

**FINAL REGULATORY FLEXIBILITY ANALYSIS
FOR THE 2012 CHANGES TO THE
AREA 2A PACIFIC HALIBUT CATCH SHARING PLAN**

National Marine Fisheries Service, Northwest Region
March 2012

When an agency proposes regulations, the Regulatory Flexibility Act (RFA) requires the agency to prepare and make available for public comment an Initial Regulatory Flexibility Analysis (IRFA) that describes the impact on small businesses, non-profit enterprises, local governments, and other small entities. The IRFA is to aid the agency in considering all reasonable regulatory alternatives that would minimize the economic impact on affected small entities. After the public comment period, the agency prepares a Final Regulatory Flexibility Analysis (FRFA) that takes into consideration any new information or public comments. This FRFA addresses the Pacific Fishery Management Council's (Pacific Council's) recommended 2012 changes to the Area 2A Pacific halibut Catch Sharing Plan and annual domestic Area 2A halibut management measures.

1) A succinct statement of the need for, and objectives of, the rule.

The Northern Pacific Halibut Act of 1982 at 16 U.S.C. 773c provides that the Secretary of Commerce (Secretary) shall have general responsibility to carry out the Halibut Convention between the United States and Canada and that the Secretary shall adopt such regulations as may be necessary to carry out the purposes and objectives of the Convention and the Halibut Act. Section 773c(c) also authorizes the regional fishery management council having authority for the geographic area concerned to develop regulations governing the Pacific halibut catch in United States (U.S.) Convention waters that are in addition to, but not in conflict with, regulations of the International Pacific Halibut Commission (IPHC). Accordingly, catch sharing plans to allocate the total allowable catch (TAC) of Pacific halibut between treaty Indian and non-Indian harvesters, and among non-Indian commercial and sport fisheries in IPHC statistical Area 2A (off Washington, Oregon, and California) have been developed each year since 1988 by the Council in accordance with the Halibut Act. In 1995, the National Marine Fisheries Service (NMFS) implemented a Council-recommended long-term Catch Sharing Plan (Plan) [60 FR 14651, March 20, 1995]. In each of the intervening years between 1995 and the present, minor revisions to the Plan have been made to adjust for the changing needs of the fisheries. Thus, the main management objective for the Pacific halibut fishery in Area 2A is to manage fisheries to remain within the TAC for Area 2A, while also allowing each commercial, recreational (sport), and tribal fishery to target halibut in the manner that is appropriate to meet both the conservation requirements for species that co-occur with Pacific halibut and the needs of fishery participants in particular fisheries and fishing areas.

Each year, the states of Washington and Oregon and the halibut treaty tribes meet with their fishery participants to review halibut management under the Plan. Based on feedback from these meetings and experience from the previous year's fishing season, the states or the tribes may propose changes to the Plan. Proposed changes to the plan are intended to remedy any problems encountered during the previous year's management, problems with other fisheries with overlapping management jurisdiction (e.g., Pacific Coast groundfish), or other anticipated problems.

If either the states or the tribes wish to propose changes to the Plan or annual domestic Area 2A management measures, their representatives bring those proposed changes to the Council at its September meeting. The Council makes final recommendations to NMFS on revisions to the Plan and domestic management measures at its November meeting. This year, Washington and Oregon brought proposals

forward to the Council. In addition to these state-generated recommendations for changes to the Plan, the Council continues to support restrictions to the halibut fisheries under its groundfish specifications and management measures process. Overfished groundfish species, particularly yelloweye rockfish, are known to be taken in both recreational and commercial hook-and-line fisheries for halibut. Council recommendations to protect yelloweye rockfish and other overfished species are implemented through both the halibut regulations and the groundfish regulations. For 2012, the changes to the Plan affect the recreational fisheries and the non-treaty commercial fisheries. The following proposed changes include the Council's recommendations and a few NMFS correction to its codified regulations:

1. Adjust the primary fishery schedule for the Washington Southcoast subarea (section (f)(1)(iii)) to be open for the first 3 consecutive weeks Sunday and Tuesday and closed the following week.
2. Adjust the subarea quota split for the Columbia River subarea (section (f)(1)(iv)) between the early and late fishery from 70 percent for the early fishery and 30 percent for the late fishery to 80 percent for the early fishery and 20 percent to the late fishery, and adjust the Oregon contribution to the subarea quota to equal the Washington contribution.
3. Adjust the Oregon Central Coast subarea quota (section (f)(1)(v)) from 67 percent to 63 percent for the spring fishery and from 8 percent to 12 percent for the nearshore fishery and allow remaining quota to be allocated from the spring fishery to either the summer fishery and/or the nearshore fishery.
4. In codified regulations at 300.63, update language referring to sablefish primary fishery to be consistent with Groundfish regulations that define the sablefish primary fishery.

2) A summary of the significant issues raised by the public comments in response to the IRFA, a summary of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments.

NMFS received 2 letters of comment on the proposed rule, but none of the comments received addressed the IRFA or the effects of this action on small entities. Those letters are not addressed in the FRFA. No issues were raised by the public regarding the IRFA for Area 2A. Therefore, no changes were made to the proposed rule as a result of these comments.

3) A description and an estimate of the number of small entities to which the rule will apply or an explanation why no such estimate is available. Under the RFA, the term "small entities" includes small businesses, small organizations, and small governmental jurisdictions.

Small businesses. The SBA has established size criteria for all major industry sectors in the US, including fish harvesting and fish processing businesses. A business involved in fish harvesting is a small business if it is independently owned and operated and not dominant in its field of operation (including its affiliates) and if it has combined annual receipts not in excess of \$3.5 million for all its affiliated operations worldwide. A seafood processor is a small business if it is independently owned and operated, not dominant in its field of operation, and employs 500 or fewer persons on a full time, part time, temporary, or other basis, at all its affiliated operations worldwide. A business involved in both the harvesting and processing of seafood products is a small business if it meets the \$4.0 million criterion for fish harvesting operations. A wholesale business servicing the fishing industry is a small business if it employs 100 or fewer persons on a full time, part time, temporary, or other basis, at all its affiliated operations worldwide. For marinas and charter/party boats, a small business is one with annual receipts not in excess of \$6.5 million.

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

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

In determining the potential universe of entities subject to this rule, we must consider those entities to which this rule applies. Although many small and large nonprofit enterprises track fisheries management issues on the West Coast, the proposed changes to the Plan, annual management measures and codified regulations will not directly affect those enterprises. Similarly, although many fishing communities are small governmental jurisdictions, no direct regulations for those governmental jurisdictions will result from this rule. However, charterboat operations and participants in the non-treaty directed commercial fishery off the coast of Washington and Oregon are small businesses that are directly regulated by this rule.

In 1995, NMFS implemented the Plan, when the TAC was 520,000 pounds (236 mt). In each of the intervening years between 1995 and the present, minor revisions to the Plan have been made to adjust for the changing needs of the fisheries, even though the TAC reached levels of over 1,000,000 pounds (454 mt), with a peak of 1,480,000 pounds (671 mt) in 2004. Between 2004 and 2008, there was little change in the total allowable catch and sector allocations. In 2008, the Area 2A Halibut TAC set by the IPHC was 1,220,000 pounds (553 mt). The 2012 Area 2A TAC of 989,000 pounds (448 mt) is higher than the TAC levels from 2009-2011 due to the IPHC's stock assessment information and harvest rate adjustments.

In 2011, 604 vessels were issued IPHC licenses to retain halibut. IPHC issues licenses for: the directed commercial fishery in Area 2A (147 licenses in 2011); incidental halibut caught in the salmon troll fishery (316 licenses in 2011); and the charterboat fleet (141 licenses in 2011). No vessel may participate in more than one of these three fisheries per year. Individual recreational anglers and private boats are the only sectors that are not required to have an IPHC license to retain halibut.

Specific data on the economics of halibut charter operations is unavailable. However, in January 2004, the Pacific States Marine Fisheries Commission (PSMFC) completed a report on the overall West Coast charterboat fleet. In surveying charterboat vessels concerning their operations in 2000, the PSMFC estimated that there were about 315 charterboat vessels in operation off Washington and Oregon. In 2000, IPHC licensed 130 vessels to fish in the halibut sport charter fishery. Comparing the total charterboat fleet to the 130 and 142 IPHC licenses in 2000 and 2007, respectively, approximately 41 to 45 percent of the charterboat fleet could participate in the halibut fishery. The PSMFC has developed preliminary estimates of the annual revenues earned by this fleet and they vary by size class of the vessels and home state. Small charterboat vessels range from 15 to 30 feet and typically carry 5 to 6 passengers. Medium charterboat vessels range from 31 to 49 feet in length and typically carry 19 to 20 passengers. (Neither state has large vessels of greater than 49 feet in their fleet.) Average annual revenues from all types of recreational fishing, whalewatching and other activities ranged from \$7,000 for small Oregon vessels to \$131,000 for medium Washington vessels. These data confirm that charterboat vessels qualify as small entities under the Regulatory Flexibility Act.

4) A description of the projected reporting, recordkeeping and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record.

There are no new reporting or record-keeping requirements that are part of this action.

5) A description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and the reason that each one of the other significant alternatives to the rule considered by the agency was rejected.

As noted earlier, NOAA Fisheries considers charterboat operations and non-treaty commercial license holders as small entities. In order to meet the objectives of this final rule and address the management concerns at hand, NOAA Fisheries cannot exempt small entities or change the reporting requirements for small entities. Thus, there are no other alternatives to the rule that minimize the impacts on small entities. As discussed below, the major economic effect on the fishery is from a change in the TAC which is set by international agreement. For each of the revisions proposed for 2012, the Council recommended a Plan or regulatory revisions intended to help prolong the halibut season, provide increased recreational opportunities, or clarify sport fishery management for fishermen and managers. There were no alternatives that could have similarly improved angler enjoyment of and participation in the fisheries while simultaneously protecting halibut and co-occurring groundfish species from overharvest.

WDFW and ODFW held public meetings and crafted alternatives to adjust management of the sport halibut fisheries in their states. The states then narrowed the alternatives under consideration and brought the resulting subset of alternatives to the Council at the Council's September and November 2011 meetings. The range of alternatives that were rejected includes alternate fishery structures, such as opening the sport fisheries on different days of the week than the final preferred alternative. Generally, by the time the alternatives reach the Council, because they have been through the state public review process, there are not a large number of alternatives. Rather, the range of alternatives has generally been reduced to the proposed action and the status quo. However, the Council and the States still considered a range of alternatives that could have similarly improved angler enjoyment of participation in the fisheries while simultaneously protecting halibut and co-occurring groundfish species from overharvest.

The major effect of halibut management on small entities is from the TAC decisions made by IPHC. Since the TAC for 2012 is 8.6% higher than the TAC from 2011, it can be expected that fishing seasons, and catch will be increased. Because halibut fishing is just one component of the business operations of the small entities, it is not clear how small entities may be affected. Halibut communities such as La Push and Neah Bay have unemployment rates that exceed 20%, and thus changes in halibut fishing may have serious effects on these communities and their associated small businesses. There are no large entities involved in the halibut fisheries; therefore, none of these changes to the Plan and domestic management measures will have a disproportionate negative effect on small entities versus large entities. The changes to the Plan and domestic management measures are minor changes and are intended to help prolong the halibut season, provide increased recreational harvest opportunities, or clarify sport fishery management for fishermen and managers.

These changes are authorized under the Pacific Halibut Act, implementing regulations at 50 CFR 300.60 - .65, and the Pacific Council process of annually evaluating the utility and effectiveness of Area 2A Pacific halibut management under the Plan. Given the TAC, the sport management measures implement the Plan by managing the recreational fishery to meet the differing fishery needs of the various areas along the coast according to the Plan's objectives. The measures will be very similar to last year's management measures.