

SUBSISTENCE HALIBUT III AMENDMENTS

PROPOSED ACTIONS: Revise the halibut subsistence program under six regulatory amendments.

ANALYSIS: CE/RIR (IRFA for Action 4; EA for Action 6). None of the proposed actions are expected to significantly affect the human environment.

ACTION/ALTERNATIVES:

Action 1. Create a subsistence halibut possession limit.

Alternative 1. No action.

Alternative 2. Possession limit equal to two daily bag limits (40 fish).

Problem Statement:

Action 2. Revise the definition of charter vessels.

Alternative 1. No action.

Alternative 2. Allow the use of charterboats for subsistence halibut fishing

Alternative 3. Adopt the State of Alaska definition of charter vessels to redefine a charterboat vessel as State-licensed and restrict their use in the subsistence fishery to the owner and identified immediate family members (father, mother, brother, sister, children, legally adopted children).

Problem Statement: Prohibit the use of charter vessels for hire for subsistence halibut fishing is difficult to enforce under current regulations.

Action 3. Revise the \$400 customary trade limit for subsistence halibut by IPHC regulatory area.

Alternative 1. No action.

Alternative 2. Revise the customary trade limit to \$100.

Alternative 3. Eliminate the customary trade limit (\$0).

Problem Statement:

Action 4. Allow subsistence halibut fishing in non-subsistence areas under special permits.

Alternative 1. No action.

Alternative 2. Allow the use of community harvest permits, educational permits, and ceremonial permits in non-traditional use areas by tribes whose traditional fishing grounds are located within these areas, with a 20-fish per day bag limit.

Problem Statement:

Action 5. Revise the list of eligible subsistence halibut communities.

Alternative 1. No action.

Alternative 2. Add to list of eligible communities:

Option 1. Naukati

Option 2. Port Tongass Village

Problem Statement: In adopting the subsistence halibut program, the Council recognized that rural communities may have been left off its list of eligible communities inadvertently. The Council required that communities which seek to be included in this program in the future first seek approval for any claim to rural status and halibut customary and traditional use by either the Alaska Board of Fisheries or Federal Subsistence Board before petitioning the Council.

Action 6. Revise subsistence halibut gear and annual limits.

Alternative 1. No action (30 hooks per person/vessel, no stacking limits, no annual limit)

Alternative 2. Change gear and annual limits in local areas.

(a) in Kodiak road zone and Chiniak Bay:

Issue 1. Gear limit:

Option 1. 5 hooks

Option 2. 10 hooks

Issue 2. Limit stacking on a single unit of gear per trip provided the subsistence user(s) are on board the vessel to:

Option 1. one hook limit (no stacking)

Option 2. two times the hook limit

Option 3. three times the hook limit

(b) in Prince William Sound:

Issue 1. Gear and annual limit:

Option 1. 5 hooks and 30 fish annual limit

Option 2. 10 hooks and 30 fish annual limit

Issue 2. Limit stacking on a single unit of gear per trip provided the subsistence user(s) are on board the vessel to:

Option 1. one hook limit (no stacking)

Option 2. two times the hook limit

Option 3. three times the hook limit

(c) in Cook Inlet:

Issue 1. Gear limit:

Option 1. 5 hooks

Option 2. 10 hooks

Issue 2. Limit stacking on a single unit of gear per trip provided the subsistence user(s) are on board the vessel to:

Option 1. one hook limit (no stacking)

Option 2. two times the hook limit

Option 3. three times the hook limit

(d) in Sitka Sound LAMP:

Issue 1. Seasonal gear and vessel limits:

During September 1 to May 31

30 hooks per vessel, power hauling allowed and

10 halibut per day/vessel

During June 1 to August 31

15 hooks per vessel, no power hauling and

5 halibut per day/vessel

Issue 2. Limit stacking on a single unit of gear per trip provided the subsistence user(s) are on board the vessel to:

Option 1. one hook limit (no stacking)

Option 2. two times the hook limit

Option 3. three times the hook limit

Option: Apply (d) to all of Area 2C

Option: Require mandatory retention of rockfish. A fisherman would be required to stop subsistence halibut fishing for that day if the legal limit of rockfish allowed under State regulations were caught.

Problem Statement: In adopting the statewide halibut subsistence program the Council recognized that the regulatory framework, while comprehensive in nature, might not meet Council objectives regarding the needs of subsistence harvesters or other users of the halibut resource in local areas. Consistent with the Council's

working relationship with the Alaska Board of Fisheries (Board), the Council requested that the Board investigate whether or not the halibut subsistence regulatory framework was appropriate to address local conditions and to report back to the Council with recommended modifications to the program to better reflect local issues and concerns. Specifically, the Board, through their public input process, was requested to address any concerns and make recommended changes to the Council's regulatory framework regarding gear, daily limits, reporting requirements, customary and traditional (C&T) designations for Tribes or rural communities, and non-rural area definitions for halibut subsistence fishing areas.

The Sitka Sound LAMP was adopted by the Council to address localized depletion of halibut in the Sitka Sound area and to enhance halibut harvesting opportunities for local residents. Since many residents are not equipped to target halibut with skates of gear, the Council is concerned that subsistence regulations could undermine Sitka Sound LAMP goals.

ESTIMATE OF STAFF RESOURCES: Council staff will prepare the EA/RIR/IRFA, as required. NMFS staff will prepare the CE memo, proposed rule, final rule, final RFA certification, CZMA letter, memos, and all other certifications. An inter-agency staff meeting will convene to review legal, enforcement, and implementation issues.

TIMELINE TO IMPLEMENTATION: ADF&G Subsistence Division staff will present the results of the first Subsistence Halibut Household Survey (under contract with NMFS) to the Council in October 2004; preliminary results will be available to staff in Summer 2004. These data will be incorporated into analyses to amend the regulations for this program.

Council staff has identified the following implementation timeline for consideration by the Council at its June 2004 meeting. The Council timeline is unlikely to affect the speed at which the proposed regulations would be published in the *Federal Register*, as NMFS AKRO staff will be focused on implementing the crab rationalization program, 2005 groundfish specifications at the end of 2004, and the 2005 halibut annual management plan.

An October/December action schedule would allow for increased opportunity for public comment from Southeast stakeholders since the October meeting will be held in Sitka, and from Central and Western Alaska stakeholders in December in Anchorage. The Council could schedule any of these proposed actions for final action in October since none are controversial or expected to significantly affect the human environment. Actions 1 - 5 are policy decisions, many of which are reconsideration of or amendments to previous actions. Only Action 6 would require revision to the 2002 EA/RIR due to conservation issues related to rockfish and ling cod. The draft analysis has already undergone initial and public review, selection of a preferred preliminary alternative in April 2002, and is awaiting incorporation of the 2003 fishery survey data.

Initial Review	October 2004
Selection of preferred alternative(s) (final action)	December 2004
Submission of analysis from Council to NMFS	December 2004
Publish proposed rule	as early as Spring 2005
Final rule published	as early as Summer 2005

SUBSISTENCE HALIBUT III AMENDMENTS DISCUSSION PAPER

SUMMARY OF PROPOSED ACTIONS: Council staff has provided short summaries of each of the proposed six actions to amend the subsistence halibut program. At its June 2204 meeting, the Council is scheduled to set staff tasking priorities (Agenda D-3) from among the eight regulatory and BSAI/GOA Groundfish FMP amendments to the commercial halibut and sablefish IFQ program and six regulatory amendments to the subsistence halibut program. The alternatives that were adopted in October 2003 are identified in a box for each proposed action. The Council did not identify a problem statement for each proposed action. However, the original problem statement and purpose and need for implementation of the subsistence halibut program is included below.

Current federal regulations do not reflect the customary and traditional use of halibut for subsistence by Alaska Natives in rural communities.

The purpose of the proposed action is to develop regulations to allow for the legal harvest of halibut for subsistence use in Convention waters in and off Alaska. One of the goals of the preferred alternative is to enable Alaska residents, both Alaska Native and non-Native, who depend upon the taking of halibut for food and who have limited alternative food resources to continue to take halibut for that purpose. Another goal is to formalize a heretofore unrecognized fishery and enhance accurate estimates of removals for stock assessment purposes.

The following problem statements were adopted for regulatory amendments to the subsistence halibut program (Subsistence II) that were adopted by the Council in April 2002 and are under review by the Secretary of Commerce.

In October 2000, the North Pacific Fishery Management Council (Council) adopted a regulatory framework that recognized customary and traditional use of halibut for subsistence purposes. This framework was intended to accommodate customary and traditional practices while at the same time meeting conservation, social, and economic objectives.

In adopting the statewide halibut subsistence program the Council recognized that the regulatory framework, while comprehensive in nature, might not meet Council objectives regarding the needs of subsistence harvesters or other users of the halibut resource in local areas.

Consistent with the Council's working relationship with the Alaska Board of Fisheries (Board), the Council requested that the Board investigate whether or not the halibut subsistence regulatory framework was appropriate to address local conditions and to report back to the Council with recommended modifications to the program to better reflect local issues and concerns. Specifically, the Board, through their public input process, was requested to address any concerns and make recommended changes to the Council's regulatory framework regarding gear, daily limits, reporting requirements, customary and traditional designations for Tribes or rural communities, and non-rural area definitions for halibut subsistence fishing areas.

The Sitka Sound LAMP was adopted by the Council to address localized depletion of halibut in the Sitka Sound area and to enhance halibut harvesting opportunities for local residents. Since many residents are not equipped to target halibut with skates of gear, the Council is concerned that subsistence regulations could undermine Sitka Sound LAMP goals. To prevent these goals from being undermined, the Council is considering: a) retaining existing personal use regulations for the Sitka Sound local area subsistence fishing of two hooks and two fish/day bag limit and/or b) Board recommendations relative to the Sitka Sound LAMP area (i.e., 2 hooks, 20 fish/day/year, with proxy).

The problem in the fishery as identified by staff, the proposal, background on the management issue(s), course of action, and staff requests for clarifications are presented for each proposed action below.

Alaska Native Halibut Subsistence Working Group. Executive Order 13175 established regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications to strengthen the United States government-to-government relationships with Indian tribes and to reduce the imposition of unfunded mandates upon Indian tribes. NMFS also implemented contracts with the Rural Alaska Community Action Program (RurALCAP) for purposes of consulting with Alaska Native representatives to fulfill the mandate of E.O. 13175. As this program is revised, NMFS will need the cooperation of the affected tribal entities to distribute information about registration, reporting harvest information, and general compliance with the rules which may be best achieved through ongoing consultation with the affected tribes. The Alaska Native Halibut Subsistence Working Group (ANHSWG) has convened numerous times to review proposed amendments to the program and provide advice to the Council. The Council and NMFS have requested that ANHSWG receive written authorization from all 120 Alaska Native Tribes listed in the regulations as eligible to participate in the subsistence halibut fishery that it may advise the Council and NMFS on their behalf.

Staff of the NMFS SF, NMFS Enforcement, Council staff, International Pacific Halibut Commission (IPHC), and Alaska Department of Fish and Game (ADF&G) Subsistence Division and Council member Hazel Nelson met with ANHSWG on May 6, 2004 to consult on proposed Council actions. Recommendations from ANHSWG are noted where applicable.

Action 1. Create a subsistence halibut possession limit.

Alternative 1. No action.

Alternative 2. Possession limit equal to two daily bag limits (40 fish).

Problem Statement:

Problem: The International Pacific Halibut Commission (IPHC) staff identified that enforcement officers have no means to verify time on the water for subsistence halibut harvesters who possess more than one daily bag limit. A possession limit would limit abuses of daily bag limit privileges and enhance enforcement. This provision would not apply in those areas where the Council has eliminated daily bag limit restrictions and is not intended to hamper traditional subsistence harvests.

Proposals: In October 2003, the IPHC staff reported to the Council that subsistence regulations changed the legal definition of halibut possession significantly. IPHC staff was concerned with the overall enforcement of the subsistence program and accurate accounting of halibut removals and proposed implementation of a subsistence halibut possession limit. In a second letter dated April 12, 2004, IPHC staff clarified that the proposed possession limit is recommended for those areas that have experienced increased fishing power in more settled areas of Southeast Alaska and the Gulf of Alaska (Area 2C and 3A) only.

Background: Since no documentation of daily limits, such as a punch card, is required at the time of fishing, IPHC staff reports that it would be difficult for NOAA Enforcement to determine the number of days in a subsistence halibut fishing trip and therefore the number of legal fish allowed. NOAA Enforcement and the Enforcement Committee recommended a possession limit to clarify this issue.

Current subsistence halibut regulations do not define a possession limit. Current Federal and State regulations for a daily harvest limit (2 fish) and possession limit (2 daily harvest limits or 4 fish) are in effect for the sport (charter and non-charter) halibut fisheries. The Council previously addressed some secondary issues related to enforcement of proposed possession limits in Areas 2C and 3A that would be set equal to two daily bag limits in its 1997 and 2000 analyses to implement a guideline harvest level in the charter

halibut fishery. That proposed action would have required that the possession limit be in effect until all affected halibut are processed at the angler's place of permanent residence. Staff recommends consideration of similar language for the subsistence fishery.

The Council also considered whether to redefine halibut possession limits such that they also apply on land adjacent to convention waters off Alaska in Areas 2C and 3A. It addresses a lack of clarity in the Federal regulations regarding “where” the possession limit regulation applies. As identified in the 2000 analysis, NOAA General Counsel Alaska Regional Office staff has opined that Federal halibut possession limits *off Alaska* may not have the force of law on land and may be enforceable only at-sea. Current Federal regulations stipulate only that the possession limit on the water is the same as two daily bag limits and do not address possession limits on land. Section 23(7) of the Pacific Halibut Fishery Regulations (64. Fed. Reg. 13519 (March 19, 1999)), provides that “[t]he possession limit for halibut *in the waters off the coast of Alaska* is two daily bag limits.”

The above language contrasts with the possession limits for halibut in Area 2A, which expressly limit possession “on land” as well as on the water. State of Alaska possession limits apply at-sea and on land. In all waters off California, Oregon, and Washington, all sport fishing is managed on a ‘port of landing’ basis. Washington Department of Fish and Wildlife possession limit for halibut is two daily limits in any form, except only one limit while aboard a vessel. Oregon Department of Fish and Wildlife regulations limit an angler to one halibut >32 inches per day when fishing north of Cape Falcon. The bag limit is one halibut >32 inches and one halibut >50 inches for south of Cape Falcon to the California boundary. The Oregon halibut possession limit is equal to one daily bag limit. Off the California coast, the daily bag limit is one halibut >32 inches. The issue of enforceability of the current IPHC regulations for possession limits in and off Alaska remains.

Community harvest permits (CHPs) and Ceremonial and Educational Permits, which were adopted by the Council in April 2002 and now under NMFS review, were adopted to mitigate the impacts of more restrictive harvest and gear limits in Area 2C. Therefore, Area 2C (except for the Sitka LAMP) subsistence users fishing under CHPs would be exempt from possession limits since they are also exempt from other program restrictions. Under a CHP, Area 2C tribes or communities may appoint individuals to harvest an unlimited number of halibut subject to more stringent reporting requirements. Ceremonial and Educational Permits allow tribes only a slight increase in harvest potential of up to 25 halibut per permit and also remain subject to more stringent registration and reporting requirements.

ANSHWG: Include an alternative for a possession limit equal to one daily bag limit (20 fish).

Action: A regulatory amendment would be required to implement the proposed action. Staff proposes preparing a categorical exclusion for this action.

In June, staff requests that the Council:

- (1) identify a problem statement for this proposed action**
- (2) clarify the IPHC regulatory areas to which a possession limit would apply**
- (3) clarify whether a community harvest permit system would be implemented to mitigate the impacts of more restrictive harvest and gear limits wherever they are implemented (e.g., Area 3A)**
- (4) clarify Council intent as to whether the possession limit would be in effect until all affected halibut are processed (e.g., filleted, frozen) at the angler's place of permanent residence**
- (5) request clarification from NOAA General Council regarding the enforceability of possession limits on land**
- (6) clarify whether CHPs would be allowed to be used to mitigate the impacts of possession limits in both Area 2C and Area 3A, as they were adopted by the Council in April 2002 for Area 2C to mitigate the impacts of more restrictive harvest and gear limits.**

Action 2. Revise the definition of charter vessels.

Alternative 1. No action.

Alternative 2. Allow the use of charterboats for subsistence halibut fishing

Alternative 3. Adopt the State of Alaska definition of charter vessels to redefine a charterboat vessel as State-licensed, and restrict their use in the subsistence fishery to the owner and identified immediate family members (father, mother, brother, sister, children, legally adopted children).

Problem Statement: Prohibit the use of charter vessels for hire for subsistence halibut fishing is difficult to enforce under current regulations.

Problem: A charter boat may not be used for sport fish charters and subsistence fishing at the same time. However, it may be used for subsistence fishing operations if it is not being used as a charter boat for sport fishing. Creative agreements have the potential to circumvent this intent. Revising the regulations to tighten the prohibition on the use of a licensed charter vessel would clarify this enforcement problem.

Proposals: Since the regulations are not enforceable as written, NOAA Enforcement staff and the Enforcement Committee recommended that the regulations clarify the definition of a charter boat and restrict subsistence users on a charter vessel to be the owner and immediate family members. The definition found in Chapter 39 and Chapter 75 of the Alaska Administrative Code that is the basis for part of the language under Alternative 3 is “A charter vessel means a vessel licensed under AS 16.05.490, used for hire in the sport, personal use, or subsistence taking of fish or shellfish, and not used on the same day for any other commercial fishing purpose; a charter vessel does not include a vessel or skiff without a charter vessel operator.” Proposed language that modified the State’s definition of a charter vessel that would allow the use of a vessel licensed to charter by its owner and immediate family members in the subsistence halibut fishery for analysis was recommended by the committee and adopted by the Council for analysis.

NOAA Enforcement and Enforcement Committee also recommended eliminating the prohibition on the use of charter vessels for subsistence halibut fishing (Alternative 2), if appropriate language under Alternative 3 is not adopted, rather than the status quo.

Background: The Council intended to allow the use of charter vessels in the subsistence halibut fishery by their owners and not to allow their use for hire by eligible subsistence users. However, NOAA Enforcement staff has encountered situations where a licensed charter vessel operator was aboard the vessel while non-family members were subsistence halibut fishing. Enforcement staff is unable to prove that payment for hire occurred.

ANSHWG: While the committee recommendation would allow a subsistence fisher and immediate family members to use a charter vessel for subsistence halibut fishing, subsistence fishing by non-related Tribal members is a customary and traditional practice as reported by the Alaska Native Halibut Subsistence Working Group. The group also identified that a licensed charter vessel may be the safest fishing platform in some Tribal areas. The group did not support Alternative 3. The use of CHPs by Area 2C subsistence users could exempt them from proposed restriction on the use of charter vessels by individuals fishing under Subsistence Halibut Registration Certificates, if that it is Council intent. Expansion of the CHP program to Area 3A was recommended if a possession limit is adopted for that area.

Action: A regulatory amendment would be required to implement the proposed action. Staff proposes preparing a categorical exclusion for this action. **In June, staff requests that the Council:**

- (1) review the language of Alternative 3 to determine whether it meets the C&T needs of Tribes
- (2) clarify the use of CHPs to mitigate the effects of possession limits on C&T uses of halibut.

Action 3. Revise the \$400 customary trade limit for subsistence halibut by IPHC regulatory area.

- Alternative 1. No action.
- Alternative 2. Revise the customary trade limit to \$100.
- Alternative 3. Eliminate the customary trade limit (\$0).

Problem Statement:

Problem: The identification of a dollar amount for the allowance of customary trade in the regulations has resulted in some subsistence users “selling” halibut to other subsistence users outside of customary and traditional practices. NOAA Enforcement also reports that subsistence halibut is illegally entering into the commercial market.

Proposals: NOAA Enforcement and the Enforcement Committee has proposed that the regulations be revised to eliminate customary trade for cash because the limit is not enforceable.

Background: It is illegal to sell subsistence-caught halibut or to otherwise allow it to enter into commerce (through a fish buying operation, into a grocery store, through the internet, etc.). The purpose of the \$400 annual limit is to allow someone receiving subsistence-caught halibut from a SHARC holder to help pay for some of the costs of harvesting. For example, if a SHARC holder provides halibut to several families who are not able to fish for themselves, the expense of catching the halibut may be defrayed by those receiving the halibut, up to \$400 per year from all other persons for each SHARC holder.

As reported in the 2000 EA/RIR for the original subsistence halibut program, including a provision for any “exchange of cash” for subsistence harvested food stuffs in regulations may have established an undesirable precedent, and/or induced “sales” which might otherwise not have occurred, in the absence of such “authority.” That is, establishing a trade limit (\$400) may have created a new incentive for some subsistence fishers to harvest halibut for “sale.” In small rural villages, or among Alaska Native tribal groups, the volume of additional halibut harvested is likely to have been small due to this added incentive, as the pool of consumers is demographically limited. In mid-sized towns (Sitka, Kodiak City, Unalaska) and urban places (Juneau, Ketchikan, Anchorage) with larger populations and seasonal visitors, the potential for the incentive having created new harvests is greater.

Regulations defining the area in which or group with whom trade for cash would be allowed could have mitigated this potential problem. Regulations restricting customary trade to rural villages also could have prevented incentives for new subsistence harvests in mid-sized towns and urban places. A regulation restricting customary trade to Alaska Native tribal members could have prevented the development of new subsistence harvest patterns for customary trade. Each, however, would have had associated concerns and complexities associated with equity, as well as monitoring and enforcement considerations and costs. However, the Council selected the most liberal application as its preferred alternative by allowing trade to occur with anyone anywhere.

In June 2003, the Enforcement Committee reviewed a case in the Kodiak area of the sale of subsistence-caught halibut, and heard from NMFS Enforcement staff that such sales are essentially allowed, up to the \$400 customary limit approved by the Council (it was not the Council intent to create a new commercial fishery). The committee deemed the public sale of halibut problematic, and the \$400 limit not enforceable. It is debatable whether the current regulations clearly prohibit advertising and solicitation for commercial sale. The committee identified that the Council has to either accept that such ‘sale’ of halibut will occur or amend the program, possibly prohibiting cash transactions. The committee reported that a change in the

dollar amount would not offer any resolution on its enforceability. The committee noted that elimination of the sale/barter allowance for larger communities, particularly those on the road system, might alleviate the concern over commercial trade, recognizing that would be a significant policy call for the Council.

ANSHWG: Include an alternative to allow traditional exchange of money between members of a tribe as reimbursement for expenses associated with subsistence fishing.

Action: A regulatory amendment would be required to implement the proposed action. Staff proposes preparing a categorical exclusion for this action.

In June, staff requests that the Council:

(1) identify a problem statement for this proposed action

(2) consider whether to limit cash trades based on:

(a) IPHC regulatory areas

(b) demographics:

- 1. between members of an Alaska Tribe;**
- 2. any Alaska rural resident;**
- 3. any Alaska resident;**
- 4. anyone.**

(c) population size

(d) the use of community harvest permits

Action 4. Allow subsistence halibut fishing in non-subsistence areas under special permits.

Alternative 1. No action.

Alternative 2. Allow the use of community harvest permits, educational permits, and ceremonial permits in non-traditional use areas by tribes whose traditional fishing grounds are located within these areas, with a 20-fish per day bag limit.

Problem Statement:

Problem: There is no provision for subsistence halibut fishing by anyone in non-subsistence areas. If a resident of an urban area qualifies because he or she is a member of an Alaska Native Tribe with customary and traditional use of halibut, that fisher must still travel outside of the four non-subsistence areas. Similarly, an eligible subsistence user must harvest subsistence halibut outside a non-subsistence use area even if the area was traditionally fished for halibut by subsistence users.

Proposals: The Alaska Native Halibut Subsistence Working Group proposed that the use of special permits be allowed in non-subsistence use areas by tribes whose traditional fishing grounds are located within areas designated by the Council as non-subsistence use areas (using State criteria).

Background: In its identification of non-subsistence use areas adjacent to urban areas, the Council modeled its preferred alternative after the State of Alaska's non-subsistence use areas. Section 16.05.258. Subsistence use and allocation of fish and game states the following:

“ . . . A non-subsistence area is an area or community where dependence upon subsistence is not a principal characteristic of the economy, culture, and way of life of the area or community. In determining whether dependence upon subsistence is a principal characteristic of the economy, culture, and way of life of an area or community under this subsection, the boards shall jointly consider the relative importance of subsistence in the context of the totality of the following socio-economic characteristics of the area or community:

- (1) the social and economic structure;
- (2) the stability of the economy;
- (3) the extent and the kinds of employment for wages, including full-time, part-time, temporary, and seasonal employment;
- (4) the amount and distribution of cash income among those domiciled in the area or community;
- (5) the cost and availability of goods and services to those domiciled in the area or community;
- (6) the variety of fish and game species used by those domiciled in the area or community;
- (7) the seasonal cycle of economic activity;
- (8) the percentage of those domiciled in the area or community participating in hunting and fishing activities or using wild fish and game;
- (9) the harvest levels of fish and game by those domiciled in the area or community;
- (10) the cultural, social, and economic values associated with the taking and use of fish and game;
- (11) the geographic locations where those domiciled in the area or community hunt and fish;
- (12) the extent of sharing and exchange of fish and game by those domiciled in the area or community;
- (13) additional similar factors the boards establish by regulation to be relevant to their determinations under this subsection.”

ANSHWG: Revise Alternative 2 to read, “Allow the use of community harvest permits, educational permits, and ceremonial permits in non-**subsistence** use areas by tribes whose traditional fishing grounds are located within these areas, with a 20-fish per day bag limit **applicable under all three kinds of permits.**”

Action: A regulatory amendment would be required to implement the proposed action. Staff proposes preparing a categorical exclusion for this action. **In June, staff requests that the Council:**

- (1) identify a problem statement for this proposed action**
- (2) accept the ANSHWG language as a clarification.**

Action 5. Revise the list of eligible subsistence halibut communities.

Alternative 1. No action.

Alternative 2. Add to list of eligible communities:

Option 1. Naukati

Option 2. Port Tongass Village

Problem Statement: In adopting the subsistence halibut program, the Council recognized that rural communities may have been left off its list of eligible communities inadvertently. The Council required that communities which seek to be included in this program in the future first seek approval for any claim to rural status and halibut C&T use by either the Board of Fisheries or Federal Subsistence Board before petitioning the Council.

Problem: The Council recognized that its approved list of eligible rural communities may be incomplete.

Proposals: The Council requested, and the Board agreed to provide, recommendations for any communities that are seeking to be included on list of eligible communities for subsistence use of halibut. In February 2004, the Board of Fisheries considered appeals concerning recommendations on communities eligible for subsistence use of halibut. It recommended that Naukati and Port Tongas Village be considered by the Council for inclusion on the list of eligible rural communities.

Background: In its design of the subsistence halibut program, the Council identified its intent that residents of communities who seek to be included in this program in the future first seek approval for any claim to

rural status and halibut C&T use. The Board has been designated as the primary entity to receive, review, and make recommendations to the Council on appeals for eligibility for subsistence halibut fishing. The Council identified that it alone is authorized to recommend changes to the list of rural places to the Secretary of Commerce.

As reported by ADF&G staff, the list of communities and areas that the Council identified as eligible to subsistence fish for halibut was derived from positive C&T findings for halibut and bottomfish made by the Board prior to the McDowell decision in December 1989. After that decision, state regulations direct the Boards of Fisheries and Game to determine whether each fish stock or game population in subsistence use areas of the state is subject to C&T uses. Hence, the focus of the C&T determination process is not on communities or areas that conduct the use, but on the pattern of uses of that stock or population. Although the Council has used a community-based approach, there is nothing preventing the Board from nominating areas, such as remote homesteads for eligibility for subsistence halibut. It is reasonable to find that individuals or families in remote locations within the subsistence use areas of the state practice the same patterns of use as nearby communities that have C&T uses, and as such should qualify for subsistence halibut fishing eligibility.

In October 2003, the Board received seven appeals from Southeast and Southcentral communities and individuals requesting positive C&T use findings for halibut. Only two were proposed for outside of the non-subsistence use area and were reviewed by ADF&G staff. The remaining petitions failed because the petitioners lived in areas designated as non-subsistence use areas and did not fit the criteria, as listed under Action 4. The following is summarized from an ADF&G staff report.

A resident of Southeast Alaska living on a float house in Nakat Inlet near the abandoned village of Old Port Tongass submitted an appeal to the Council requesting a C&T use finding for halibut and rockfish. The department has no record of harvest or pattern of use data for this area. However, the surrounding area supports stocks subject to C&T uses. After its 1989 findings in Southeast, the Board had invited public input to refine C&T use findings when the McDowell decision modified the C&T determination focus from communities and areas, to stocks subject to C&T uses. It is conceivable that this area has similar patterns of use as the larger area that is determined to have C&T uses.

Residents of Naukati Bay submitted an appeal requesting a C&T use finding for halibut and rockfish. Naukati Bay is located on the west coast of Prince of Wales Island in Southeast Alaska. The bay was named 'Naukatee Bay' in 1904 by the U.S. Coast & Geodetic Survey, who recorded it as the local Indian name. Naukati Bay was originally established as a logging camp and later settled as a Department of Natural Resources land disposal site. Until recently the community derived most of its jobs and income from logging. Employment is seasonal. Two community non-profit associations have been organized for planning and local issue purposes. Naukati is accessed primarily by float plane or from the Prince of Wales Island North Island Road. Naukati Bay appears in the U.S. Census of Population for the first time in 1990, with a population of 93. Its population reached a high of 170 in 1998, followed by a decline to 135 in 2000. There were 60 households in Naukati Bay in 2000 with an average household size of 2.25 people. The median age of population in Naukati Bay in 2000 was 36.6 years. The 2000 census reported an Alaska Native population of 9.6 percent. The pattern of harvest and use in Naukati Bay from a 1998 ADF&G Division of Subsistence household survey is similar to Craig, Klawock, and Petersburg, communities that are eligible for subsistence halibut use. Bottomfish continue to be part of a wide range of resources used in Naukati, including salmon, deer, and shellfish. The top ten resources used by the most households included halibut, the third-most important resource which 70 percent of the households reporting use. Rockfish was the 10th most used resource with 52 percent of the households reporting use.

Action: A regulatory amendment would be required to implement the proposed action. Staff proposes preparing a categorical exclusion for this action.

Action 6. Revise subsistence halibut gear and annual limits.

Alternative 1. No action (30 hooks per person/vessel, no stacking limits, no annual limit)

Alternative 2. Change gear and annual limits in local areas.

(a) in Kodiak road zone and Chiniak Bay:

Issue 1. Gear limit:

Option 1. 5 hooks

Option 2. 10 hooks

Issue 2. Limit stacking on a single unit of gear per trip provided the subsistence user(s) are on board the vessel to:

Option 1. one hook limit (no stacking)

Option 2. two times the hook limit

Option 3. three times the hook limit

(b) in Prince William Sound:

Issue 1. Gear and annual limit:

Option 1. 5 hooks and 30 fish annual limit

Option 2. 10 hooks and 30 fish annual limit

Issue 2. Limit stacking on a single unit of gear per trip provided the subsistence user(s) are on board the vessel to:

Option 1. one hook limit (no stacking)

Option 2. two times the hook limit

Option 3. three times the hook limit

(c) in Cook Inlet:

Issue 1. Gear limit:

Option 1. 5 hooks

Option 2. 10 hooks

Issue 2. Limit stacking on a single unit of gear per trip provided the subsistence user(s) are on board the vessel to:

Option 1. one hook limit (no stacking)

Option 2. two times the hook limit

Option 3. three times the hook limit

(d) in Sitka Sound LAMP:

Issue 1. Seasonal gear and vessel limits:

During September 1 to May 31

30 hooks per vessel, power hauling allowed and

10 halibut per day/vessel

During June 1 to August 31

15 hooks per vessel, no power hauling and

5 halibut per day/vessel

Issue 2. Limit stacking on a single unit of gear per trip provided the subsistence user(s) are on board the vessel to:

Option 1. one hook limit (no stacking)

Option 2. two times the hook limit

Option 3. three times the hook limit

Option: Apply (d) to all of Area 2C

Option: Require mandatory retention of rockfish. A fisherman would be required to stop subsistence halibut fishing for that day if the legal limit of rockfish allowed under State regulations were caught.

Problem Statement: In adopting the statewide halibut subsistence program the Council recognized that the regulatory framework, while comprehensive in nature, might not meet Council objectives regarding the needs of subsistence harvesters or other users of the halibut resource in local areas. Consistent with the Council's working relationship with the Alaska Board of Fisheries (Board), the Council requested that the Board investigate whether or not the halibut subsistence regulatory framework was appropriate to address local conditions and to report back to the Council with recommended modifications to the program to better reflect local issues and concerns. Specifically, the Board, through their public input process, was requested to address any concerns and make recommended changes to the Council's regulatory framework regarding gear, daily limits, reporting requirements, customary and traditional designations for Tribes or rural communities, and non-rural area definitions for halibut subsistence fishing areas.

The Sitka Sound LAMP was adopted by the Council to address localized depletion of halibut in the Sitka Sound area and to enhance halibut harvesting opportunities for local residents. Since many residents are not equipped to target halibut with skates of gear, the Council is concerned that subsistence regulations could undermine Sitka Sound LAMP goals. To prevent these goals from being undermined, the Council is considering: a) retaining existing personal use regulations for the Sitka Sound local area subsistence fishing of two hooks and two fish/day bag limit and/or b) Board recommendations relative to the Sitka Sound LAMP area (i.e., 2 hooks, 20 fish/day/year, with proxy).

Problem: Subsistence halibut regulations do not address concerns raised by the Alaska Board of Fisheries regarding local depletion of rockfish and ling cod as a result of their catch in the subsistence halibut fishery in local areas.

Proposals: In lieu of developing local area management area plans (LAMPs) for Kodiak, Prince William Sound, and Cook Inlet, the Board proposed to amend federal subsistence halibut regulations to better meet local community needs for both subsistence food requirements and protection of local halibut and rockfish stocks (except Part 4(4) which was added by the Council) in May 2001. These recommendations were based on public testimony received at four hearings in Sitka, Kodiak, Cordova, and Homer in April 2001 and ADF&G staff recommendations.

Background: The Board has put the LAMP process on hold while awaiting a Secretarial decision on the charter halibut IFQ program. The Board proposed a suite of actions that cumulatively were designed to address immediate concerns about local resource issues. The Council selected a preferred alternative in April 2002 for each of the local areas by accepting the Board's recommendations, except for raising gear limits for Kodiak, Prince William Sound, and Cook Inlet from 5 hooks to 10 hooks. Its preliminary preferred alternative on the proposed action is identified as follows.

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. Limit stacking 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. Limit stacking 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. Limit stacking 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 4: In Area 2C Sitka Sound LAMP Area:

During September 1 to May 31

- | | |
|--|---|
| <ol style="list-style-type: none"> 1. 30 hooks/vessel, power hauling allowed. 2. 10 halibut per day/vessel | <ol style="list-style-type: none"> 3. No annual fish limit 4. No proxy system |
|--|---|

During June 1 to August 31

- | | |
|---|--|
| <ol style="list-style-type: none"> 1. 15 hooks per vessel, no power hauling, no proxy, no stacking | <ol style="list-style-type: none"> 2. 5 halibut per day/vessel 3. No annual fish limit |
|---|--|

In June and October 2003, the Enforcement Committee reported on the inconsistent gear limits for rockfish in State of Alaska and Federal waters. The State limits its subsistence rockfish fishery to 5 hooks per person. The Council selected a preferred alternative in April 2002 that would have limited gear to 10 hooks per person in the Federal subsistence halibut fishery in Cook Inlet, Prince William Sound, and Kodiak, and a seasonal hook limit per vessel and daily harvest limit per vessel. The Federal subsistence halibut fishery also harvests rockfish and ling cod. Numerous inquiries are being fielded by state and federal enforcement officers. The committee recommended that resolution of this issue is necessary, as subsistence halibut harvesters need to know whether and under what conditions such bycatch may be retained. While the federal regulations are clearly written and easily enforced, the committee identified a potential waste/conservation problem in some state waters, with attendant enforcement concerns. The committee noted that NOAA Fisheries raised concerns with the complexity of implementing and enforcing an annual limit in Kodiak, as well as the regulations specific to Sitka Sound. The committee suggested that alternative approaches to the regulations be considered for these areas, but did not identify them.

In October 2003, the Council revisited its decision based on advice from its Enforcement Committee and ADF&G. The Council withdrew its preferred alternative on local area restrictions and rescheduled it for final action in late 2004 to incorporate subsistence halibut survey results into the analysis.

ANSHWG: Alternative 2(b) Prince William Sound: Add Option 3. 15 hooks;

Alternative 2(c) Cook Inlet:

Add Option 3. 15 hooks;

Alternative 2(d) Sitka LAMP area:

Delete option that would apply to all of Area 2C.

Option for rockfish retention:

Clarify the option to ensure that lingcod are not included in this provision and to ensure that the intent is to stop fishing once the **current** state legal limit for rockfish is caught, but not to restrict subsistence users below the current bag limits. This will prevent a zero bag limit which could happen for yelloweye rockfish. If the State later increases the bag limit for rockfish, this greater limit should apply.

Action: A regulatory amendment would be required to implement the proposed action. An EA would be prepared for this proposed action due to issues raised about local depletion of rockfish and ling cod.

NEW PROPOSED ACTIONS: ANSHWG proposed two new actions for inclusion in the 2004 analytical package.

- Develop a community harvest permit system for tribes as an alternative to the SHARC registration system. These CHPs could be implemented through cooperative agreements with tribes.
- Allow Area 4C fishermen to retain halibut under 32 inches which are caught while commercial fishing.