community Development Quota Program (CDQ, i.e. commercial) halibut taken in certain areas of the Bering Sea.

This paper reviews the suggested changes proposed by the Council with reference to the regulatory text that will implement the amended policy later this year. Specifically, this paper will discuss regulatory and implementation details necessary to carry out the Council's intent. This paper explicitly requests clarification of the Council's intent in some areas, but also solicits correction of any issue not correctly represented in the discussion. Approval and clarification of this paper will be helpful to staff in drafting and implementing proposed rules that distinctly reflect Council intent.

### **Background**

Management of the Pacific halibut fishery in and off of Alaska is based on an international agreement between Canada and the United States – the "Convention between the United States

of America and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea," signed at Ottawa, Canada on March 2, 1953, and amended by the "Protocol Amending the Convention," signed at Washington, D.C., March 29, 1979. The Northern Pacific Halibut Act of 1982 (Halibut Act) of the United States gives effect to the Convention administered by the International Pacific Halibut Commission (IPHC). Generally, the IPHC develops fishery management regulations governing the halibut fisheries and then recommends those regulations to the U.S. Secretary of State. If approved, NMFS publishes the recommended regulations in the Federal Register as annual management measures. The annual management measures for 2003 were published March 7, 2003 (68 FR 10989).

The Halibut Act also provides for the Council to develop halibut fishery regulations, including limited access regulations, in its geographic area of concern that would apply to nationals or vessels of the U.S. (Halibut Act section 773(c)). Such an action by the Council is limited only to those regulations that (a) are in addition to and not in conflict with IPHC regulations, (b) must be approved and implemented by the Secretary and (c) any allocation of fishing privileges must be fair and equitable and consistent with other applicable Federal law. The Halibut Act provides the authority under which the Council acted initially in October to adopt its original subsistence halibut policy and later in April 2002 in adopting the amended policy.

In January 2002, the IPHC adopted regulatory language (in section 23 of the IPHC regulations) that recognized customary and traditional fishing for halibut in Alaska. The IPHC also expanded the allowance to retain short halibut taken with commercial halibut harvested under the CDQ Program in Areas 4D and 4E. Council, NMFS, and NOAA GC staffs continued to meet to discuss various implementation issues, in particular, monitoring and enforcement, and to refine the draft proposed rule. NMFS also conducted consultations with affected Alaska Native representatives pursuant to Executive Order 13175.

NMFS Alaska Region submitted the proposed rule package to NMFS Headquarters on May 30, 2002, who published it in the Federal Register on August 26, 2002 beginning on Page 54767. A 30-day comment period on the proposed rule began on the day of publication and ended September 25, 2002.

In its original October 2000 action, the Council incorporated a request to the State of Alaska Board of Fisheries to review the Council in June 2001. The Board complied with the request and recommended specific restrictions on subsistence gear and harvest limits for the Kodiak Road Zone and Chiniak Bay (together Kodiak Road Zone), Prince William Sound, Cook Inlet, and Sitka Sound. Due to the increased restrictions in some areas, the Board recommended use of the State's proxy system to allow subsistence halibut fishermen to harvest halibut for other qualified persons. The Board also recommended redefinition of the southern boundary of the non-subsistence or non-rural area in Cook Inlet. Finally, the Board recommended more liberal restrictions for subsistence in the Bering Sea (IPHC Area 4).

In response, the Council initiated an analysis of the Board's recommendations and other alternatives, including the no action alternative. During initial review of this analysis in December 2001, the Council expanded the range of some of the elements and options by adding

an alternative and a separate action to allow for the retention of legal sized halibut in certain areas. The Council selected a preferred alternative in April 2002 (see attached). In October 2002, NMFS staff presented a discussion paper that assessed regulatory and implementation aspects of the proposed April 2002 amendments. However, the Council's preferred alternative requires additional clarification regarding questions raised in the October 2002 discussion paper. Upon clarification, NMFS will further develop a proposed rule reflecting the April 2002 suggested changes for submission and publication. Rules implementing the Council's April 2002 action will change the October 2000 action implementing the original rules, assuming the Secretary of Commerce fully approves the April 2002 action.

### **Required Clarification**

The principal effect of the Council's April 2002 action involves increasing restrictions on the amount of longline gear that may be used for harvesting subsistence halibut and the harvest limits of halibut in some areas. Furthermore, new provisions of the April 2002 action include relaxing constraints on mixing commercial CDQ halibut with subsistence halibut in some areas of the Bering Sea, providing for community harvest permits to mitigate additional proposed restrictions in Areas 2C and 3A, and ceremonial, cultural and educational permits. The following discussion addresses each of these issues individually.

1. Authorized areas of subsistence halibut harvest. The Council's original action allows subsistence halibut fishing in any area in and off of Alaska except for the four non-rural areas of Anchorage, Valdez, Juneau, and Ketchikan. The Council defined the non-rural areas in the proposed rule to coincide with the non-subsistence marine waters of existing non-subsistence hunting and fishing areas used by the State of Alaska. In April 2002, the Council recommended changing the boundary of the Anchorage non-rural area.

In April 2002, the Council adopted the Board's recommendation to relocate the southern boundary of the non-rural area in Cook Inlet further south to an east-west line at 59°30.40' N. latitude. The effect of this action prohibits subsistence halibut fishing in all of Cook Inlet north of this new southern boundary line. Subsistence halibut fishing could occur in rural areas south of this line including the area currently open to subsistence fishing for State-managed groundfish fisheries. However, NMFS staff requires further clarification of the intended location of the proposed southern boundary because of a discrepancy in the existing rule and the proposed change.

What appears to be a typo exists in the current regulatory text. The textual description describes the southern boundary of the Anchorage non-rural area as extending from Hesketh Island at 59°30.04' N. latitude. However, when observing a graphical representation of that text, 59°30.04' N. latitude lies south of Hesketh Island and fails to contact any physical point on the island. The line as illustrated at 59°30.40' N. latitude, however, more adequately describes the textual description by contacting the westernmost physical point on Hesketh Island. This discrepancy in the textual and numerical description represents a significant error that could potentially affect enforcement. Consequently, NMFS staff requires confirmation from the Council that the actual desired line of reference occurs at 59°30.40' N. latitude.

2. **Gear Restrictions.** The rule implementing the Council's original action allows subsistence halibut fishing only with setline gear and hand-held gear of not more than 30 hooks including longline, handline, rod and reel, spear, jigging, and hand-troll gear. The 30-hook limit on setline or longline gear applies in any rural area, and to each authorized subsistence fisher. By contrast, the Council's action in April 2002 would change this general rule to be more liberal in some areas and more restrictive in others as described in Table 1. Nonetheless, the April 2002 action suggests that the number of hooks used to harvest subsistence halibut in any area not specifically excepted must never exceed 3 times the per person hook limit per vessel for a given area, meaning that a vessel in a 30 hook per person area will be limited to 90 hooks and a vessel in a 10 hook per person area will be limited to 30 hooks.

**Table 1: Proposed Subsistence Gear Restrictions**

IPHC Area	Council Action of April 2002
2C Excluding the Sitka LAMP Area	Subsistence fishing gear must not have more than 30 hooks per vessel unless fishing under a Community Harvest Permit.
2C Inside Sitka LAMP Area	1. <u>June 1 through August 31:</u> <ol style="list-style-type: none"> <li>i. No more than 15 hooks per vessel</li> <li>ii. No longlines within a 4 nautical mile radius extending south from Low Island at 57°00'42" N. lat. And 135°36'34" W.long.</li> <li>iii. No power hauling allowed.</li> </ol> 2. <u>September 1 through May 31:</u> <ol style="list-style-type: none"> <li>i. No more than 30 hooks per vessel.</li> <li>ii. Power hauling allowed.</li> </ol>
3A	<u>Inside Kodiak Road Zone, Prince William Sound, Cook Inlet:</u> no more than 10 hooks per person unless fishing under a Community Harvest Permit.
3B, 4A, and 4B	No more than 3 times the 30-hook limit per vessel per trip, provided at least 3 authorized subsistence fishers are on board.
4C, 4D, and 4E	No hook limits (other than legal gear for halibut).

3. Harvest restrictions. The rule implementing the Council's original action allows up to 20 fish per day to be harvested in rural areas by each authorized subsistence fisher. Implementing the Council's April 2002 action changes the harvest retention limit in only two IPHC Areas, but a distinction is made in Area 2C between the Sitka LAMP area and the remainder of Area 2C, as indicated in Table 2. In Area 2C, excluding the Sitka LAMP area, the daily retention limit of 20 fish per day per authorized fisher declines to 20-fish per vessel. Hence, regardless of the number of authorized subsistence fishers on board a vessel in Area 2C, no more than 20 fish per day may be harvested on that vessel. Inside the Sitka LAMP area, the daily retention limit changes seasonally from 5 fish per vessel during the summer months (June, July, August) to 10 fish per vessel during the remainder of the year. In Area 3A, the original basic limit of 20 fish per day per person changes only within the Kodiak Road Zone and Chiniak Bay. In these areas, an annual limit of up to 20 fish per authorized fisher would apply. Elsewhere, in IPHC Areas 3B, 4A, and 4B, the Council recommended no change from its original 20-fish per day rule, and in Areas 4C, 4D, and 4E, no subsistence harvest limits would apply as was originally recommended in October 2000.

The implementation of Community Harvest Permits (CHP), Ceremonial Permits, and Educational Permits proposed by April 2002 action present other specific exceptions to the retention limits exclusively in Areas 3A and 2C. A CHP eliminates any retention limitations for the vessel in possession of the permit. A Ceremonial or Educational Permit allows retention of 25 fish per permit. Section 5 and 6 of this discussion paper covers the specifics of the 2C and 3A exclusive permits in more detail.

**Table 2: Proposed Subsistence Harvest Restrictions**

IPHC Area	Council Action of April 2002
2C Excluding the Sitka LAMP Area	<ol style="list-style-type: none"> <li>1. The daily retention limit is 20 fish per vessel.</li> <li>2. No daily retention limit if fishing under a Community Harvest Permit.</li> <li>3. The retention limit if fishing under a Ceremonial or Educational permit is 25 halibut per permit.</li> </ol>
2C Within the Sitka LAMP Area	<ol style="list-style-type: none"> <li>1. <u>June 1 through August 31</u>: The daily retention limit is 5 fish per vessel.</li> <li>2. <u>Sept. 1 through May 31</u>: The daily retention limit is 10 fish per vessel.</li> <li>3. The retention limit if fishing under an Educational permit is 25 halibut per permit.</li> </ol>
3A	<ol style="list-style-type: none"> <li>1. A daily retention limit of 20 fish per authorized subsistence fisher, except in Kodiak Road Zone and Chiniak Bay where an annual harvest limit of up to 20 fish per person would apply.</li> <li>2. No daily retention limit if fishing under a Community Harvest Permit.</li> <li>3. The retention limit if fishing under a Ceremonial or Educational permit is 25 halibut per permit.</li> </ol>
3B, 4A, and 4B	No change from original limit of 20 fish per day per authorized fisher.
4C, 4D, and 4E	No change; no retention limit



4. Special provisions for mixing subsistence and commercial harvest. The prohibition on the retention of subsistence halibut on board a vessel with commercial or sport halibut represents the standard rule. In the current rule, an exception allows CDQ fishermen in Areas 4D and 4E to retain halibut for subsistence use that are less than the 32 inch legal size for commercial halibut (i.e., “short” halibut) while they are CDQ fishing. Additionally, the IPHC regulations (at sec. 7) only allow a person to retain short halibut in an Area 4D or 4E CDQ fishery if the person or vessel lands their entire annual halibut catch at a port within these areas.

In its April 2002 action, the Council expanded this exception by allowing legal-sized halibut (32 inches long or greater) to also be retained for subsistence use while CDQ fishing without counting against a CDQ allocation. Nonetheless, while CDQ and subsistence halibut may be retained together in some situations, under no circumstance may IFQ or sport halibut be retained with subsistence halibut. This allowance may be exercised only by residents of eligible communities in Areas 4C, 4D, and 4E, and such mixed subsistence and CDQ halibut may only occur on a vessel that lands its entire annual halibut catch at a port within these areas. Residents of all of the communities in Areas 4C, 4D, and 4E listed as having customary and traditional uses of halibut would be eligible.

Hence, to use this provision to retain halibut for subsistence and commercial CDQ purposes on the same vessel, a person must (a) be authorized to fish for subsistence halibut, (b) be authorized to fish for CDQ halibut, (c) use a vessel that lands its entire annual halibut catch at a port within IPHC Areas 4C, 4D, or 4E, and (d) be a resident of one of the subsistence-eligible communities in these areas. Note that not all CDQ communities may be listed as subsistence-eligible communities.

In summary, subsistence halibut and commercial halibut (i.e., halibut harvested under the CDQ or IFQ rules) must not be retained at the same time on board the same vessel, except in IPHC Areas 4C, 4D, and 4E. The exception recommended by the Council in April 2002 allows retention of “short” and legal sized halibut on the same vessel with commercial CDQ halibut (but not IFQ halibut) only in Areas 4D and 4E. In Area 4C, only legal sized halibut may be retained on the same vessel for subsistence with CDQ halibut; not “short” halibut.

5. Community harvest permit (CHP). In April 2002, the Council adopted a policy in response to the Board of Fisheries request for “proxy” fishing that applies exclusively to IPHC Areas 2C and 3A. The Council developed a CHP concept to mitigate the proposed more restrictive gear and harvest limits suggested by the April 2002 action (see Tables 1 and 2). Specifically, a CHP applies only in IPHC Area 2C excluding the Sitka LAMP and in those parts of Area 3A that are within the Kodiak Road Zone, Prince William Sound, and Cook Inlet (3A subareas). A CHP may not be used within any non-rural area where any subsistence halibut fishing would normally be prohibited or within the Sitka LAMP area.

Based on recommendations of the Council’s Halibut Subsistence Committee from its meeting in July 2002, a CHP will issue only on request of an Alaska Native tribal entity that has customary and traditional uses of halibut in the applicable areas (2C and 3A) or a government entity representing a community that has customary and traditional uses of halibut in these areas, if no

tribal entity exists in the community. A CHP will be specific to the community in Area 2C or 3A in which the requesting tribal entity or community has customarily and traditionally harvested halibut and where additional restrictions are imposed. In addition, the Committee intended for only one CHP to be issued per tribal entity or community government. In cases where there is more than one eligible tribal entity in a community, however, each eligible tribe in the community could request and receive a separate CHP. However, in communities where a tribe exists, a community will not be issued a CHP.

In IPHC Area 2C, for example, 19 Alaska Native tribes (as defined in the proposed rule) would be eligible to receive a CHP to harvest subsistence halibut in rural parts of Area 2C. This includes five Alaska Native tribes located in the non-rural areas of Ketchikan and Juneau. An additional 14 rural communities in Area 2C also would be eligible to receive a CHP because these communities do not contain an eligible Alaska Native tribe. Hence, the maximum number of CHPs that could be issued in any one year in Area 2C would be 33 (19 + 14). The 14 eligible rural communities without Alaska Native tribes include:

Coffman Cove	Edna Bay	Elfin Cove
Gustavus	Hollis	Hyder
Meyers Chuck	Pelican	Point Baker
Port Alexander	Port Protection	Tenakee Springs
Thorne Bay	Whale Pass.	

In IPHC Area 3A, the number of eligible Alaska Native tribes and communities would be fewer than in 2C, because eligibility would be limited to those tribes or communities that would conduct subsistence halibut fishing only in the areas of the Kodiak Road Zone and Chiniak Bay, Prince William Sound, and Cook Inlet where additional gear and harvest constraints would apply under the Council's April 2002 action. In Area 3A, however, all the affected communities contain an eligible Alaska Native tribe; no other communities without Alaska Native tribes would be affected. Specifically, these include:

Native Village of Chanega in Chanega Bay	Native Village of Eyak in Cordova
Kenaitze Indian Tribe in Kenai-Soldotna	Village of Salamatoff in Kenai-Soldotna
Lesnoi Village in Kodiak City	Native Village of Afognak in Kodiak City
Shoonaq' Tribe of Kodiak in Kodiak City	Native Village of Nanwalek in Nanwalek
Ninilchik Village in Ninilchik	Native Village of Port Graham
Seldovia Village Tribe in Seldovia	Native Village of Tatitlek in Tatitlek.

In its application for a CHP, a tribal or community government must only identify the tribe or community requesting the CHP and identify one person as the CHP Coordinator for each tribe or community. Any person harvesting subsistence halibut for that tribe or community under a CHP must also possess a subsistence halibut registration certificate. Additionally, all harvest of subsistence halibut under a CHP must occur from a single vessel from which gear is set or retrieved and on board which the physical CHP is maintained. In other words, subsistence halibut may be harvested from any vessel under a CHP, although the vessel must have the CHP

on board while the community harvest occurs. The CHP will remain valid for only the year in which it issues, but may be renewed annually on application to NMFS.

Subsistence halibut harvesting under a CHP may be performed with any of the gear that would be legal for such harvesting. In concurrence with the general gear limitations, longline or setline gear may possess no more than 30 hooks per skate for each subsistence halibut registered person on board a vessel and no more than three skates or 90 hooks total per vessel may be used under any circumstance. However, a CHP imposes no limit on the number of halibut that may be retained.

Each CHP will identify a CHP coordinator for each tribe. The CHP coordinator will be responsible for the conduct of subsistence fishing under the CHP on which she or he is named. This responsibility includes identifying designated harvesters that may fish under the CHP each day and all record keeping and data reporting of subsistence harvests under the CHP. The CHP must also maintain possession of the CHP when not in use and issue the CHP to designated harvesters when necessary. The “gatekeeper” function of the CHP coordinator helps facilitate accurate recordkeeping and data collection as well as helps prevent abuse of the special permit. NMFS may take into consideration compliance with applicable rules and reporting requirements in renewing a CHP in subsequent years. CHP halibut harvesters may be reimbursed their CHP harvesting costs by the permitted tribal entity through the CHP coordinator. However, reimbursement of harvesting costs to a harvester under a CHP will remain subject to the \$400 customary trade limit specified in the prohibitions section.

6. Ceremonial and Educational Harvest Permits. In Areas 2C and 3A, any Alaska Native tribe listed in the subsistence implementing rules may request from NMFS and receive a Ceremonial or Educational Permit. Basically, either permit allows a harvest of up to 25 halibut per permit. However, a Ceremonial or Educational Permit in no way changes the gear limitations for the affected areas. Like the CHP, use of these special permits is limited to the special subareas of Area 3A and Area 2C. However, while use of a Ceremonial Permit within the Sitka LAMP in Area 2C is prohibited, an Educational Permit may be used within the Sitka LAMP.

A Ceremonial Permit allows the special harvest of halibut associated with memorial potlatches and traditional cultural events. The provisions for a Ceremonial Permit loosely coincide with similar requirements for ceremonial subsistence harvest under U.S. Fish & Wildlife and National Park Service guidelines. To receive a Ceremonial Permit an application must identify the requesting tribe, indicate the name of the decedent or the occasion of cultural significance, and identify one person as the Ceremonial Permit coordinator similar to the provision under the CHP. Similar to the CHP, the permit must be maintained on board the vessel when setting and retrieving the gear.

An Educational Permit allows the special harvest of halibut associated with activities organized and conducted by Native Alaskans as part of native culture camps or other established educational programs. To ensure the validity of the educational program an applicant must include the name and address of the educational institution or organization, include each instructor’s name, demonstrate the enrollment of qualified students, describe minimum

attendance requirements, and describe the standards for the successful completion of the program. One primary exception allows students to harvest halibut under an Educational Permit absent a subsistence halibut registration certificate. Similar to the CHP and Ceremonial Permit, the permit must be maintained on board the vessel from which gear is set or retrieved. Additionally, at least one listed instructor must be on board the vessel when setting and retrieving the gear.

The Ceremonial and Educational Permits require data reporting and record keeping requirements similar to the CHP. The Ceremonial Permit coordinator or Instructor performs a similar function to the CHP coordinator by acting as a record keeper and reporter for the permit. Either permit will be valid for 30 days from the date of issuance, but tribes may apply for the special permits as needed. However, like the CHP either permit may be revoked or reissued based on the tribe's compliance with applicable rules and reporting requirements.

### **Issues that Require Further Clarification**

1. Authorized areas of subsistence halibut harvest. The rationale and intended effect of expanding the non-rural or non-subsistence area in Cook Inlet remains unclear. In April 2002, the Council adopted a change in the definition of the non-rural area in Cook Inlet, and not to the other non-rural areas, for reasons unique to that area. In making this recommendation to the Council, the Board indicated its concern for potential bycatch of groundfish north of the recommended southern boundary that may exceed existing State limits of subsistence harvest of groundfish. This concern could be addressed, however, with less restrictive measures than a complete prohibition of subsistence fishing in the expanded non-rural area. This suggests that other concerns may exist about subsistence halibut fishing in this area.

- *The Council may wish to articulate additional rationale for its proposed expansion of the Cook Inlet non-rural area with respect to other problems that could be resolved by this action.*
- *With reference to the location of the southern boundary of the Cook Inlet non-subsistence area, does the Council intend the boundary to be located at 59 °30.04' N. latitude, which lies south of Hesketh Island and fails to contact any physical point on the island, or at 59 °30.40' N, which contacts the westernmost point of Hesketh Island?*

2. Gear Restrictions. In April 2002, the Council recommended making the gear restrictions in IPHC Areas 2C and 3A more restrictive than originally proposed. Generally, for Area 2C, excluding the Sitka Sound LAMP area, the Council proposed a vessel limit of 30 hooks. For Area 3A, outside of the special areas of Kodiak, Prince William Sound and Cook Inlet, the hook limit would be up to three times the personal hook limit or a total of 90 hooks per vessel provided at least three eligible fishers were on board the vessel. In taking this action the Council indicated its concern for the allocation of the halibut resources in these areas which are likely to be heavily used by subsistence fishers in addition existing commercial and sport halibut fishers.

The Council recommended further gear restrictions inside of the Sitka LAMP area of Area 2C and inside the special subareas of the Kodiak Road Zone, Prince William Sound, and Cook Inlet. During the summer months inside the LAMP area, the hook restrictions on longline gear would decrease to 15 per vessel, no power hauling would be allowed, and longline gear for subsistence fishing would be prohibited within 4 nautical miles south and west of Low Island. Seasonally more restrictive hook limits on subsistence halibut longline gear inside the LAMP area is understood to respond to the localized depletions concerns for which the LAMP was originally created. The ban on power hauling of longline gear and on the use of longline gear near Low Island, however, remains unclear and presents additional issues. For instance, the record fails to indicate whether someone must be observed "power hauling" or simply possess equipment for power hauling on board to be subject to an enforcement action. Furthermore, the record suggests a quarter circle closure area extending south and west from Low Island for the purpose of protecting 4 particular spots within that area from localized depletion. However, one of the spots in the closure area is Vitskari Hole, which falls outside the south and west quarter circle area.

- *Considering the extent of the Low Island Longline Closure Area and the intended purpose of the power hauling restriction to discourage longlining during the summer months, would a summer longlining prohibition throughout the Sitka LAMP be consistent with Council intent?*
- *If a summer longline closure throughout the Sitka LAMP is not consistent with Council intent, did the Council actually intend to establish a semicircle closure area extending south from Low Island to include Vitskari Hole rather than the quarter circle extending south and west?*
- *If a summer longline closure throughout the Sitka LAMP is not consistent with Council intent, how does the Council intend to define "power hauling"?*
- *In defining the Cook Inlet and Prince William Sound subareas according to the State regulations, does the Council intend the seaward boundaries to coincide with the "waters of Alaska" 3-mile territorial limit?*
- *With respect to Ceremonial and Educational Permits used in Areas 3A and 2C, does the Council intend that the gear restrictions remain the same as those required for the standard subsistence halibut fisher (i.e. 30 hooks/vessel in Area 2C) or that gear restrictions conform to requirements similar to those required for a CHP (i.e. 30 hooks/person and 3 times the per person hook limit per vessel)?*

3. Harvest restrictions. The Council has recommended various daily harvest limits in terms of numbers of halibut per eligible fisher and per vessel. In only one area, the Kodiak Road Zone, the Council recommended an annual harvest limit per eligible fisher. Enforcement has expressed the difficulty in enforcing this provision due to the inability to distinguish between a fish harvested under an annual limit within the Kodiak Road Zone and one harvested beyond the boundary under a daily limit without actually observing the fisherman exceeding those limits. Additionally, without any required reporting stipulation the provision becomes even more

problematic since an individual may go out daily within the zone, catch their annual limit, and never indicate that the harvested halibut were "annual" fish. Regardless, although the Council previously explained the intent was to incorporate Chiniak Bay, it was unclear as to the boundary that should encompass the particular area.

- *In defining the Kodiak Road Zone subarea according to the State regulations, what is the additional extent of Chiniak Bay the Council intends the regulation to cover?*

4. Community harvest permit (CHP). The Council's recommended CHP program is designed to substitute for the proxy system recommended by the State Board of Fisheries. NMFS staff developed the previously described regulatory scheme that it believes is consistent with the Council's intent. However, some details of the proposed CHP program remain unresolved.

NMFS staff determined that the most effective means to implement a CHP program was through a per vessel approach. If you have the CHP on board the vessel, you would be subject to the relaxed CHP restrictions. If you don't have a CHP on board, you would be subject to the standard subsistence halibut registration certificate restrictions for the respective area. This method vastly simplifies the burden on both Enforcement and RAM. Each tribe and community remains eligible for 1 permit per entity. The CHP Coordinator (tribal foods coordinator) simply acts as a "gatekeeper," issuing and maintaining the CHP to designated individuals as a librarian would maintain a book. This is consistent with the rationale that a few select individuals in each tribe with specific expertise in halibut should be allowed to fish for the community, but allows more flexibility to the tribe or community in designating individuals. Moreover, it eliminates the necessity of naming the individual designated fishers on every permit and reduces the administrative burden on RAM by allowing for the production of a generalized permit. The CHP would remain subject to the 30 hooks per person and 3x per person per vessel gear limitation, but would create an unlimited harvest potential.

- *Does the Council agree that the implementation of the proposed regulatory scheme for a CHP described above is consistent with its intent?*

The Council expressed that the CHP should be a revocable privilege both by referring to them as "permits" rather than "registrations" as well as suggesting that their renewability be based on "applicable rules and reporting requirements." This creates an inconsistency with the current regulation scheme. Under current regulations, the reporting requirements of a qualified subsistence fisherman are *voluntary*.

- *Does the Council intend that the reporting requirements of the CHP be mandatory? Does the Council want to impose more strict requirements for the permits than those for SHARC registrations? If so, what is the rationale?*
- *More specifically, if reporting is mandatory, what does the Council envision the reporting requirements should be?*

The current proposed regulatory text states that only a CHP coordinator may reimburse individual CHP harvesters. It further qualifies that reimbursement of harvesting costs provided to a subsistence harvester performing under a CHP will count toward that harvester's annual customary trade limit as specified in the prohibitions (e.g. \$400). The Council record is ambiguous on how the reimbursement of CHP harvesters may occur.

- *Does the reimbursement of harvesting costs to a CHP harvester by her or his tribal or community government entity count toward his or her annual \$400 customary trade limit? What is the rationale?*

6. Ceremonial, cultural, and education harvest permits. The Council's recommended Ceremonial and Educational Permits appear to be a potentially valuable tool to provide for special ceremonial, cultural, and educational uses of subsistence halibut, especially in those parts of Areas 2C and 3A where subsistence harvests would be constrained. However, a few minor aspects of the permits remain unclear. The Council may wish to explain some of the specifics associated with the Ceremonial and Educational Permits.

Similar to the CHP, the Council expressed that the Ceremonial and Educational Permits should be a revocable privilege both by referring to them as "permits" rather than "registrations" as well as suggesting that their renewability be based on "applicable rules and reporting requirements." Once again, this creates an inconsistency with the current regulation scheme because of its voluntary nature.

- *Does the Council intend that the reporting requirements of the Ceremonial or Educational Permits be mandatory? Does the Council want to impose more strict requirements for the permits than those for SHARC registrations? If so, what is the rationale?*
- *More specifically, if reporting is mandatory, what does the Council envision the reporting requirements should be?*
- *Does the Council intend that an additional reimbursement provision similar to the one under the CHP be imposed on Ceremonial and Educational Permits?*

## **Attachment**

### **Council's Preferred Alternative Adopted in April 2002**

#### **Modify the previous action on halibut subsistence:**

Part 1: Areas 4C, 4D, and 4E - Eliminate Gear Restrictions

Part 2: A: In Areas 3A, 3B, 4A and 4B - allow stacking of a maximum of 3 times the number of hooks on a single unit of gear per trip, provided that the subsistence users are on board the vessel. Proxy fishing is not allowed.

B: In Area 2C, excluding the Sitka Sound LAMP area - 30 hooks and 20 fish per day is the individual and vessel limit. Stacking of gear and proxy fishing is not allowed.

Part 3: Add to part 3 (A), (B) and (C) and part 4 (Area 2C including Sitka) (below) - a community harvest permit program. Community harvest permits may not be used in the Sitka Sound LAMP area. The Council Halibut Subsistence Committee will work with NMFS to develop criteria for community harvest permits to federally recognized tribes and other local governments of rural communities that have been recognized by the Council in October 2000 as having customary and traditional use of halibut. The criteria will be defined in the proposed rule and reviewed by the Council at a subsequent meeting.

Part 3 (A): In Area 3A, Kodiak road zone and Chiniak Bay:

1. 10 hooks
2. 20 fish annual limit
3. No proxy system
4. Allow stacking of a maximum up to 3 times the number of hooks on a single unit of gear provided that the subsistence user(s) are on board the vessel.

Part 3 (B): In Area 3A, Prince William Sound:

1. 10 hooks
2. No fish annual limit
3. No proxy system
4. Allow stacking of a maximum up to 3 times the number of hooks on a single unit of gear provided that the subsistence user(s) are on board the vessel.

Part 3 (C): In Area 3A, Cook Inlet:

1. 10 hooks
2. No fish annual limit
3. No proxy system
4. Allow stacking of a maximum up to 3 times the number of hooks on a single unit of gear provided that the subsistence user(s) are on board the vessel.



5. The Cook Inlet non-subsistence use area southern boundary would be set at the Board of Fisheries recommended latitude/longitude of 59°30.40'N.

Part 4: In Area 2C Sitka Sound LAMP Area:

During September 1 to May 31

1. 30 hooks/vessel, power hauling allowed.
2. 10 halibut per day/vessel
3. No annual fish limit
4. No proxy system

During June 1 to August 31

1. 15 hooks per vessel, no power hauling, no proxy, no stacking
2. 5 halibut per day/vessel
3. No annual fish limit
4. No longline fishing area four nautical miles south and west of Low Island

Part 5: Adopt a ceremonial, cultural and educational harvest permit system modeled after USFWS existing system as recommended by the Halibut Subsistence Committee.

In addition:

For Areas 4C, 4D, and 4E, allow retention of legal size halibut for subsistence use by residents of qualifying Area 4 communities while CDQ fishing on their own vessels.



## United States Department of the Interior

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MAY 20 2003

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Dear Mr. Tyner:

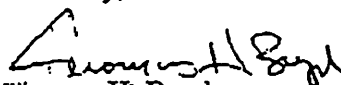
I received your letter dated April 23, 2003 requesting a response from the Federal Subsistence Board regarding the rural determination of the community of Ninilchik and the status of customary and traditional use determinations for halibut for rural residents living within the Cook Inlet Area have. Because your information request deals with information pertaining to regulations already adopted by the Federal Subsistence Board this letter will serve the stated purpose as outlined in your letter in providing the Board's interpretation of these regulations.

The Cook Inlet Area includes all waters of Alaska enclosed by a line extending east from Cape Douglas (58° 51' 06" N. Latitude) and a line extending south from Cape Fairfield (148° 50' 15" W. Longitude). The community of Ninilchik is located within this area. Federal regulations (50 CFR 100.23) recognize rural communities by defining the nonrural areas. A community is considered to be rural if it is not specifically identified in Federal regulations as a nonrural area. Nonrural areas within the Cook Inlet Area include Anchorage Municipality Area (including communities of Eklutna, Chugiak, Eagle River, Anchorage, Girdwood, and Portage), Homer Area (including communities of Homer, Anchor Point, Kachemak City and Fritz Creek), Kenai area (including communities of Clam Gulch, Kalifornsky, Kasilof, Kenai, Nikiski, Salamatof, Soldotna, and Sterling), Seward area (including communities of Moose Pass and Seward) and the Matanuska Susitna area (including communities of Sutton, Moose Creek, Palmer, Bodenbug Butte, Palmer, Wasilla, Knik, Big Lake, and Houston). Ninilchik and the surrounding area are considered to be rural because this community and area do not fall within the boundaries of one of the above nonrural areas described.

For residents of the Cook Inlet Area, there is a customary and traditional use determination for all fish other than salmon, Dolly Varden, trout, char, grayling, and burbot (50 CFR 100.24 (a) (2)). Unless otherwise specifically noted by species, halibut would be included in the customary and traditional use determination for all fish.

I hope I have provided the regulatory clarification you seek which clearly establishes Ninilchik as a rural community and rural residents residing in this area have a customary and traditional use determination for halibut. If you have any questions or need further assistance, please contact Pete Probasco at 1-800-478-1456.

Sincerely,

  
Thomas H. Boyd  
Assistant Regional Director

## ALASKA BOARD OF FISHERIES

### Process for appeals re: Halibut Subsistence Determinations by the North Pacific Fishery Management Council October 2003

#### Background

In July 1999, the North Pacific Fishery Management Council (council) requested the Board of Fisheries (board) provide recommendations concerning subsistence use of halibut in Alaska, in order that the council could authorize a subsistence fishery for Pacific halibut. While the board does not have direct authority in regulating the take of halibut, the council recognized the expertise that lies within the state's board system, including the Department of Fish and Game's Subsistence Division, for gathering and providing detailed information. The council requested the board provide recommendations relating to legal gear, daily limits, reporting requirements, customary and traditional use areas of tribes and rural communities, and nonrural area definitions for halibut fishing areas.

The board conducted a number of special hearings in areas around the state to gather public input in order to develop specific recommendations for each region. A copy of the report from the board is available from the board's executive director.

The council took action in October 2000 to define halibut subsistence eligibility. The council's action allowed for the opportunity to include additional communities for which customary and traditional use findings are developed in the future. The council specifically stated that it intended that communities seeking eligibility pursue a finding from the Board of Fisheries (or the Federal Subsistence Board, as suitable) before petitioning the council. The council's final rule took effect April 2003.

At the board/council Joint Protocol Committee meeting in July 2003, the board agreed to develop a process to take up petitions/appeals received concerning halibut subsistence. The process described below describes a method for addressing these appeals.

#### Process

##### **Stage 1: Pending Appeals**

Currently, a number of communities/individuals have appealed to the council for a positive finding of subsistence use of halibut. In order to address these appeals in a timely manner, the following timeline is suggested:

October 2003: Appeals are received by the board.

October 2003 thru January 2004: Board solicits public comment

February 2004: Board makes recommendations on each appeal and forwards those recommendations to the council (includes public testimony)

***Stage 2: Future Appeals***

August: The board may choose to set a deadline that coincides with the annual agenda change request deadline for appeals to halibut subsistence determinations. Appeals would not be limited to a "regional" call and would be accepted for any area of the state.

October: Board schedules appeals for specific meetings during that cycle

November – March: Board makes recommendations on appeal(s) and forwards those recommendations to the council

Communication with Federal Subsistence Board

In a small number of appeals in areas where the state and federal nonsubsistence use areas differ, the appeal may be addressed by both the Board of Fisheries and the Federal Subsistence Board. In those cases, the council will forward a copy of the appeal to both systems. The Board of Fisheries will forward an informational copy(s) of its recommendations to the Federal Subsistence Board as well as the council.



## United States Department of the Interior

U.S. FISH AND WILDLIFE SERVICE  
Office of Subsistence Management  
3601 C Street, Suite 1030  
Anchorage, Alaska 99503

FWS/OSM/halibut

JUN 10 2003

RECEIVED  
JUN 19 2003  
N.P.F.M.C

Mr. Chris Oliver, Executive Director  
North Pacific Fishery Management Council  
605 W 4<sup>th</sup> Ste 306  
Anchorage, Alaska 99501-2252

Dear Chris:

I received your letter dated May 23, 2003 requesting clarification from the Federal Subsistence Board (Board) on whether it is willing to review and issue findings, if requested, by residents of communities not currently on the list of eligible rural places for halibut subsistence as established by the NPFMC (Council). As you noted in your letter, you have received a copy of my response to Mr. David Tyner dated May 20, 2003, regarding his request for rural determination and finding of halibut customary and traditional use for the community of Ninilchik. This letter serves as a good example of how the Office of Subsistence Management is able to respond to a public request clarifying current Federal subsistence regulations pertaining to rural determination and customary and traditional use of halibut. My office will continue to respond to these types of requests whenever they are received.

The Federal Subsistence Board can address proposals to change customary and traditional use determinations for halibut for harvests that occur within the Board's jurisdiction. However, requests to establish a specific customary and traditional use determination for halibut would be handled only during the Board's annual fisheries proposal period. The fisheries proposal period opens in early January and closes in March of each calendar year. During September and October, the Regional Advisory Councils will hold their fall meetings to review these proposals and make recommendation to the Board. The Board meets in December to consider staff and public comments and review Regional Council recommendations before establishing the final regulations for the following regulatory year.

Hopefully, this has answered your request. On behalf of OSM and the Board we will continue to work with the Council to assist in clarifying halibut subsistence regulations. If you need further assistance please call me, or Pete Probasco at 786-3375.

Sincerely,

Thomas H. Boyd  
Assistant Regional Director

**DISCUSSION PAPER**  
**ADDITIONAL COMMUNITIES IDENTIFIED THAT MAY BE ELIGIBLE FOR HALIBUT**  
**SUBSISTENCE HARVESTS**

**prepared by**  
**NPFMC Staff**  
**March 17, 2003**

The Council's October 2000 action to define halibut subsistence eligibility created based its eligibility criteria on both the State of Alaska and the Federal Subsistence Board (FSB) criteria for "rural" and for "subsistence." The Council identified that persons eligible to subsistence fish for halibut are: (1) Alaska rural residents as defined in ANILCA<sup>1</sup> and (2) identified in the table entitled "Alaska Rural Places in Areas with Subsistence Halibut Uses" based on Board of Fisheries (BOF) findings of "rural" and customary and traditional use of halibut. The Council also identified members of 123 Alaska Federally-recognized Native Tribes who were identified as having customary and traditional use of halibut. These lists of eligible rural communities and Tribal members can only be changed by Council action. The history of this action is described in more detail in the analysis to consider including Ninilchik as an eligible halibut subsistence community (NPFMC 2003) that is scheduled for final action at the April 2003 Council meeting.

In its October 2000 preferred alternative, the Council identified its policy to include additional communities for which customary and traditional findings are developed in the future (this policy did not explicitly address how communities which meet the FSB rural standard could be considered for eligibility). The Council urged communities seeking eligibility to subsistence fish for halibut to pursue a 'customary and traditional' finding from either the State of Alaska Board of Fisheries or the Federal Subsistence Board before petitioning the Council. They would also need to meet the definition of rural of either agency prior to consideration. The Council identified that it alone is authorized to recommend changes to the list of eligible rural places (or Tribes) to the Secretary of Commerce.

A petition from a Ninilchik resident was received by the Council in September 2002. In December 2002, the Council requested that staff identify additional communities that may meet the Council eligibility criteria based on FSB criteria. In March 2003, a Nikolaevsk resident also contacted Council staff regarding eligibility.

Council staff contacted USFWS Subsistence Division staff for assistance in compiling the list of potential communities that the Council could consider for inclusion as eligible for halibut subsistence use. Using the criteria for defining eligibility under the original October 2000 preferred alternative, USFWS staff determined if there are any potential rural communities having a customary and traditional use determination for halibut under the Federal Subsistence Board system which may have been omitted from the list referenced above. For the majority of the Federal lands and fishery management areas there are no specific references regarding customary and traditional use determination for halibut. Many of these fishery management areas reference "all fish" when identifying customary and traditional use determinations for that particular area. Individually many of these fishery management areas encompass not only coastal areas but also include large spans of interior areas, i.e., Yukon/Northern area. Using the table at 50 CFR 300.65 (f) (1) as a guide, USFWS staff assumed that the Council did not intend to include these interior communities primarily due to the fact that if a species specific customary and traditional use determination for halibut were to be conducted, these communities would not meet the C&T use determination criteria.

USFWS staff used the Department of Community and Economic Development (DCED) Alaska Community Database ([http://www.dced.state.ak.us/cbd/commdb/CF\\_COMDB.htm](http://www.dced.state.ak.us/cbd/commdb/CF_COMDB.htm).) to identify 20 additional

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<sup>1</sup>Under federal law in ANILCA, subsistence uses are identified as customary and traditional uses of fish and game by rural Alaska residents.

communities for consideration by the Council for inclusion as eligible communities for the purposes of halibut subsistence use. Ninilchik is already being considered for eligibility for halibut subsistence use by the Council under a separate analysis and is not considered further here. The remaining 20 communities are:

1. Akiachak is located on the west bank of the Kuskokwim River, on the Yukon-Kuskokwim Delta. It lies 18 miles northeast of Bethel. It lies at approximately 60.90944° North Latitude and -161.43139° West Longitude.(Sec. 36, T010N, R069W, Seward Meridian.) Akiachak is located in the Bethel Recording District. Population is 622; 97% are Alaska Native or part Native; the Akiachak Native Community is a **federally recognized Tribe** of Yup'ik Eskimos and is not on the list of eligible Tribes for halibut subsistence. If the community is included the Council should consider including this Tribe for halibut subsistence.
2. Aleneva is located on the southern coast of Afognak Island, north of Kodiak Island. It is on the coast of Raspberry Strait, across from Little Raspberry Island. It lies at approximately 58.01418° North Latitude and -152.90944° West Longitude. (Sec. 18, T025S, R022W, Seward Meridan.) Aleneva is located in the Kodiak Recording District. Population is 92; <2% are Alaska Native. It is currently a "Russian Old Believer" religious community.
3. Atmautluak lies on the west bank of the Pitmiktakik River in the Yukon-Kuskokwim delta, 20 miles northwest of Bethel. It lies at approximately 60.86694° North Latitude and -162.27306° West Longitude. (Sec. 19, T009N, R074W, Seward Meridian.) Atmautluak is located in the Bethel Recording District. It was settled in the 1960s. Population is 291; 96% are Alaska Native; the Atmautluak Native Community is a **federally recognized Tribe** of Yup'ik Eskimos and is not on the list of eligible Tribes for halibut subsistence. If the community is included the Council should consider including this Tribe for halibut subsistence.
4. Covenant Life is located at Mile 26 of the Haines Highway, near Klehini River. It lies at approximately 59.39907° North Latitude and -136.0783° West Longitude. (Sec. 29, T028S, R055E, Copper River Meridian.) Covenant Life is located in the Haines Recording District. Population is 142; 2% are Alaska Native. It was settled by families from the "Whitestone Farms" religious community of Dry Creek, near Hoonah.
5. Ekwok is located along the Nushagak River, 43 miles northeast of Dillingham, and 285 miles southwest of Anchorage. It lies at approximately 59.34972° North Latitude and -157.47528° West Longitude. (Sec. 35, T009S, R049W, Seward Meridian.) Ekwok is located in the Bristol Bay Recording District. Population is 114; 94% are Alaska Native or part Native; the Ekwok Village Council is a **federally recognized Tribe** of Yup'ik Eskimos and is not on the list of eligible Tribes for halibut subsistence. If the community is included the Council should consider including this Tribe for halibut subsistence.
6. Eyak is located on the Copper River highway, 5.5 miles southeast of Cordova, between Eyak Lake and the Cordova airport. The area was annexed to the City of Cordova in 1992. It lies at approximately 60.525059° North Latitude and -145.628293° West Longitude. (Sec. 33, T015S, R002W, Copper River Meridian.) Eyak is located in the Cordova Recording District. Population is 159; 8% are Alaska Native; the Native Village of Eyak

is included as an eligible Tribe; **Eyak may be considered part of Cordova for subsistence purposes.**

7. Game Creek is on Chichagof Island in Southeast Alaska, 2.6 miles southwest of Hoonah. It lies at approximately 58.05809° North Latitude and -135.51478° West Longitude. (Sec. 21, T044S, R061E, Copper River Meridian.) Game Creek is located in the Sitka Recording District. Population is 35; 8.6% of the population are Alaska Native or part Native. Residents are members of a religious ministry, "Whitestone Farms" (Church of the Living Word, Inc.).
8. Halibut Cove is located in the Homer Recording District. Halibut Cove is in the Kachemak Bay State Park on the Kenai Peninsula. It lies on the south shore of Kachemak Bay, 12 miles across the inlet from the Homer Spit. It lies at approximately 59.595° North Latitude and -151.225° West Longitude. (Sec. 4, T007S, R011W, Seward Meridian.) Population is 35; 9% of the population is Alaska Native or part Native. It was resettled by families from the "Whitestone Farms" religious community.
9. Kasigluk is on the Johnson River in the Kuskokwim River Delta, 26 miles northwest of Bethel. The community is comprised of Old and New Kasigluk, surrounded by the Johnson River and a network of lakes. It lies at approximately 60.89506° North Latitude and -162.51799° West Longitude. (Sec. 02, T009N, R075W, Seward Meridian.) Kasigluk is located in the Bethel Recording District. Population is 527; 97% are Alaska Native; the Kasigluk Traditional Council is a **federally recognized Tribe** of Yup'ik Eskimos and is not on the list of eligible Tribes for halibut subsistence. If the community is included the Council should consider including this Tribe for halibut subsistence.
10. Kupreanof is located on the northeast shore of Kupreanof Island, across the Wrangell Narrows from Petersburg and Mitkof Island. It lies about 120 miles south of Juneau and 120 miles north of Ketchikan. It lies at approximately 56.81444° North Latitude and -132.98056° West Longitude. (Sec. 29, T058S, R079E, Copper River Meridian.) Kupreanof, formerly known as West Petersburg, is located in the Petersburg Recording District. Population is 23; 0% are Alaska Native.
11. Kwethluk is a Yup'ik community located 12 air miles east of Bethel on the Kwethluk River at its junction with the Kuskokwim. The village is the second largest along the Lower Kuskokwim River, following Bethel. It lies at approximately 60.81222° North Latitude and -161.43583° West Longitude. (Sec. 05, T008N, R069W, Seward Meridian.) Kwethluk is located in the Bethel Recording District. Population is 693; 95% are Alaska Native or part Native; the Organized Village of Kwethluk is a **federally recognized Tribe** of Chilkat Indians and is not on the list of eligible Tribes for halibut subsistence. If the community is included the Council should consider including this Tribe for halibut subsistence.
12. Lutak lies just north of Haines, near Lutak Inlet and Chilkoot Lake, in the Haines Borough. It lies at approximately 59.38269° North Latitude and -135.64291° West Longitude. (Sec. 8, T030S, R059E, Copper River Meridian.) Lutak is located in the Haines Recording District. Population is 43; 10% are Alaska Native or part Native. **Lutak may be considered part of Haines for subsistence purposes.**



13. Mud Bay lies just south of Haines, off Mud Bay Road, on the Chilkat Inlet in Haines Borough. It lies at approximately 59.1655° North Latitude and -135.37792° West Longitude. (Sec. 19, T031S, R060E, Copper River Meridian.). Mud Bay is located in the Haines Recording District. Population is 158; 4% are Alaska Native or part Native. **Mud Bay may be considered part of Cordova for subsistence purposes.**
14. Naukati Bay is located on the west coast of Prince of Wales Island in Southeast Alaska. It lies at approximately 55.88077° North Latitude and -133.195° West Longitude. (Sec. 18, T069S, R080E, Copper River Meridian.). Naukati Bay is located in the Ketchikan Recording District. Population is 110; 10% are Alaska Native or part Native.
15. Nunapitchuk is located on the both banks of the Johnson River, 22 miles northwest of Bethel in the Yukon-Kuskokwim Delta. It lies at approximately 60.89689° North Latitude and -162.45683° West Longitude. (Sec. 05, T009N, R074W, Seward Meridian.) Nunapitchuk is located in the Bethel Recording District. Population is 512; 96% are Alaska Native or part Native; the Native Village of Nunapitchuk (AKA Akolmiut) is a **federally recognized Tribe** of Yup'ik Eskimos and is not on the list of eligible Tribes for halibut subsistence. If the community is included the Council should consider including this Tribe for halibut subsistence.
16. Port Clarence is located west of Teller on the Seward Peninsula. It was built on the northern tip of a sand spit in Port Clarence. It lies at approximately 65.26222° North Latitude and -166.84583° West Longitude. (Sec. 3, T003S, R040W, Kateel River Meridian.) Port Clarence is located in the Cape Nome Recording District. Population is 0% Alaska Native or part Native. Port Clarence is currently a U.S. Coast Guard Base.
17. Portage Creek is located at the mouth of Portage Creek, a tributary of the Nushagak River, 29 miles southeast of Dillingham. It lies at approximately 58.90016° North Latitude and -157.66153° West Longitude. (Sec. 01, T015S, R051W, Seward Meridian.). Portage Creek is located in the Bristol Bay Recording District. Population is 48; 86% are Alaska Native or part Native. the Portage Creek Village Council is a **federally recognized Tribe** (Ohgsenakale) and is not on the list of eligible Tribes for halibut subsistence. If the community is included the Council should consider including this Tribe for halibut subsistence.
18. Shemya Station or Earekson Air Force Station is located on Shemya Island on the western end of the Aleutian Chain. It lies at approximately 52.72458° North Latitude and 174.11205° East Longitude. (Sec. 14, T086S, R257W, Seward Meridian.). Shemya Station is located in the Aleutian Islands Recording District. The Station was developed during World War II as an Army Air base, and became an Air Force intelligence site. At its peak, the Station housed over 1,100 personnel. By 1980, the workforce had been reduced to 600. Shemya was closed in 1995; there is currently a small group of caretakers residing on the Station. Population is 0% Alaska Native or part Native. Residents are caretakers of the Air Station facilities.
19. Thom's Place is located South of Wrangell on Wrangell Island and Zimovia Strait, on Thom's Creek Road. It is about 160 miles south of Juneau and 80 miles northwest of Ketchikan. It lies at approximately 56.19467° North Latitude and -132.21179° West Longitude. (Sec. 35, T065S, R085E, Copper River Meridian.) Thom's Place is located in the Wrangell Recording District. Population is 12; 14% are Alaska Native or part Native.

20. Tuluksak is on the south bank of the Tuluksak River at its junction with the Kuskokwim River. The village is 35 miles northeast of Bethel. It lies at approximately 61.1025° North Latitude and -160.96167° West Longitude. (Sec. 27, T012N, R066W, Seward Meridian.) Tuluksak is located in the Bethel Recording District. Population is 461; 94% are Alaska Native or part Native; the Tuluksak Native Community is a **federally recognized Tribe** of Yup'ik Eskimos and is not on the list of eligible Tribes for halibut subsistence. If the community is included the Council should consider including this Tribe for halibut subsistence.

USFWS staff also identified Nunam Iqua for consideration by the Council, but it is already on the list of eligible communities and requires no additional action. It was renamed from Sheldon Point, perhaps leading to the confusion over its eligibility status. USFWS staff also referenced Shemya Station (Earekson Air Force Station) and Port Clarence (currently a U.S. Coast Guard Base - all residents live in a group quarters facility) for consideration; both of these are military bases.

There are two types of communities to be addressed for the eligibility. The first are communities that are generally within the areas that the council identified as rural but are not on the list in the proposed regulation; most of the communities on the USFWS list are of that type (e.g., proximity to Bethel raised Akiachak, Atmautluak, Kwethluk, Nunapitchuk, and Tuluksak for consideration). Part of the issue arises from listing specific places rather than generally qualifying residents of an area, such as Kodiak Island (e.g., Aleneva). Some communities are identified by DCED as "developments of" larger communities that are eligible (e.g., Lutak and Mud Bay under Haines, Eyak under Cordova) and could be interpreted as already qualifying under the current list of eligible rural places. Lastly, two are military bases (Port Clarence and Shemya Station) that are both rural and are within an area with a finding of customary and traditional fishing, but may or may not as individual communities meet Council intent for subsistence eligibility.

The question for Ninilchik, and other places that the FSB classifies as rural is a little different, in that the Council chose to adopt the State's non-subsistence area boundaries as its own rather than the Federal Subsistence Board's rural boundaries. That was at least in part due to the reluctance to qualify large populations on the Kenai Peninsula that had little to no history of traditional subsistence uses of halibut, other than several named tribes. Adding the Ninilchik "community," which may also include nearly 500 residents of Happy Valley, and perhaps other places on the Kenai road system that the FSB, but not the state joint board, finds rural/in a subsistence area, may be inconsistent with this earlier decision and perhaps more than a small adjustment.

Even if the Council did not intend to exclude communities in the non-subsistence area automatically, adding additional communities still requires examination of information, beyond just whether halibut are used there. Any community or Tribe not currently included by the Council's October 2000 preferred alternative is the result of their lack of "customary and traditional" use, as well as whether the community was rural or urban. *Additional investigation would be needed to determine if the identified communities in fact rely on halibut to meet their subsistence needs, if the Council wishes to pursue consideration of these communities that may meet federal standards for rural and fish subsistence; however, neither the FSB or USFWS has certified the subsistence (customary and traditional) use of halibut that is part of the Council's requirements for eligibility.*

The Council also should recognize that a common pattern in Alaska is for sport fishers to travel to the coast from an inland community to fish for halibut, bringing the fish back home. For example, ADFG Subsistence Division staff found some Healy residents did this. It appears that Ninilchik, which is being considered for eligibility under a separate action, may also rely of sport caught halibut for personal use. This pattern is not what is generally considered a customary and traditional subsistence use by state and federal boards, nor the

Council. So in its original action, the Council made a judgement if the pattern of halibut use by residents of a community is most properly called a "sport" or a "subsistence" pattern.

Lastly, six communities proposed for consideration have federally-recognized Tribes associated with them that are not on the list of eligible Tribes. The Council may wish to also consider whether to include these Tribes as eligible, as halibut subsistence privileges for Tribal members are regulated differently than for non-Tribal members.

In summary, USFWS staff has identified 20 communities (Table 1) that the Council may wish to review for consideration for inclusion as eligible communities for the purposes of halibut subsistence. Council staff requested this assistance after the Council noticed the public that it had initiated an analysis of whether to include Ninilchik as an eligible community, based on its meeting federal criteria for "rural" and "subsistence." USFWS is forwarding them for additional consideration, and is not formally recommending them for consideration as they have not received a "rural" or "halibut subsistence" finding by the FSB. To address the issue of eligibility, the Council may choose to clarify whether its policy of including both state and federal standards as the basis for its own eligibility criteria is appropriate given the policy issues raised by under the dual standard.

**Table 1. Summary of communities identified as meeting Federal criteria for "rural" and "fish subsistence."**

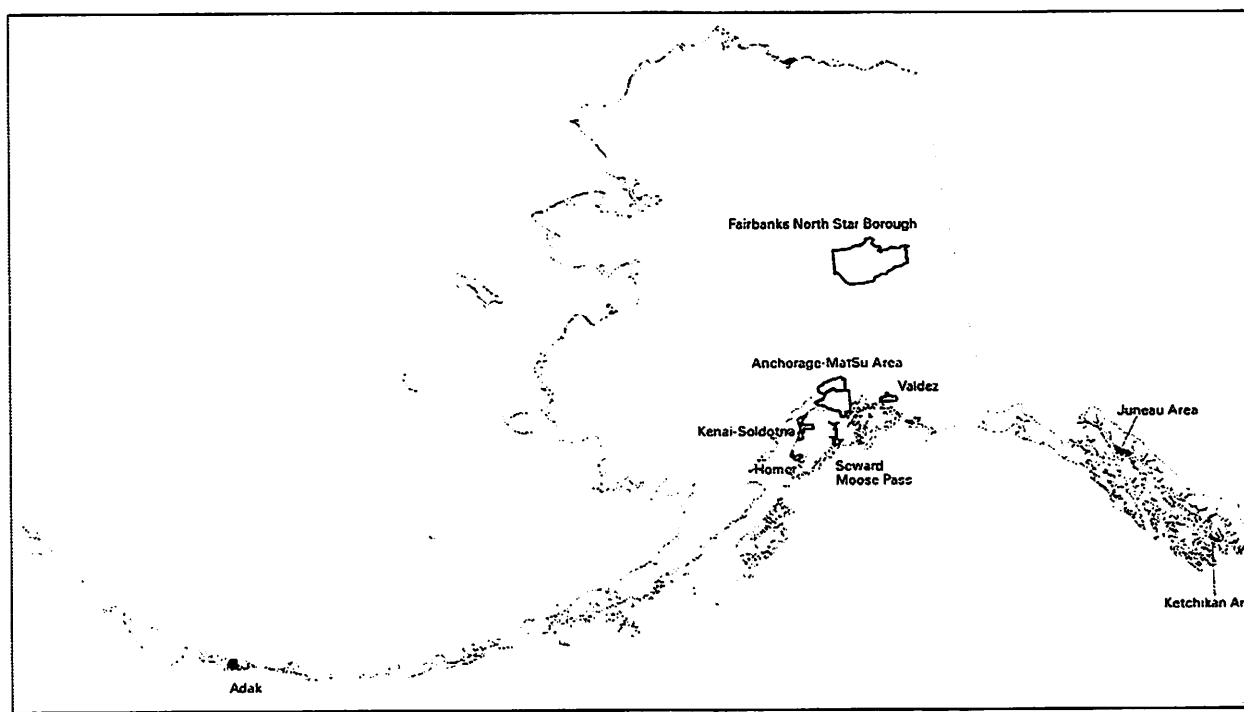
<b>Rural Place</b>	<b>Population</b>	<b>% Alaska Native</b>	<b># Alaska Native</b>	<b># non-Native</b>	<b>Tribal status</b>
Akiachak	622	96.4%	600	22	Tribe
Aleneva	92	1.5%	1	91	
Atmautluak	291	95.9%	279	12	Tribe
Covenant Life	142	2.0%	3	139	
Ekwok	114	93.8%	107	7	Tribe
Eyak	159	8.3%	13	146	Tribe*
Game Creek	35	8.6%	3	32	
Halibut Cove	26	2.9%	1	25	
Kasigluk	527	96.7%	510	17	Tribe
Kupreanof	23	0.0%	0	23	
Kwethluk	693	94.8%	657	36	Tribe
Lutak	43	10.3%	4	39	
Mud Bay	158	4.4%	7	151	
Naukati Bay	110	9.6%	11	99	
Nunapitchuk	512	95.9%	491	21	Tribe*
Port Clarence	22	0.0%	0	22	military base
Portage Creek	48	86.1%	41	7	CDQ group
Shemya Station	27	0.0%	0	27	military base
Thom's Place	12	13.6%	2	10	
Tuluksak	461	94.2%	434	27	Tribe
<b>Total</b>	<b>4,117</b>		<b>3,164</b>	<b>953</b>	

## GENERAL INFORMATION

### Do These Regulations Apply to You?

**Are you a rural Alaska resident?** You must be a rural Alaska resident to harvest fish and shellfish under Federal subsistence regulations. You must have your primary, permanent residence in a rural area to qualify to fish under Federal subsistence regulations. A seasonal residence does not qualify you as a rural resident.

### Federal Nonrural Areas



AK Nonrural Areas 06/00

[See enlarged maps of nonrural areas on following pages.]

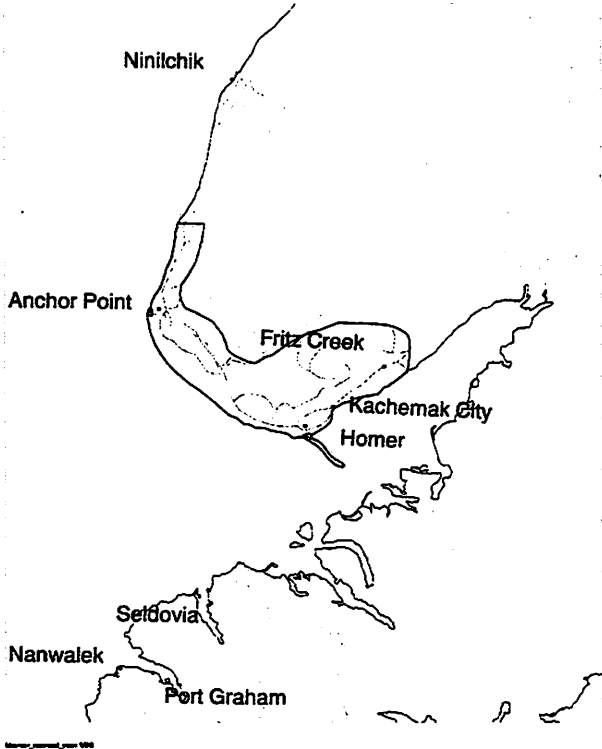
All communities and areas in Alaska are rural, except:

- **Adak**
- **Anchorage** (Municipality)
- **Fairbanks** (North Star Borough)
- **Homer area** (Homer, Anchor Point, Kachemak City and Fritz Creek)
- **Kenai area** (Clam Gulch, Kalifornsky, Kasilof, Kenai, Nikiski, Salamatof, Soldotna, Sterling)
- **Juneau area** (Douglas, Juneau, West Juneau)
- **Ketchikan area** (Clover Pass, Herring Cove, Ketchikan City, Ketchikan East, Mountain Point, North Tongass Highway, Pennock Island, parts of Gravina Island, and Saxman East)
- **Seward area** (Seward and Moose Pass)
- **Valdez**
- **Wasilla area** (Big Lake, Bodenbergt Butte, Houston, Palmer, Wasilla)

# GENERAL INFORMATION

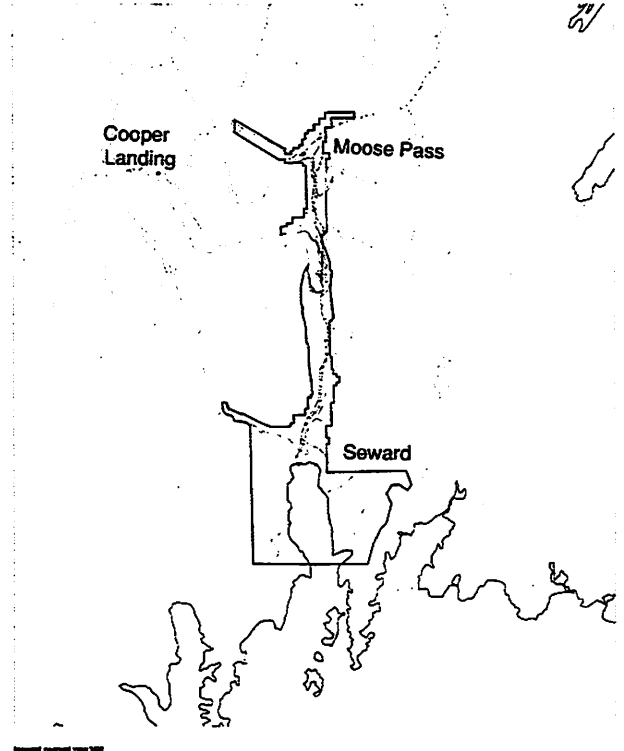
## Maps of Nonrural Areas (continued)

### Homer Nonrural Area



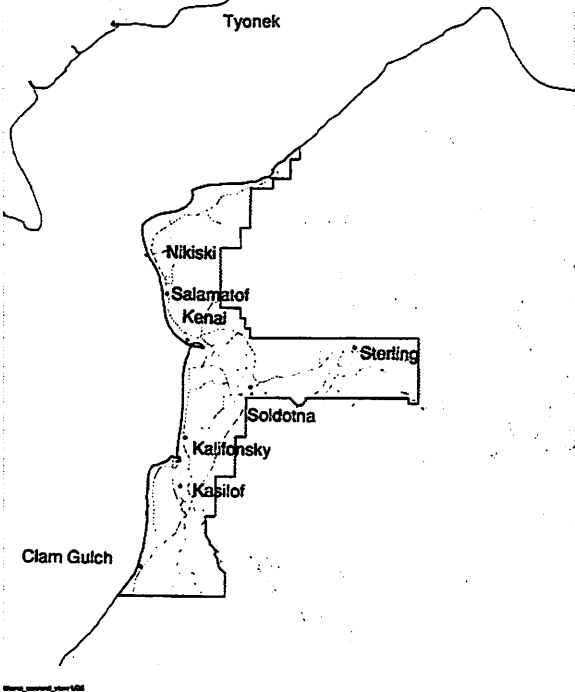
- *Homer area (Homer, Anchor Point, Kachemak City, and Fritz Creek)*

### Seward Nonrural Areas



- *Seward area (Seward, Moose Pass)*

### Kenai Nonrural Areas

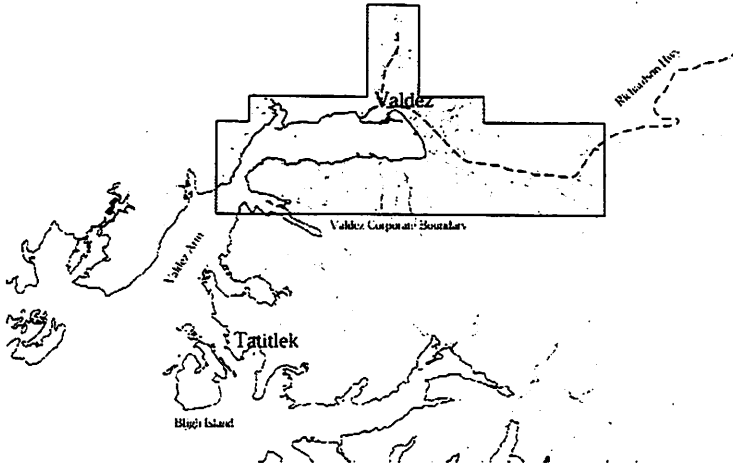


- *Kenai area (Clam Gulch, Kalifornsky, Kasilof, Kenai, Nikiski, Salamatof, Soldotna, Sterling)*

# GENERAL INFORMATION

## Maps of Nonrural Areas (continued)

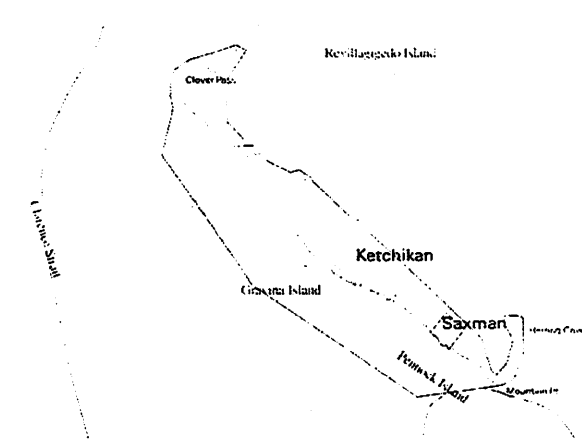
### Valdez Nonrural Area



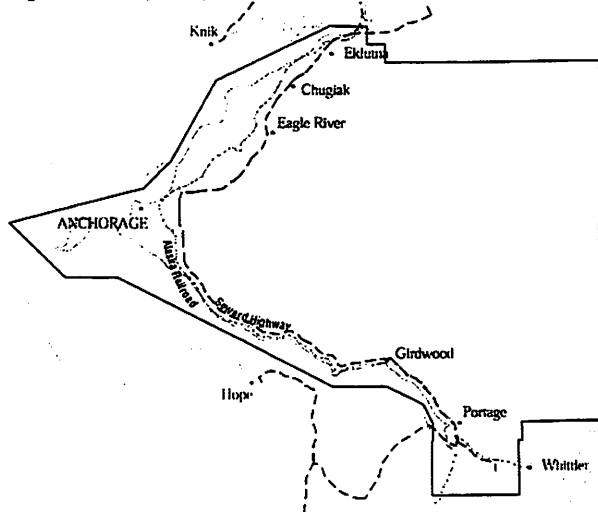
• Valdez

### Ketchikan Nonrural Area

• **Ketchikan area**  
 (Clover Pass, Herring Cove, Ketchikan City, Ketchikan East, Mountain Point, North Tongass Highway, Pennock Island, parts of Gravina Island, and Saxman East)



### Anchorage Municipality Nonrural Area

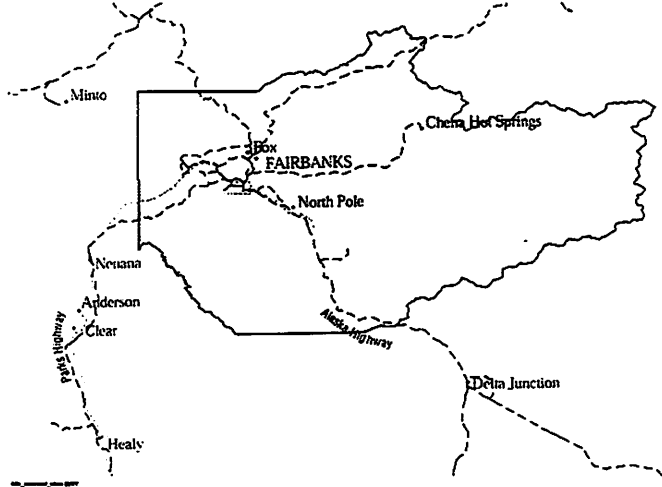


• Anchorage  
 (Municipality)

# GENERAL INFORMATION

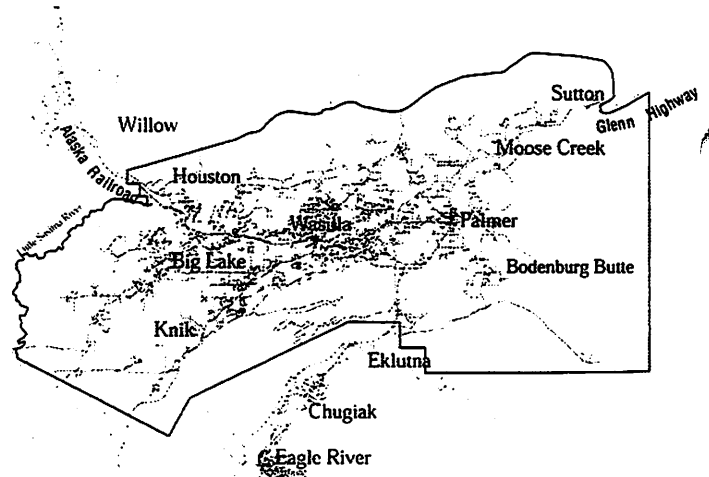
## Maps of Nonrural Areas

**Fairbanks North Star Borough Nonrural Area**



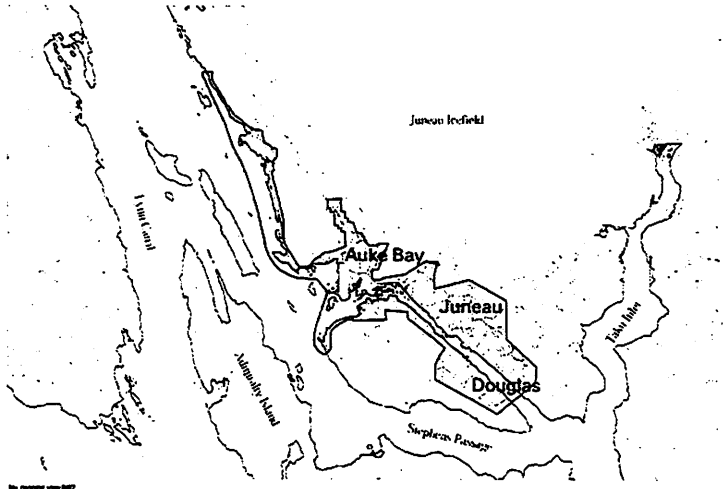
- **Fairbanks (North Star Borough)**

**Matanuska Susitna Nonrural Area**



- **Wasilla area (Big Lake, Bodenberg Butte, Houston, Palmer, Wasilla)**

**Juneau Nonrural Area**



- **Juneau area (Douglas, Juneau, West Juneau)**

21 September 2003

First I'd like to thank the council for allowing me this time to talk to you about halibut subsistence in Ninilchik.

My name is Dave Tynex. I live in Ninilchik, I'm here to ask the council to approve adding Ninilchik and Happy Valley to the list of rural communities (50 CFR 300.65(f)(1)).

I'll talk about the three options before the council, and they are: No action; Ninilchik only without Happy Valley; Combining Ninilchik with Happy Valley

The first option I'd like to discuss is adding Ninilchik and Happy Valley.

Ninilchik and Happy Valley are small-unincorporated communities; they are geographically dispersed along twenty-three miles of the Sterling Highway over a network of mostly dirt roads leading inland from the coast. Residents there have depended on the subsistence harvest of fish and game for many years.

A 1983 study by the State Division of Subsistence found that 50% of households harvested as much as half of their total meat and fish and 6.5% of the households obtained all of the fish and meat through subsistence harvest.

The 1998 ADFG Subsistence Division report showed for Ninilchik and Happy Valley halibut ranked first among ten resources used by the residents. Over 90% of households used halibut, 60% of household's harvested halibut and 47% of households gave it away (shared it with other members of the community).

The history of customary and traditional use of subsistence for native and non-native in the Ninilchik rural area can be documented as far back as 1847 when Russian Orthodox missionaries moved their families from Kodiak to what is now Ninilchik.

I'd like to address the similarities and differences I see between the Federal Subsistence Board (FSB) and the Alaska Board of Fish (ABF) as they both relate to the decision you have to make, keeping in mind I'm talking about Ninilchik and Happy Valley.

First, the FSB and the ABF describe whole areas, not communities on the Kenai Peninsula. Both acted under either state or federal laws that allow for a preference to subsistence users. Both allow for natives and non-natives to participate in subsistence activities.

In spring of 1992, the Alaska legislature amended the state subsistence law to require the Boards of Fish and Game to establish nonsubsistence areas where subsistence activities are not permitted. When the ABF met November 1-7 of 1992 they considered seven proposed nonsubsistence areas. (Note: My understanding is the ABF could not provide a rural preference, as describe under ANILCA, as it was struck down as contrary to the Alaska Constitution in McDowell v. State in 1989 hence the term nonsubsistence instead of urban or rural)

They were (1) Fairbanks/Denali Park (2) Anchorage/MatSu (3) Kenai Peninsula (4) Whittier (5) Ketchikan (6) Juneau and (7) Valdez.

On November 6<sup>th</sup> the board decided to merge consideration of the Anchorage/MatSu and Kenai proposals. As a result the Boards applied the twelve socio-economic criteria found in AS 16.05.258c to the vast area encompassing most of Southcentral Alaska.

As a result of applying the twelve socio-economic factors to all of Southcentral Alaska, the ABF fundamentally diminished the relevance of the criteria with respect to individual communities such as Ninilchik and Happy Valley.



Dr. John Kruse, Professor Emeritus of Public Policy at the University of Alaska Anchorage and Program Director of the Institute of Social and Economic Research (ISER) explained:

"By lumping the communities on the Kenai Peninsula and the Mat/Su Valley in with Anchorage, and simultaneously considering the three areas as one, the Joint boards skewed the results of the analysis, and guaranteed a non-subsistence area finding for all communities paired with Anchorage. As it was, the decision was determined by the weight of the Anchorage evidence."

An informal opinion by the State Attorney General interpreting AS 16.05.258 states that:

It would probably be contrary to the legislature's intent, and thus arbitrary, for the boards to define all of Southeast Alaska as one "area" for the purposes of their nonsubsistence area determinations. Southeast Alaska contains many distinct communities and areas, some where subsistence is of principal importance and some where it clearly is not. The boards must distinguish between them.

Even though Southcentral Alaska contains many distinct communities and areas, some where subsistence is of principal importance and some where it clearly is not, the boards did not distinguish between them in 1992.

When the FSB looked at the Kenai Peninsula, it looked at individual areas on the Kenai Peninsula and applied its own criteria (FR 67 N0. 88 dated May7 2002 pages 30559 to 30571). It found areas that fit all of the requirements of rural areas with rural residents residing in those areas as having a customary and traditional use of subsistence activities. The Ninilchik rural area is such an area, it includes the communities of Ninilchik and Happy Valley.

As the NPFMC has created two lists of eligibility, and has already granted customary and traditional uses of halibut to some members of our community. I believe the right thing for the Council to do is to find the FSB decision on the Ninilchik rural area to be correct, compared to the ABF decision of the large nonsubsistence area, as the FSB looked at smaller areas within the Kenai Peninsula. While the ABF may have used the correct criteria AS 16.05.258c, it did so over such a vast area of the State, and without looking at specific communities, its decision excluded smaller communities and areas such as Ninilchik and Happy Valley.

There are several advantages of accepting the Ninilchik rural area as defined by the FSB. The best one is that regulation, management and enforcement would be easier. The NPFMC would not have to spend more time defining the boundaries of a Ninilchik area that excludes Happy Valley.

Next I'd like to talk about option two: Adding Ninilchik without Happy Valley. Regulation, management and enforcement would be more difficult. The NPFMC would have to define the boundaries of Ninilchik. Subsistence users now living within the Ninilchik Rural area, as defined now by the FSB, that now enjoy subsistence fishing and hunting under a permit issued by the US Fish and Wildlife Service, may or may not qualify for subsistence halibut fishing.

Just trying to define Ninilchik--where there are no city limits signs--is difficult at best. Various entities have already defined the following boundaries in the area:

1. The Ninilchik Tribal boundaries (see attached map) from the Kasilof River to the North, Kachemak Bay to the south, Mt. Redoubt to the west and the Harding Ice Fields to the east.
2. The Kenai Peninsula School district buses students to Ninilchik from as far north as mile 110 of the Sterling Highway to mile 150 to the south.
3. Ninilchik Emergency Services has two different areas they serve; the volunteer fire department area is from mile 118 of the Sterling Highway to mile 144 and all roads east of the highway. The volunteer ambulance area, set by the Kenai Peninsula Borough, is mile 120 to mile 144 and all roads east of the highway.
4. The Ninilchik Chambers of Commerce list mile 134 to mile 138 as its area, even though they list business's on their website with the name Ninilchik that are outside of this area.

As you can tell these areas describe Ninilchik geographically as small as four miles of the Sterling Highway to as large as several hundred square miles.

That's why I believe the NPFMC should not try to redefine Ninilchik: It should adopt the Federal Subsistence Board's Ninilchik rural area as it is defined from mile 121 Falls Creek road to mile 144 Stariski Creek.

The FSB did a good job of looking at the Kenai Peninsula and narrowing the Ninilchik rural area down so it includes only two communities with a history of rural residents residing in those areas as having a customary and traditional use of subsistence activities.

While making your decision I'd like the Council to consider how subsistence, whether its fish or game, contributes to better living conditions in Ninilchik and Happy Valley.

According to the 2000 census of the 1011 residents living in this area, 462 were employed, 98 were unemployed and 451 were not in the labor force. Unrelated individuals 15 years and over living below the poverty level were 27.5% for Ninilchik and 30.5% for Happy Valley. In Ninilchik, 10.4% of families live below the poverty level while Happy Valley has 10.9%, and residents 62 years and over living in Ninilchik made up 16.8% of the population while 16.6% of Happy Valley residents were of that age group.

What I'm trying to show you by this information, and the reports by State Division of Subsistence in 1983 and by ADFG Subsistence Division report in 1998, mentioned earlier, is that subsistence is as necessary of a way of life for our residents now as it has been through out its long history.

I'd like the NPFMC to make our community whole again by allowing both natives and non-natives, living within the Ninilchik rural area, the ability to subsistence fish for halibut.

The final option I'd like to address to the council is that of no action. Any allocation of halibut fishing privileges must be fair and equitable and consistent with other applicable Federal law. This is the authority under which the Council acted in October 2000 to adopt a subsistence halibut policy.

Halibut harvested in subsistence fishing are intended for the sustenance of the fisher(man), his family and community in accordance with cultural traditions of Alaska Natives and rural lifestyles.

I don't know what reasons the council would have to take no action and exclude some residents of the Niniilchik rural area from halibut subsistence. I believe there is enough evidence through the FSB findings and from reports from the State of Alaska that show both natives and non-natives rely on fish and game for their subsistence needs. All of the residents within this area now enjoy subsistence for fish and game through permits issued by the US Fish and Wildlife Service.

In closing, I'd like the NPFMC to find the Niniilchik Rural Area meets all of its guidelines for halibut subsistence and add it to the list of rural places (50 CFR 300.65(f)(1)) so that all residents living within the Niniilchik Rural Area can fish for halibut to help fulfill their subsistence needs.

Thank you for your time Dave Tyner.



Official Site of the

**Ninilchik Traditional Council**

Governing Body of the Ninilchik Village Tribe



## TRIBAL BOUNDARIES

The Ninilchik Traditional Council is the Tribal governing body for the federally recognized Ninilchik Tribe. Ninilchik is located on the Kenai Peninsula of the state of Alaska, USA. It is centrally located between Kenai, Alaska and Homer, Alaska on the east coast of Cook Inlet.

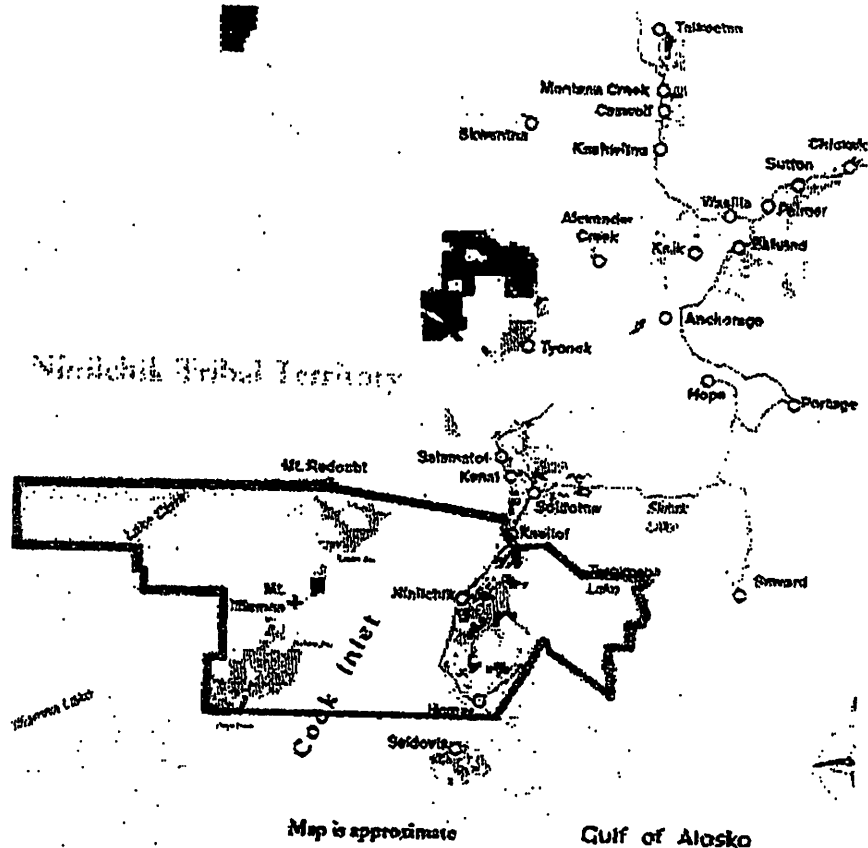
Our Tribal service area, in general, extends from the Kasilof River to Kachemak Bay to Mt. Redoubt to the Harding Ice Fields. More specifically, our Tribal boundaries are defined as follows:

The following description is approximate. It is intended to describe in layman's terms the boundaries of the Ninilchik Tribe. It is not intended for use as a "legal description". All angle points, unless otherwise stated, are township corners. Bearings and distances used in this description are approximate.

Beginning at a point which is the highest point on Redoubt Volcano, located on the West side of the Cook Inlet; thence East approximately 50 miles to a point which is equidistance from the shores of the mouth of the Kasilof River at low mean water; thence East approximately 14 miles following a series of points which are equidistant from the shores of the Kasilof River, on its Northernmost tributary which connects both up stream and down with the Kasilof River, and are at one foot intervals, to a point which is equidistant from the shores of the Kasilof River at the confluence of the Kasilof River and the Tustumena Lake; thence Northeast to a point which is equidistant from the Southernmost point of Fox Lake and the Westernmost point of Caribou Island; thence Southeast to a point which is the intersection of the East shore of Tustumena Lake and the Seward Base Line; thence East along the Seward Base Line until the intersection of the Seward Base Line and the Cook Inlet Regional Corporation boundary; thence South following the Cook Inlet Regional Corporation boundary approximately 44.5 miles until the intersection of the Cook Inlet Regional Corporation boundary and the highest point of the Dinglestadt Glacier on that line; thence Northwest approximately 8 miles to a point which is the Southeasternmost shore of Glacier Lake.

thence Northwest approximately 2 miles to a point which is equidistant and at the confluence of the Fox River and Glacier Lake; thence West approximately 20 miles along a series of points which are equidistant from the shores of the Fox River and at intervals of one foot within the northernmost tributary of the Fox River until a point which is the confluence of the Fox River and Kachemak Bay; thence Southwest approximately 20 miles to a point which is the Southeastern most point of the Homer Spit at Mean Low Tide; thence due West approximately 84 miles until intersecting the Cook Inlet Region Incorporated boundary line to a point on the line which is due West of the point of beginning; thence due East approximately 90 miles to the point of beginning.

Included are all bodies of water (navigable and non-navigable) all land formations or parts of such bodies and formations which are within the boundaries described above.



Saturday, September 13, 2003

Jane DiCosimo  
North Pacific Fisheries Management Council  
605 W. 4th, Suite 306  
Anchorage, AK 99501-2252

RECEIVED

SEP 16 2003

N.P.F.M.C

Dear Ms DiCosimo:

I encourage you to support adding Ninilchik to the list of rural areas eligible for subsistence halibut fishing.

I have been a licensed charter operator on Cook Inlet, Resurrection Bay and Kachemak Bay. I also fished commercially up until quotas were imposed, and my minimal share made it impractical to continue in that capacity. Over the last 34 years, I have fished in Alaska for sport, subsistence and personal use. When not fishing for money, use of the state's proxy program has enabled me to provide for several families that can no longer fish for themselves due to age or disability.

With the heavy pressure from commercial and charter businesses, locals are finding the fish harder to catch by rod and reel. Guides are now traveling up to 40 miles out of Ninilchik by boat to find good enough fishing to justify the prices they charge their tourists. Meanwhile, few year round residents have boats anywhere near large enough to travel that far, even on a calm day.

I, weather permitting, can normally catch more fish than I can eat by myself. Many others, including members of my own family, cannot. An opportunity to participate in a subsistence halibut fishery would allow me and other capable resident anglers to provide more meals for our own and our neighbor's tables. I think it only fair that the locals have a little better opportunity to compete with the professional long-liners and charters.

Respectfully,



Jeff Pasco  
P. O. Box 235  
Ninilchik, AK. 99639



# Ninilchik Traditional Council

P.O. Box 39070

Ninilchik, Alaska 99639

Ph: 907 567-3313 / Fx: 907 567-3308

E-mail: [ntc@ninilchiktribe-nsn.gov](mailto:ntc@ninilchiktribe-nsn.gov)

Web Site: [www.ninilchiktribe-nsn.gov](http://www.ninilchiktribe-nsn.gov)

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September 29<sup>th</sup>, 2003

Jane DoCosimo  
North Pacific Fishery Management Council  
306 West 4<sup>th</sup> Avenue, Suite 306  
Anchorage, AK 99501-4424

Re: NTC support for addition of Ninilchik and Happy Valley to the rural list of residences for halibut subsistence.

Dear Jane:

The Ninilchik Traditional Council (NTC), the governing body of the Ninilchik Village Tribe, is in support for Alternative #2 of the Environmental Assessment/Regulatory Impact Review to Add Ninilchik to the List of Eligible Communities for Proposed Halibut Subsistence Regulations. This would place Ninilchik and Happy on the rural list of residences for halibut subsistence, as the Federal Subsistence Board has identified the Ninilchik rural area as mile 121 Falls Creek Road to mile 144 Stariski Tower. NTC's Board of Directors approved this during their 09/22/2003 Regular Council Meeting, with the stipulation that Section 804 of ANILCA is sustained and upheld in regards to this halibut subsistence program.

Sincerely,

Ivan Z. Encelewski  
NTC Executive Director

Cc: Dave Tyner  
file

North Pacific Fishery Management Council  
Attn: Jane DiCosmio  
605 West 4<sup>th</sup> Suite 306  
Anchorage Alaska 99501-2252

RECEIVED

MAR - 6 2003

N.P.F.M.C

March 1, 2003

To the NPFMC

My name is Dave Tyner, I'm sorry but do to my work schedule I won't be able to attend the meetings in April. I would like the council to approve Halibut subsistence for Ninilchik.

Subsistence in this community is more then just a word it's a connection to the past. Both natives and non-natives have relied on it since the village was founded in 1847.

Sharing of fish and game holds this community to it's cultural past and provides the youths of this area solid roots.

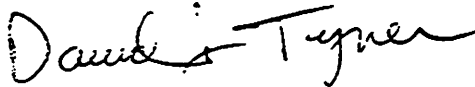
I hope the council will move halibut subsistence forward the first weekend of April by approving a final ruling for the Ninilchik rural area.

These Ninilchik residents (see enclosed documents) would like the council to approve subsistence halibut fishing for the Ninilchik rural area as defined by the Federal Subsistence Board.

We believe all of the subsistence users in this area both native & non-native will benefit from your ruling.

Sincerely,

David Tyner





I OLGA M MCCORMICK support Dave Tyner's effort to ensure that all residents in Ninilchik are . . . considered and eligible for subsistence use of fish. The people of the Ninilchik Rural Area on the Kenai Peninsula are using fish & game for subsistence. We catch and use fish as part of our staple meals for the last 2 1/2 years and should be included for subsistence use, both native and non-native.

Olga M McCormick

I Dave & Nan Cooper, support Dave Tyner's effort to ensure that all residents in Ninilchik are considered and eligible for subsistence use of fish. The people of the Ninilchik Rural Area on the Kenai Peninsula are using fish & game for subsistence. We catch and use fish as part of our staple meals for the last 5 1/2 years and should be included for subsistence use, both native and non-native.

Dave A. Cooper & Nan Cooper  
65095 Lingonberry Ave  
Ninilchik Ak. 99639

I Cynthia R. Schnabl, support Dave Tyner's effort to ensure that all residents in Ninilchik are considered and eligible for subsistence use of fish. The people of the Ninilchik Rural Area on the Kenai Peninsula are using fish & game for subsistence. We catch and use fish as part of our staple meals for the last 10 years and should be included for subsistence use, both native and non-native.

Cynthia R. Schnabl  
10275 Holly St.  
Ninilchik, AK.

I Rod Van Saun, support Dave Tyner's effort to ensure that all residents in Ninilchik are . considered and eligible for subsistence use of fish. The people of the Ninilchik Rural Area on the Kenai Peninsula are using fish & game for subsistence. We catch and use fish as part of our staple meals for the last 10 years and should be included for subsistence use, both native and non-native.

R. Van Saun

Box 622

Ninilchik AK 99639

I Kevin Zimmerman, support Dave Tyner's effort to ensure that all residents in Ninilchik are considered and eligible for subsistence use of fish. The people of the Ninilchik Rural Area on the Kenai Peninsula are using fish & game for subsistence. We catch and use fish as part of our staple meals for the last 12 years and should be included for subsistence use, both native and non-native.

Kevin Zimmerman  
PO Box 39307  
Ninilchik AK. 99639

I Severine Basham, support Dave Tyner's effort to ensure that all residents in Ninilchik are considered and eligible for subsistence use of fish. The people of the Ninilchik Rural Area on the Kenai Peninsula are using fish & game for subsistence. We catch and use fish as part of our staple meals for the last 15 years and should be included for subsistence use, both native and non-native.

Severine Basham

PO Box 832  
Ninilchik, AK  
99639

I Jeffrey support Dave Tyner's effort to ensure that all residents in Ninilchik are considered and eligible for subsistence use of fish. The people of the Ninilchik Rural Area on the Kenai Peninsula are using fish & game for subsistence. We catch and use fish as part of our staple meals for the last 17 years and should be included for subsistence use, both native and non-native.



I Deanne Smith, support Dave Tyner's effort to ensure that all residents in Ninilchik are considered and eligible for subsistence use of fish. The people of the Ninilchik Rural Area on the Kenai Peninsula are using fish & game for subsistence. We catch and use fish as part of our staple meals for the last 19 years and should be included for subsistence use, both native and non-native.

Deanne Smith

P O Box 128

Ninilchik, AK. 99639



I Ruth Taggart, support Dave Tyner's effort to ensure that all residents in Ninilchik are considered and eligible for subsistence use of fish. The people of the Ninilchik Rural Area on the Kenai Peninsula are using fish & game for subsistence. We catch and use fish as part of our staple meals for the last 20 years and should be included for subsistence use, both native and non-native.

Ruth Taggart

I Lloyd Taggart, support Dave Tyner's effort to ensure that all residents in Ninilchik are considered and eligible for subsistence use of fish. The people of the Ninilchik Rural Area on the Kenai Peninsula are using fish & game for subsistence. We catch and use fish as part of our staple meals for the last 20 years and should be included for subsistence use, both native and non-native.

Lloyd TAGGART  
65525 Green Tree  
NINILCHIK

I MARK PIERCE, support Dave Tyner's effort to ensure that all residents in Ninilchik are considered and eligible for subsistence use of fish. The people of the Ninilchik Rural Area on the Kenai Peninsula are using fish & game for subsistence. We catch and use fish as part of our staple meals for the last 21 years and should be included for subsistence use, both native and non-native.

Mark Pierce

65090  
Lingonberry St  
Ninilchik Ak

I John L. Myers support Dave Tyner's effort to ensure that all residents in Niniilchik are considered and eligible for subsistence use of fish. The people of the Niniilchik Rural Area on the Kenai Peninsula are using fish & game for subsistence. We catch and use fish as part of our staple meals for the last 24 years and should be included for subsistence use, both native and non-native.

John L. Myers

I Helena Bock support Dave Tyner's effort to ensure that all residents in Ninilchik are considered and eligible for subsistence use of fish. The people of the Ninilchik Rural Area on the Kenai Peninsula are using fish & game for subsistence. We catch and use fish as part of our staple meals for the last 30 years and should be included for subsistence use, both native and non-native.

Helena Bock

Box 38

Ninilchik, AK

99639

I KEN KVASNIKOFF, support Dave Tyner's effort to ensure that all residents in Ninilchik are considered and eligible for subsistence use of fish. The people of the Ninilchik Rural Area on the Kenai Peninsula are using fish & game for subsistence. We catch and use fish as part of our staple meals for the last 32 years and should be included for subsistence use, both native and non-native.

Ken Kvasnikoff

1665 HOBY ST  
NINILCHIK AK

I Earl M Simonds, support Dave Tyner's effort to ensure that all residents in Ninilchik are considered and eligible for subsistence use of fish. The people of the Ninilchik Rural Area on the Kenai Peninsula are using fish & game for subsistence. We catch and use fish as part of our staple meals for the last 35 yrs years and should be included for subsistence use, both native and non-native.

Earl M Simonds

I Stephen Vanek, support Dave Tyner's effort to ensure that all residents in Ninilchik are considered and eligible for subsistence use of fish. The people of the Ninilchik Rural Area on the Kenai Peninsula are using fish & game for subsistence. We catch and use fish as part of our staple meals for the last 38 years and should be included for subsistence use, both native and non-native.

Stephen Vanek



I Nancy Webb, support Dave Tyner's effort to ensure that all residents in Ninilchik are considered and eligible for subsistence use of fish. The people of the Ninilchik Rural Area on the Kenai Peninsula are using fish & game for subsistence. We catch and use fish as part of our staple meals for the last 40 years and should be included for subsistence use, both native and non-native.

Nancy E Webb

PO Box 572

Ninilchik AK 99639

I Paul M Simonds, support Dave Tyner's effort to ensure that all residents in Ninilchik are considered and eligible for subsistence use of fish. The people of the Ninilchik Rural Area on the Kenai Peninsula are using fish & game for subsistence. We catch and use fish as part of our staple meals for the last 50 years and should be included for subsistence use, both native and non-native.

Paul M Simonds

16646 Holly St  
Ninilchik, AK 99639  
907-567-1020

I John Tyler, support Dave Tyner's effort to ensure that all residents in Ninilchik are considered and eligible for subsistence use of fish. The people of the Ninilchik Rural Area on the Kenai Peninsula are using fish & game for subsistence. We catch and use fish as part of our staple meals for the last 51 years and should be included for subsistence use, both native and non-native.

John Tyler 15519 Sterling Hwy



# Ninilchik Traditional Council

P.O. Box 39070

Ninilchik, Alaska 99639

Ph: 907 567-3313 / Fx: 907 567-3308

E-mail: [ntc@ninilchiktribe-nsn.gov](mailto:ntc@ninilchiktribe-nsn.gov)

Web Site: [www.ninilchiktribe-nsn.gov](http://www.ninilchiktribe-nsn.gov)

March 07, 2003

North Pacific Fishery Management Council  
Attn: David Benton, Chairman  
605 W. 4<sup>th</sup> Ave., Suite 306  
Anchorage, AK 99501-2252

RECEIVED

MAR 10 2003

N.P.F.M.C

Dear Mr. Benton:

The Ninilchik Traditional Council (NTC), the federally and state recognized tribal government of the Ninilchik Village Tribe, would like to extend our complete and total support for the pursuit of a halibut subsistence ruling.

It is our understanding that the North Pacific Fishery Management Council (Council) has adopted a policy recommendation to the Secretary of Commerce (Secretary) concerning the subsistence use of Pacific halibut in and off of Alaska by populations living in rural areas and Alaska Natives. Subsistence fishing and hunting is a traditionally fundamental practice of Alaskan Natives and those who live in rural areas. The approval of this ruling would have multiple and numerous benefits to our tribe and community. What we would like to propose is that the waters off of the Ninilchik coast be included in the proposed subsistence area.

We would like to encourage you to use this letter with your policy recommendation to illustrate our solid support for an approval of a halibut subsistence rule. Thank you.

Sincerely,

Sarah E. Stokes  
NTC Executive Director/Deputy CEO

c: file

# Subsistence Sales Raise State Hackles

by Bob Tkacz

**A**laska Gov. Frank Murkowski may have to sue his old employer, Uncle Sam, to change Federal Subsistence Board regulations that place only minimal restrictions on the sale of subsistence-caught fish by rural residents.

At a closed meeting, July 15, the Subsistence Board rejected a request by the Alaska Department of Fish and Game to modify regulations that ADF&G claims "generally authorize transactions of any size, with no limits on the poundage or dollar value involved."

A month earlier the federal panel rejected a similar request from the Southeast Alaska Seiners.

The regulation currently prohibits the sale of subsistence-harvested fish, fish parts or eggs to any business or as part of a business transaction. They ban resale by non-rural purchasers, and require that buyers use the product for their own consumption or consumption by their family. However, the regulations do not limit the amount of fish or the value of the fish an individual person can sell or buy.

When the FSB adopted the rules in January, Chairman Mitch Demientieff called them "a starting point" and said specific regional concerns would be addressed during the normal course of business. Among the proposals submitted for consideration at this December's Subsistence Board meeting are four that would set specific dollar limits or other restrictions on sales.

At a July 17 news conference, Murkowski said the open-ended regula-

tion remains a concern, but he wasn't ready to commit to a lawsuit.

"We have to have a dialogue here and get this thing under control," the governor said. "We will attempt to work with the Federal Subsistence Board."

Nevertheless, ADF&G's leadman on the issue said a lawsuit was possible.

"As far as I know the options are sue or don't — if we want to have some effect on that particular regulation," said David Bedford. Bedford was executive director of Southeast Alaska Seiners and the United Fishermen of Alaska's Subsistence Committee chairman before he was appointed deputy commissioner of ADF&G this spring.

Commercial Fisheries Division director Doug Mecum downplayed the threat of legal action against the Subsistence Board. "There's a possibility of litigation, but none of those conversations have been held," he said.

**I**n its appeal request, ADF&G noted that ANILCA, supported by a 9th U.S. Court of Appeals decision, allows only "customary and traditional" subsistence uses or trade. The 9th Circuit also said federal law does not permit the establishment of "significant commercial enterprises under the guise of subsistence uses."

As the court noted, "The size of the transaction or the manner in which it is conducted may place it outside the bounds of customary trade." Calling the federal subsistence regulations "arbitrary and capricious," ADF&G complained that the Subsistence Board had no evidence that currently sanctioned sales are consistent with customary practices.



ADF&G is worried about excessive sales of subsistence-caught fish. (Photo by Jason Hesskew)

Eight of the ten regional subsistence councils in Alaska had already proposed caps on subsistence sales ranging from \$400 to \$1,000, some mandating that specific portions of the catch to be used by the harvester or their family. ADF&G argued that the Subsistence Board improperly rejected regional council recommendations, but the Subsistence Board's analysis said it did not have to accept regional advice where sales were

## Halibut Flap

continued from page 15

Only three halibut charter businesses are operating in Unalaska this summer, and fewer than 200 derby tickets had been sold by the time the second trimester of the season was concluded in July. Last year, 600 had been sold during the same time frame. With big-boat pollock fishing going full blast earlier in the summer because of a huge Bering Sea quota, she said it's harder for sport fishermen to get seats not booked already by the commercial fishing industry.

Southworth defended his 351-pound entry at noon July 31 at the Peking Restaurant, where the derby committee gathered to decide if he deserved the \$1,000 for the biggest halibut landed during the period that ended July 27.

Prior to the meeting, Southworth said he wasn't longlining and that he used a legal rod and reel to hook the fish that took 45 minutes to bring to the surface and another 1-1/2 hours to get into the boat.

"It felt like a piano," he recalled. "At first I thought I'd hooked a crab pot. But when it jerked a few times, I said, 'this is a fish!'"

During the informal derby inquest at the restaurant, Southworth and his prize-winning flatfish were vindicated by an affidavit from a passing boater who confirmed his sport-fishing account. A portion of the big fish went to the local senior center, and Southworth went to the bank with \$1,000.

Jim Paulin can be reached at  
paulinjim@yahoo.com

concerned — only on matters regarding the "taking" of fish or game.

The board's analysis added that the 9th Circuit ruling cited by ADF&G was not applicable because it was based on a criminal case involving the illegal sale of subsistence-caught resources.

"The state has presented no new information, does not demonstrate that the information used by the board was incorrect, or demonstrated that the board's interpretation of information, applicable law, or regulation was in error," the board's analysis concluded. ■

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LATE COMMENT

to Dennis Austin.

I am writing you a letter

to try & get logging AK. put on the

substance Halibut List. We are located

roughly 30 miles north of Hetchikan.

There are no roads, power, water or

mail service. Logging used to be an

old cannery town, where most people

including my father & relatives made

their living off of salmon, trapping

on Halibut. I and my family commercial

fish for salmon & shrimp in the winter

a subsistence Halibut permit ~~was~~ would

surely help. Sorry for the hand-

written letter

Thank you

*[Signature]*

REX BARBER

P.O. Box 5070

Hetchikan AK 99901

PH # (907) 209-0707 call

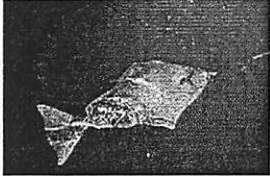
OCT - 5 2003

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C-6  
Staff Report  
by Babba  
Cook &  
Jay Ginter

NOAA National Marine Fisheries Service Sustainable Fisheries Division

## Subsistence Halibut



Proposed changes to  
50 CFR § 300.60 – 300.66  
based on NPFMC recommendations.

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### This Presentation Addresses:

- Designation and definition of new subsistence halibut subareas within the IPHC Areas.
- Changes in gear and harvest restrictions in IPHC areas and new subareas.
- Development of a Community Harvest Permit, Ceremonial Permit, and Educational Permit for areas where gear and harvest restrictions increased.

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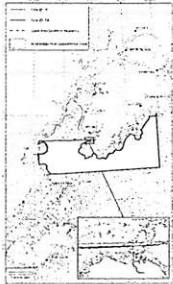
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### § 300.61 Definitions

Cook Inlet means all waters of Alaska enclosed by a line extending east from Cape Douglas (58 degrees 51.10' N. lat.) and a line extending south from Cape Fairfield (148 degrees 50.25' W. long.).



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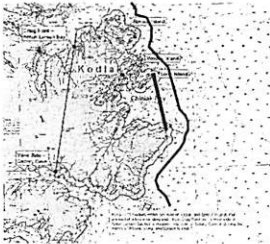
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**§ 300.61 Definitions**



Kodiak Road Zone means all waters within one mile of Kodiak and Spruce Islands that are east of a line extending south from Crag Point on the west side of Anton Larsen Bay to the westernmost point of Saltery Cove, including all waters of Woody, Long, and Spruce Islands and...

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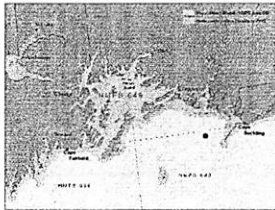
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**§ 300.61 Definitions**



Prince William Sound means all waters of Alaska between the longitude of Cape Fairfield (148 degrees 50.25' W. long.) and Cape Suckling (144 degrees W. long.).

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**§ 300.65  
Subsistence Fishing Gear  
Restrictions**

(h) Subsistence fishing gear must not have more than 30 hooks per person registered in accordance with paragraph (i) of this section and on board the vessel from which gear is being set or retrieved, and shall never exceed 3 times the per person hook limit per vessel, except that:

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**§ 300.65  
Subsistence Fishing Gear  
Restrictions**

**A. No hook limit applies in Areas 4C, 4D, and 4E.**

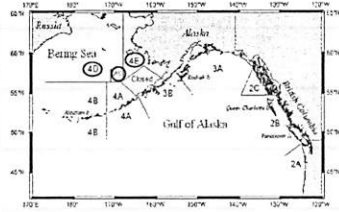


Figure 1.1. IPHC regulatory areas.

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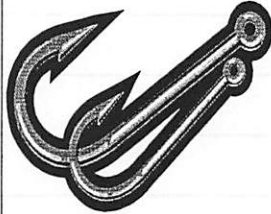
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**§ 300.65  
Subsistence Fishing Gear  
Restrictions**

**B. Inside the Kodiak Road Zone, Prince William Sound, and Cook Inlet in Area 3A subsistence fishing gear must not have more than 10 hooks per person unless fishing under a Community Harvest Permit (CHP) pursuant to paragraph (j) of this section.**




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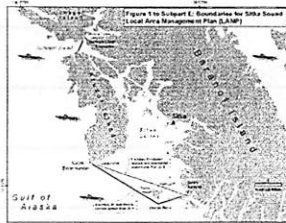
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**§ 300.65  
Subsistence Fishing Gear  
Restrictions**

**C. In Area 2C, excluding the Sitka LAMP, subsistence fishing gear must not have more than 30 hooks per vessel unless fishing under a CHP pursuant to paragraph (j) of this section.**




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## § 300.65

### Subsistence Fishing Gear Restrictions

**D. In Area 2C within the Sitka LAMP:**

**(I) From June 1 to August 31:**

- (i) Subsistence fishing gear must not have more than 15 hooks per vessel
- (ii) Longlines may not be used in a 4 nautical mile radius extending south from Low Island at 57(degrees) 00' 42" N. lat., and 135(degrees) 36' 34" W. long.
- (iii) Power hauling is prohibited.

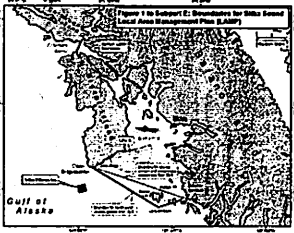


Figure 4 in Subpart E. Boundaries for Sitka Sound Local Area Management Plan (LAMP)

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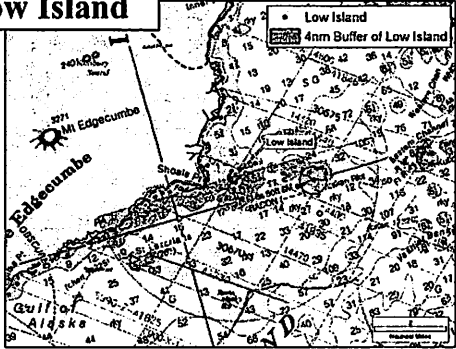
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**Low Island**



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## § 300.65

### Subsistence Fishing Gear Restrictions

**(D) In Area 2C within the Sitka LAMP:**

**(I) From September 1 to May 31:**

- (i) Subsistence fishing gear must not have more than 30 hooks per vessel.
- (ii) Power hauling is allowed.




Figure 4 in Subpart E. Boundaries for Sitka Sound Local Area Management Plan (LAMP)

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**§ 300.65  
Harvest Retention Limits**

(2) The daily retention of subsistence halibut in rural areas is limited to no more than 20 fish per person eligible to conduct subsistence fishing for halibut under paragraph (g) of this section, except that:

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**§ 300.65  
Harvest Retention Limits**

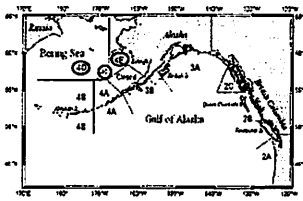


Figure 1.1. IPHC regulatory areas.

(i) No daily retention limit applies in Areas 4C, 4D, and 4E.

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**§ 300.65  
Harvest Retention Limits**

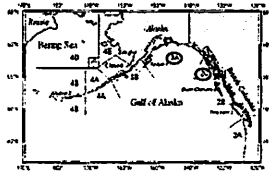


Figure 1.1. IPHC regulatory areas.

(ii) No daily retention limit applies to persons fishing under a Community Harvest Permit (CHP) pursuant to paragraph (j) of this section.

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**§ 300.65  
Harvest Retention Limits**



Figure 1.1. IPHC regulatory areas.

(iii) The total allowable harvest for persons fishing under a ceremonial or educational permit pursuant to paragraph (k) of this section is 25 fish per permit.

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**§ 300.65  
Harvest Retention Limits**



(iv) In Area 2C:  
(A) Excluding the Sitka LAMP, the daily retention limit is 20 fish per vessel.

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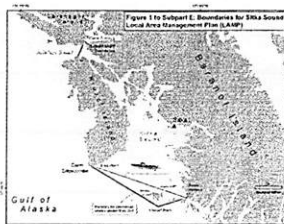
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**§ 300.65  
Harvest Retention Limits**

(iv) In Area 2C  
(A) Within the Sitka LAMP:

- (1) From June 1 to August 31 the daily retention limit is 5 fish per vessel.
- (2) From September 1 to May 31 the daily retention limit is 10 fish per vessel.




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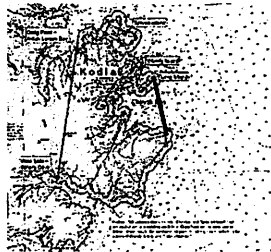
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**§ 300.65  
Harvest Retention Limits**

(v) In the Kodiak Road Zone, the *annual* harvest limit is 20 fish per person.



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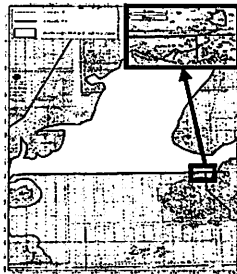
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**§ 300.65 Non-Rural/Non-Subsistence Exception Areas**

(iii) Anchorage-Matsu-Kenai non-subsistence marine waters area in Commission regulatory area 3A (see Figure 4 to subpart E) is defined as all waters enclosed by a line extending...across Cook Inlet to the western boundary of the territorial sea east of Ursus Cove and north of Augustine Island.



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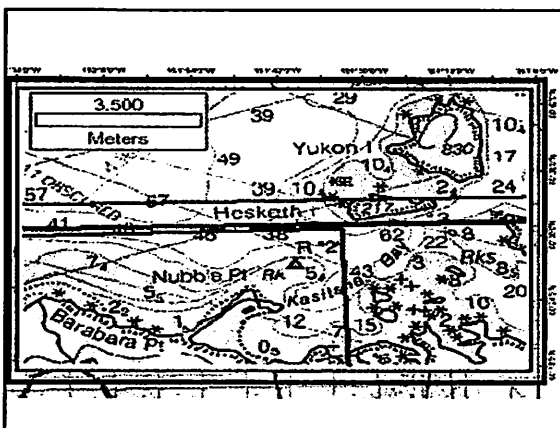
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**§ 300.65**  
**Community Harvest Permits**

(j) ...In areas 2C and 3A, a community or tribe listed in paragraph (g) of this section may apply for a CHP, which allows a community or tribe to appoint one or more individuals from their respective community or tribe to harvest subsistence halibut from a single vessel under reduced gear and harvest restrictions.

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**§ 300.65**  
**Community Harvest Permits**

**(2) Registration...**

(i) An application must:

(A) Identify the tribe or community requesting the CHP.

(B) Identify one person as the CHP Coordinator for each tribe or community.




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**§ 300.65**  
**Community Harvest Permits**

(ii) NMFS will issue a CHP to a community in Area 2C or 3A only if:

(A) The applying community is listed as eligible in paragraph (g)(1) of this section.

(B) No tribe listed in paragraph (g)(2) exists in that community.

(iii) NMFS will issue a CHP to a tribe in Area 2C or 3A only if the applying tribe is listed as eligible in paragraph (g)(2) of this section.




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**§ 300.65**  
**Community Harvest Permits**

- (3) Subsistence fishing for halibut under a CHP shall be limited to:
- (i) Area 3A within the Kodiak Road Zone, Cook Inlet, and Prince William Sound.
  - (ii) Area 2C, except that a CHP may not be used within the Sitka LAMP.
  - (iii) Persons in possession of a valid subsistence halibut registration certificate issued in accordance with paragraph (i) for the same tribe or community listed on the CHP.
  - (iv) A single vessel from which gear is set or retrieved and on board which the CHP is maintained.



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**§ 300.65**  
**Community Harvest Permits**

- (4) Expiration of permit...
- ...A CHP will expire *1 year* from the date of issuance to a tribe or community eligible to harvest halibut under paragraph (f) of this section.
- ...A CHP *may be revoked or reissued based on the tribe or community's compliance with applicable rules and reporting requirements.*



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**§ 300.65**  
**Community Harvest Permits**

- (5) Requirements of the CHP coordinator:
- (i) Identify the designated harvesters who may fish under the CHP each day.
  - (ii) Maintain possession of the CHP when not in use and issue the CHP to designated harvesters when necessary.
  - (iii) Perform all record keeping and data reporting of subsistence harvests under the CHP.



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**§ 300.65**  
**Community Harvest Permits**

**(5) Requirements of the CHP coordinator:**

(iv) Only a CHP Coordinator may reimburse individual harvesters. Reimbursement of harvesting costs provided to a subsistence harvester performing under a CHP *shall (not)* count toward that harvester's annual customary trade limit specified in section 300.66(j) of this chapter.

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**§ 300.65 Ceremonial and Educational Permits**

**(k)(2)(i) NMFS will issue a ceremonial permit for the harvest of halibut associated with memorial potlatches and traditional cultural events only if the application:**

(A) Identifies the tribe requesting the permit.  
 (B) Indicates the name of the decedent or the occasion of cultural or ceremonial significance.  
 (C) Identifies one person as the ceremonial permit coordinator for the cultural or ceremonial event.

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**§ 300.65 Ceremonial and Educational Permits**

**(2)(ii) NMFS will issue an educational permit only if the application:**

(A) Includes the name and address of the educational institution or organization.  
 (B) Includes each instructor's name.  
 (C) Demonstrates the enrollment of qualified students.  
 (D) Describes minimum attendance requirements of the educational program.  
 (E) Describes standards for the successful completion of the educational program.

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**§ 300.65 Ceremonial and Educational Permits**

- (3) Subsistence fishing for halibut shall be limited to:
- (i) Area 3A within the Kodiak Road Zone, Cook Inlet, and Prince William Sound.
  - (ii) Area 2C, except that a ceremonial permit may not be used within the Sitka LAMP.
  - (iii) A single vessel from which gear is set or retrieved and on board which the ceremonial or educational permit is maintained.
  - (iv) A vessel on which the instructor is present for educational permits.

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**§ 300.65 Ceremonial and Educational Permits**

- (4) Expiration of Registration:
- Ceremonial and educational permits will expire *30 days* from the date of issuance to a tribe eligible to harvest halibut under paragraph (g)(2) of this section.
- A tribe eligible to harvest subsistence halibut under paragraph (g)(2) of this section may apply for *additional ceremonial or educational permits as necessary.*
- A ceremonial or educational permit *may be revoked or reissued based on the tribe's compliance with applicable rules and reporting requirements.*

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**§ 300.66 Prohibitions**



In addition to the general prohibitions specified in 50 CFR 300.4, it is unlawful for any person to do any of the following:

- (f) Fish for subsistence halibut in and off Alaska unless the person is qualified to do so under 50 CFR 300(g), has in his or her possession a valid subsistence halibut registration certificate pursuant to 50 CFR 300.65(i), and makes this certificate available for inspection by an authorized officer on request, *except that students fishing under a valid educational permit do not need a subsistence halibut registration certificate.*

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**§ 300.66 Prohibitions**

(i) Retain, on board the harvesting vessel, halibut harvested from subsistence fishing with halibut harvested from commercial fishing or from sport fishing, as defined at 50 CFR 300.61(b), except that:



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**§ 300.66 Prohibitions**

(i)(1) Persons who land their total annual harvest of halibut in Commission regulatory area 4C, 4D, or 4E may retain, with harvests of CDQ halibut, marked subsistence halibut harvested in Commission regulatory Areas 4C, 4D, or 4E that are greater than the minimum size limit specified in the annual management measures published pursuant to 50 CFR 300.62.



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**§ 300.65  
Mixing Subsistence and CDQ  
Halibut**

(d) A person authorized to conduct subsistence fishing under paragraph (g) of this section may retain subsistence halibut on the same vessel as CDQ halibut in Commission regulatory areas 4C, 4D, and 4E, provided that:

- (1) The total annual halibut harvest of that person is landed in regulatory areas 4C, 4D, or 4E; and
- (2) No person may sell such halibut outside the limits prescribed for customary and traditional exchange of subsistence halibut prescribed at 50 CFR 300.66.

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**§ 300.66 Prohibitions**

(k) Retain subsistence halibut harvested under a CHP, ceremonial permit, or educational permit together in any combination or with halibut harvested under any other license or permit.



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**QUESTIONS?**



> Please direct questions to:  
Bubba Cook  
National Marine Fisheries Service  
Sustainable Fisheries Division  
PO Box 21668  
Juneau, AK 99802-1668  
907-586-7425  
Bubba.Cook@noaa.gov



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**PUBLIC TESTIMONY SIGN-UP SHEET FOR  
AGENDA ITEM**

*C-6 Halibut Subsistence*

	NAME (PLEASE PRINT)	AFFILIATION
1	GERRY MERRIGAN	PVOA - PETLUBUR VESSEL OWNERS ASSOCIATE
2	sky Starkey	ANSIHWG
3	Ivey MALUTIN	KANA KUDIAK
4	David Bill	T. FOKSCO/JUNK - Wnt
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NOTE to persons providing oral or written testimony to the Council: Section 307(1)(I) of the Magnuson-Stevens Fishery Conservation and Management Act prohibits any person "to knowingly and willfully submit to a Council, the Secretary, or the Governor of a State false information (including, but not limited to, false information regarding the capacity and extent to which a United State fish processor, on an annual basis, will process a portion of the optimum yield of a fishery that will be harvested by fishing vessels of the United States) regarding any matter that the Council, Secretary, or Governor is considering in the course of carrying out this Act.

C-6  
Sky Starkey

**COMMENTS OF THE ALASKA NATIVE SUBSISTENCE  
HALIBUT WORKING GROUP  
ON ISSUES BEFORE THE NPFMC**

October 13, 2003

Comments on Staff's Requests for Clarification on a Draft Proposed Rule.

Questions asked on page 10 of the staff report.

1. *Would a summer longlining prohibition throughout the Sitka LAMP be consistent with Council Intent? What is the intended closure Area around Low Island?* With respect to questions asked about longline and power hauling gear and the Low Island closure area in the Sitka LAMP area, the ANSHWG agrees with the recommendations of the AP.
2. *The ANSHWG supports the AP recommendation that Ceremonial Permits should be allowed within the LAMP during the non-summer months.* Such permits would be issued in very limited circumstances, for very important cultural purposes. Thus the impact on resources in the LAMP area would be negligible while granting this harvest opportunity to subsistence users is important.
3. *What hook limit is intended for Ceremonial and Educational Permits?* The ANSHWG recommends that the gear limit for these permits should be the same as the Council originally adopted for subsistence halibut fishing - 30 hooks per person with stacking of up to 90 hooks provided three subsistence users are aboard. The bag limits for these permits is 25 fish. Allowing a subsistence fisher to use more hooks will merely allow the subsistence harvester to catch what is needed more efficiently and will not result in additional harvest.

Questions asked on page 11 of the staff report.

4. *Is the plan developed by staff for implementing the CHP program consistent with the Council's intent?* The ANSHWG believes the CHP plan developed by staff achieves the purposes the Council intended when it adopted the CHP program. It provides for traditional community harvest patterns and satisfies the

administrative, enforcement and harvest monitoring needs of the program.

5. *Should harvest reporting be mandatory for CHPs?* The ANSHWG supports mandatory reporting requirements for the CHP program. The mandatory reporting requirement is a fair and necessary requirement because the CHP program allows for an expanded fishing opportunity consistent with the traditional pattern of community harvesters.

Questions asked on page 12 of the staff report.

6. *Should reimbursement of harvesting costs to a CHP, Educational permit or Ceremonial permit harvester count towards his or her annual \$400 customary trade limit?* It is the ANSHWG's position that persons harvesting under a CHP or a Ceremonial or Educational Permit should be bound to the \$400 individual limit for customary trade. No extra opportunity for customary trade should be added. This is consistent with traditional practices in the tribal communities.
7. *Should there be mandatory harvest reporting requirements for Educational and Ceremonial permits?* The ANSHWG supports mandatory reporting requirements for Educational and Ceremonial permits.

### Comments on Staff's Report on Customary Trade

The ANSHWG believes that it is premature to address any concerns there may be about customary trade. ADF&G staff is conducting a harvest and by-catch monitoring survey. The Council should wait to hear the results of the survey before determining if there is any concern that requires Council action.

If, however, the Council does feel it is necessary to revisit the issue of customary trade, the ANSHWG agrees with the AP that the issue should be discussed in a committee. The ANSHWG suggests that the committee include, at a minimum, members of the ANSHWG, the State, and Council and NMFS staff. The Working Group further recommends that this committee report to the Council at its April 2004 meeting. This should allow the committee an opportunity to review the results of the ADF&G survey. After receiving the committee's report in April, the Council could put issues of concern on its October 2004 agenda.

If a committee is appointed to consider the customary trade issue or any other subsistence halibut issue, the ANSHWG asks that it be allowed to add several

additional issues that are of concern to subsistence users to the committee's scope of work.

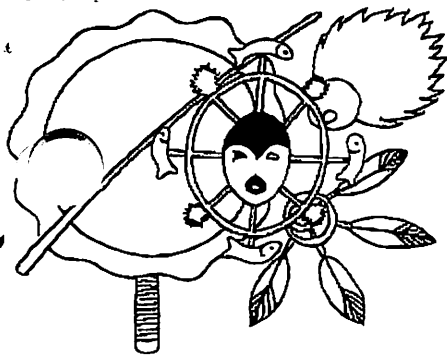
Comments on the Enforcement Committee Report on Inconsistency of State and Federal Regulations Related to Rockfish By-Catch

The ANSHWG believes that a thorough legal analysis by NOAA General Counsel is necessary before the consequences (if any) of conflicting State and Federal regulations can be fully understood. If the Council believes that the issue needs attention after reviewing a thorough legal analysis, the ANSHWG believes it would be helpful to refer the issue to a committee composed of the ANSHWG, NPFMC and NMFS staff, and the State in order to see if there is a mutually agreeable way to resolve the inconsistencies.

Comments on Concerns Raised by the IPHC

The ANSHWG agrees with the AP that the issues raised by the IPHC should be referred to a committee. As stated above, the committee should report to the Council during the April 2004 meeting allowing time for the Council to put issues it thinks may need further action on its October 2004 agenda.



C-6  
David Bill

# Nunakuyak Traditional Council

## EMERGENCY MEMO (FAXED)

### TO WHOM IT MAY CONCERN

From: David B. Tim, Tribal Council Chairman  
Subject: Permit System  
Re: Subsistence Halibut Fishing  
Date: October 10, 2003

I am submitting this memo on the behalf of the Nunakuyak Traditional Council, a Tribal governing body for the federally recognized Nunakuyarmiut Tribe of Toksook Bay, Alaska.

Mr. David A. Nicholai, then a Tribal Administrator, had no choice but to apply for permits for all Tribal members for their own protection should they be cited for subsistence fishing violation without a permit. Although a protest letter to NMFC was send (a copy enclosed) because NTC had not choice at that time but to try to protect our Tribal members from enforcement officers. Although this action was supported by the Nunakuyak Traditional Council (NTC), there was nothing there saying that NTC supports the new regulations.

Nunakuyak Traditional Council stands behind Mr. David Bill, Sr. who is representing them at this meeting and want all to know that they still oppose permit system for the subsistence halibut fishing or any other regulations relating to subsistence on other species that are traditionally harvested in Qaluyaarmiut region. This and any other issues that are and will hurt our traditional practice of surviving in this region pose threat to the very existence of Qaluyaarmiut (Nelson Island People).

The only alternative, as suggested, is that use of Tribal Identification Cards (TIC) in place of a permit or license system can be accepted for now but again, this does not mean that this Council supports the current system.

Since we are located in rural area, we do not want to see any regulations affecting traditional practice of the people nor do we want our Tribal member to subsist with fear. Therefore, we recommend no further action toward consideration and creation of subsistence halibut or any other regulations affecting our traditional and customary way of surviving in Qaluyaarmiut region.

May we also recommend that next time when this type of action is put on the table, the people responsible for such should first meet face to face with the people that will be affected instead of deciding issues that will affect them from thousands of miles away.

May 15, 2003

National Marine Fisheries Service  
Alaska Region  
Restricted Access Management (RAM) Program  
P.O. Box 21668  
Juneau, Alaska 99802

Dear Sirs,

This letter is written in opposition to the way the halibut subsistence regulation was drafted without tribal leaders' participation. As a federal government agency, your department needs to practice government to government relationship and have the tribal leaders participate in drafting regulations that will affect them.

We do not want to be treated like lower 48 American Indians who were promised through treaties that U.S. government fail to provide.

As a local tribal governing body for the federally recognized Nunakauyarmiut Tribe, Nunakauyak Traditional Council (NTC) will not honor the new halibut subsistence regulations if it will conflict with our traditionally practiced subsistence way of life. As Native Americans, we have the right to protect subsistence - our way of life - to the fullest.

This Council will not apply on the behalf its Tribal members nor will it encourage its Tribal members to apply for SHARC. If the enforcement should follow, NTC will stand behind its Tribal members and will be considered themselves responsible for the violations, not the Tribal members in question.

So, you know where we stand and we hope that we won't have to get into this kind of conflicting situations.

Sincerely,  
**THE NUNAKAUYARMIUT TRIBE**  
Honorable Paul John, Traditional Chief

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David B. Tim, Tribal Council President  
Nunakauyak Traditional Council

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Charles J. Moses, Tribal Council Sec'y  
Nunakauyak Traditional Council