

NMFS Review Draft

**Proposed Regulatory Amendment to the Subsistence Halibut Program to
Revise the Definition of Rural Eligibility**

Regulatory Impact Review

Date June 18, 2008
Lead Agency NOAA Fisheries Service
P. O. Box 21668
Juneau, Alaska 99802

Responsible Official Robert Mecum
Acting Regional Administrator
National Marine Fisheries Service
709 W. 9th St.
Juneau, Alaska 99802-1668
907-586-7221

Information Contact Jane DiCosimo
North Pacific Fisheries Management Council
605 W. 4th Avenue, Suite 306
Anchorage, AK 99501

Abstract This Regulatory Impact Review evaluates the costs and benefits of a regulatory amendment to change the criteria for rural residents to participate in the subsistence halibut program (50 CFR 300.65(g)), in conformance with the requirements of Presidential Executive Order 12866. Current regulations prohibit some rural residents from legally participating in the program, because they live in locations that are “too rural” to have met minimum population thresholds to be deemed eligible. This action would open additional subsistence halibut fishing opportunities for as many as 9,400 rural residents of Alaska, which meets the North Pacific Council’s original intent. As many as 600 residents may harvest as much as 105,000 lb of Pacific halibut under the preferred alternative, based on activity levels of eligible participants. This action would not open eligibility to urban residents, nor would it open non-subsistence areas to subsistence fishing. This action would not remove the current list of eligible rural places, but would add clarifying text and maps to the regulations, as necessary.

(This page intentionally blank)

Executive Summary

The proposed action reviewed herein would revise the regulations managing the subsistence Pacific halibut fishery in Alaska to include certain rural residents whom the existing regulations inadvertently disqualify from participation in that fishery.

The purpose of this action is to rectify an unintended consequence of the wording of the original Pacific halibut subsistence action, by providing subsistence harvest opportunities for rural residents of Alaska who were inadvertently excluded by that action. Federal regulations specify that a person is eligible to harvest subsistence halibut if he or she is a rural resident of a community with customary and traditional uses of halibut. Persons eligible to fish must hold a subsistence halibut area registration certificate (SHARC) to exercise the privilege. The North Pacific Fishery Management Council (Council) adopted its definition of “rural,” for purposes of subsistence halibut fishing, to match that of the State of Alaska and defined non-rural waters based upon the definition of non-subsistence areas by the Joint Board of Fish and Game.

Current regulations have adverse implications for some rural residents. Individuals who do not reside within the legal boundaries of the listed places are prohibited from participating in the program. If proposed regulatory language was implemented, additional rural residents who reside within a designated ten-statute-mile boundary, adjacent to the waters of the Pacific, and other designated places would be eligible to subsistence fish for halibut.

The No Action Alternative would continue the current program as stipulated in federal regulations. Some rural residents who rely on halibut to feed their families would continue to be denied legal participation in the program, because they live in a rural place that is too small to be recognized as a subsistence-eligible municipality or a census designated place.

Alternative 2 is needed to correct federal regulations so as to include some subsistence halibut applicants who now are “too rural” to be eligible. As a result, certain rural residents are ineligible to legally subsistence fish. Individuals in remote locations, within eligible subsistence use areas, practice the same patterns of use as eligible participants. Alternative 2 would not remove the current list of eligible places, but would add new eligibility criteria and maps, as necessary, to the regulations. It would amend 50 CFR 300.65(g), by adding a provision that would allow rural residents to be deemed eligible to harvest Pacific halibut under subsistence regulations, if they reside within ten statute miles (from mean high water) of the Alaska coastline and in other identified places. They would not be permitted to fish in designated non-subsistence fishing areas.

The net welfare change of Alternative 2 is likely to be positive. As many as 9,400 rural residents would benefit from the preferred alternative. As many as 600 individuals are expected to actively participate in the program and harvest up to 105,000 lb of halibut. This is a small amount of halibut, compared to the aggregate amounts taken by other subsistence, commercial, and sport fishermen. It would reduce the cost of acquiring subsistence halibut, reduce associated fishing time and effort, and provide comparable opportunity to harvest this resource for subsistence as other rural residents. In these ways, their benefits from subsistence fishing should be increased.

The effect of Alternative 3, the preferred alternative, is the same as under Alternative 2; however, the preferred alternative adds clarity to Council intent by specifying the locations to be included in the proposed action. In adopting its preferred alternative, the Council revised the language of Alternative 2 by: 1) specifying that Nelson Island, St. Lawrence Island, and the entire Kodiak Archipelago were included in the proposed action and 2) replacing general text that referenced “a line of latitude that approximates the Naknek River” with specific coordinates for that location.

Table of Contents

1	Introduction.....	1
2	What is a Regulatory Impact Review?.....	2
3	Statutory authority for this action	2
4	Purpose and need for this action	3
5	Description of the alternatives under consideration.....	3
7	References.....	11
8	Authors.....	12
9	Contributors	12
	Appendix.....	13

List of Tables

Table 1	List of rural communities (and government) with customary and traditional uses of halibut by area that are currently included under the status quo.....	5
Table 2	List of additional eligible places by area under the Alternative 2 and Alternative 3 (the preferred alternative).	6
Table 3	Upper Estimate of Additional Population from Affected Boroughs and Census Designated Places by Area that Could Qualify Under Alternative 2 and Alternative 3 (the preferred alternative).	7
Table 4	Number of two-year rural subsistence fishing permits by IPHC area, 2003-2007	8
Table 5	Number of rural SHARC permits issued and used, number and pounds of halibut harvested by IPHC area in 2006.....	8
Table 6	Number of rural SHARC permits expected to be issued and used, number and pounds of halibut harvested by IPHC area under Alternative 2 and Alternative 3 (the preferred alternative).....	9
Table 7	Benefits and costs to potentially affected groups of persons by alternative.	10

1 Introduction

This Regulatory Impact Review (RIR) evaluates the costs and benefits of a regulatory amendment to the Pacific halibut subsistence halibut program. A person is eligible to harvest subsistence halibut if he or she is a rural resident of a community with customary and traditional uses of halibut, listed in the tables at §300.65(g)(1). Persons eligible to fish must hold a subsistence halibut area registration certificate (SHARC) to exercise the privilege. This proposed action would 1) add regulations that extend rural eligibility requirements for Alaska residents, to include individuals who reside outside of currently eligible rural places^{1, 2} and 2) maintain the prohibition on fishing in non-subsistence areas³.

The regulations authorize eligible persons to conduct subsistence halibut fishing in waters off Alaska. Eligible persons are identified as:

1. Residents of rural communities with customary and traditional uses of halibut; and
2. Members of federally recognized Alaska Native Tribes with customary and traditional uses of halibut.⁴

For purposes of the program, a rural resident means a person domiciled in a rural community, who has maintained a domicile in that rural community for 12 consecutive months, immediately preceding the time when the assertion of residence is made, and who is not claiming residency in another state, territory, or country. A community in this program is defined as a place that is recognized by the U.S. Census, thus only municipalities and census designated places (CDPs) are included.

Since regulations were implemented to authorize a subsistence halibut fishery in April 2003 (68 FR 18145), the North Pacific Fishery Management Council (Council) and National Marine Fisheries Service (NMFS) have received letters and calls from individuals who either:

1. Live in a rural place that is not recognized by the U.S. Census;
2. Live outside the boundaries of designated communities, but may live in close proximity to or have a mailing address in that community; or
3. Live in a place within non-subsistence area boundaries.

The public has requested that the Council revise the criteria because the regulatory language excludes rural communities (or ‘places’) that were not recognized by the U.S. Census, but whose residents are equivalently situated to those who reside in places that do qualify. In order to be recognized as a ‘place’ by the U.S. Census, a community must be incorporated by the state, or identified as a CDP. Between 1950 and 2000, the minimum population size to be determined a CDP in Alaska by the U.S. Census has been 25 residents. Thus, individuals who live in areas that are not recognized by the U.S. Census are excluded from the program. Since 2007, SHARCs have been denied to individuals who previously received them, but who subsequently were determined to be ineligible because they live outside of the legal boundaries of listed places. Some SHARCs were either returned voluntarily or were not renewed by NMFS. SHARCs that now would not be issued by NMFS have been identified for Petersburg, Alaska, in Southeast (Area 2C) and Kodiak, Alaska, in Southcentral (Area 3A), but additional instances may occur.

With the receipt of another request in January 2007, the Council asked staff to prepare a discussion paper on how the subsistence halibut rural definition inadvertently may be excluding individuals who otherwise may be deemed eligible for participation in the program under categories 1 and 2 (above). The Council did not identify a solution to persons subject to category 3 (above) in this proposed action, because such communities do not meet the rural definition adopted by the Council, in conformance with Joint Board of

¹ <http://209.112.168.2/frules/fr18145.pdf>

² The current lists in §300.65(g)(1) and (g)(2) would be maintained so as not to exclude any currently eligible communities that are not included in the proposed action.

³ Alaska statute (AS 16.05.258(c)) states 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.”

⁴ Tribes are not part of this analysis. All known tribes have been identified, and a procedure exists to add them to the list in 300.65(g)(2).

Fisheries and Game findings.⁵

The Council initiated this analysis in June 2007. The Council adopted the alternatives in October 2007 after reviewing an action plan for preparation of the analysis. The Council consulted with the Alaska Board of Fisheries on the proposed action during their joint meeting in April 2008. The Council selected its preferred alternative in June 2008.

2 What is a Regulatory Impact Review?

This RIR is required under Presidential Executive Order (E.O.) 12866. The requirements for all regulatory actions specified are summarized in the following statement from the order.

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

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

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

3 Statutory authority for this action

The International Pacific Halibut Commission (IPHC) and NMFS manage fishing for Pacific halibut *Hippoglossus stenolepis* through regulations established under the authority of the Northern Pacific Halibut Act of 1982. The IPHC promulgates regulations governing the Pacific halibut fishery under the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the North Pacific Ocean and Bering Sea, signed in Ottawa, Ontario, on March 2, 1953, as amended by a Protocol Amending the Convention signed at Washington, D.C., on March 29, 1979.

Additional regulations that are not in conflict with approved IPHC regulations may be recommended by the North Pacific Fishery Management Council (Council). Council action must be approved and implemented by the U.S. Secretary of Commerce. It was under this general authority that the Council, in October 2000, voted to adopt a subsistence halibut policy. The National Marine Fisheries Service, Alaska Region, prepared regulations formalizing the Council’s subsistence halibut policy and these regulations were adopted by the Secretary and published in the Federal Register on April 15, 2003 (68 FR 18145). Regulations implementing the Halibut Act in waters in and off Alaska appear at 50 CFR part 300.60-300.66.

⁵ The Council could include exceptions for non-subsistence areas, but such action would conflict with state regulations. An exception is under Secretarial review to allow the use of special permits within non-subsistence use areas by eligible tribes (73 FR 20008 at <http://www.alaskafisheries.noaa.gov/prules/73fr20008.pdf>).

4 Purpose and need for this action

Current regulations have adverse implications for some rural residents. Individuals who do not reside within the legal boundaries of designated places that are listed in the regulations are prohibited from participating in the subsistence halibut program. The purpose of this action is to rectify an unintended consequence of the wording of the original subsistence action by providing subsistence halibut harvest opportunities for some rural residents of Alaska that were inadvertently excluded by that action. If the proposed action was implemented, additional rural residents who reside within a designated ten-statute-mile boundary, adjacent to the waters of the Bering Sea and Pacific Ocean, and other designated places would be eligible to subsistence fish for halibut. Individuals in these extremely remote locations, within eligible subsistence use areas, could practice the same patterns of use as eligible participants and should qualify for subsistence halibut fishing eligibility.

5 Description of the alternatives under consideration

Three alternatives were considered in this analysis:

Alternative 1. No action

Alternative 1 is the No Action Alternative. Some rural residents would continue to be excluded from opportunities for subsistence harvest, because they live outside of designated places that are listed in the regulations. The list of rural places was originally prepared by Alaska Department of Fish and Game (ADF&G) Subsistence Division staff at the request of the Council and was derived from positive customary and traditional findings for halibut and bottomfish, made by the Board of Fisheries, prior to the McDowell decision in December 1989. As described by ADF&G staff in its February 2004 report to the Board, “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 customary and traditional uses. Hence, the focus of the customary and traditional determination process is not on communities or areas that conduct the use, but on the pattern of uses of that stock or population.”

Alternative 2. Excluding all non-subsistence designated areas, allow residents to be deemed eligible to harvest Pacific halibut under subsistence regulations if they reside within 10 statute⁶ miles (mean high water) of the coastline, outside all non-subsistence areas of Southeast Alaska east of 141° W. longitude and all of the Alaska Peninsula, Aleutian Islands, Nunivak Island, and Kodiak Island south of Bristol Bay Borough and a line of latitude that approximates the Naknek River, and within 10 statute miles (mean high water) of the coastline from Naknek River north to Cape Espenberg, and all other areas within 10 statute miles of the coastline from Dixon Entrance to Cape Espenberg, Alaska.

Alternative 2 would add regulations that address eligibility criteria for the subsistence halibut program off Alaska, to include certain individuals who are living a subsistence lifestyle, rely on halibut as a customary and traditional source of food for themselves and their families, and do not reside in an eligible community, to participate in the program. Although the Council used a community-based approach in its original action, the Council revised its policy, based on new information that numerous individuals and their families have been disadvantaged under current regulations. The Council recommended a wider geographic scope to its eligibility recommendations, so as to include individuals who reside in remote homesteads outside the boundaries of eligible communities. The Council determined that those individuals or families in remote locations within the subsistence use areas of the State, practice the same patterns of use as residents of nearby communities that have customary and traditional uses and should qualify for subsistence halibut fishing eligibility (ADF&G 2004).

Alternative 2 would not include non-rural residents, so as not to expand eligibility beyond its original intent. It would not include residents living within non-subsistence use areas, as that also is seen as potentially opening eligibility criteria beyond the limited scope of the proposed action. The proposed

⁶ International practice for describing linear distances requires the use of geographic or nautical miles as units offshore and statute miles onshore (from “Best Practices for Boundary Making, from the Marine Boundary Working Group Federal Geographic Data Committee” at http://www.csc.noaa.gov/products/mb_handbook/MMA_Boundaries_Handbook.pdf).

action does not alter the status of Alaska Natives, who are otherwise eligible to take part in halibut subsistence activities.

Neither the current regulation, nor the proposed action, intends that owners of charter businesses, or lodges, or both who qualify for rural SHARCs trade, sell, or share subsistence halibut with their clients. A lodge owner or operator could not feed subsistence halibut to his or her clients because that would cause the halibut to enter into commercial use. Providing halibut for a meal to clients of a lodge would not be considered customary trade because one of the services or items provided by the lodge to a client, in exchange for money, is meals—including halibut. A proposed rule to amend the subsistence halibut program would make it unlawful to transfer subsistence halibut to charter vessel anglers (73 FR 20008).

Alternative 3 (Preferred Alternative). A person would be considered a rural resident for purposes of subsistence halibut fishing if that person resides in a community with a customary and traditional use of halibut or in one of the following rural areas of Alaska:

- *Southeast Alaska east of 141° west longitude, except for the non-rural areas of Juneau and Ketchikan;*
- *The Alaska Peninsula, Aleutian Islands, Kodiak Island Archipelago, and the area south of the Bristol Bay Borough and south of 58° 39.2' N latitude;*
- *Nelson, Nunivak, and St. Lawrence islands; and*
- *All other areas of Alaska within 10 statute miles of the marine coastline of the Bering Sea and Pacific Ocean, south of Cape Espenberg, as measured from mean high water and that are not specified as non-rural areas.*

The preferred alternative differs from Alternative 2, only by adding clarity to the areas that would be affected. It specifies 1) inclusion of Nunivak Island, St. Lawrence Island, and the entire Kodiak Archipelago; and 2) the coordinates associated with the northern boundary of Bristol Bay. These locations are depicted to clarify the geographical effect of the preferred alternative in five maps, under Appendix 1.

6 Analysis of the alternatives

Alternative 1 would not change subsistence halibut fishing regulations to redefine the list of eligible rural places that are qualified to participate (Table 1). Some rural residents would continue to be excluded from opportunities for subsistence harvests, because they live outside of designated places listed in the regulations. Some applicants live in areas that are “too rural” to be defined as a ‘place’ under the U.S. Census, and thus eligible under current regulations. According to the Census Bureau’s Geographic Areas Reference Manual (1994), a ‘place’ either is legally incorporated under the laws of its respective State, or a statistical equivalent that the Census Bureau treats as a CDP. Each State enacts laws and regulations for establishing incorporated places. The Census Bureau designates criteria of total population size, population density, and geographic configuration for delineating CDPs (albeit with State and local input). Since before 1950, the minimum CDP size for Alaska has been 25 inhabitants. For Census 2000, the U.S. Census Bureau dropped this requirement, and a CDP anywhere in the United States can be any population size. The definition of a community, as established by the State of Alaska for purposes of revenue sharing agreements, is a group of not fewer than 25 people living in a geographic location as a social unit.

Table 2 identifies those additional rural places that are located within the ten-statute-mile strip, under Alternative 2; however, this list is intended to assess the effects of the proposed action, and not to be included in the regulations, because it is not inclusive of all Alaska residents residing in the strip. Further, the current list contains rural places that do not occur within the strip (e.g., Saxman), and there is no intent under this alternative to eliminate them. Table 3 identifies the additional population of the “remainder” of the boroughs and census areas that are not listed in Table 2.

Alternative 2 would not expand the criteria to urban areas, nor would it open non-subsistence use areas. The exclusion of non-subsistence areas in the language of the alternative limits the possibility that the program would be expanded to the four non-rural areas designated in the regulations, near Ketchikan, Juneau, Anchorage-Matanuska/Susitna-Kenai, and Valdez.

Table 1 List of rural communities (and government) with customary and traditional uses of halibut by area that are currently included under the status quo.

Halibut Regulatory Area 2C		Halibut Regulatory Area 4C	
Angoon	Municipality	St. George	Municipality
Coffman Cove	Municipality	St. Paul	Municipality
Craig	Municipality	Halibut Regulatory Area 4D	
Edna Bay	Census Designated Place	Gambell	Municipality
Elfin Cove	Census Designated Place	Savoonga	Municipality
Gustavus	Census Designated Place	Diomedea (Inalik)	Municipality
Haines	Municipality	Halibut Regulatory Area 4E	
Hollis	Census Designated Place	Alakanuk	Municipality
Hoonah	Municipality	Aleknegik	Municipality
Hydaburg	Municipality	Bethel	Municipality
Hyder	Census Designated Place	Brevig Mission	Municipality
Kake	Municipality	Chefornak	Municipality
Kasaan	Municipality	Chevak	Municipality
Klawock	Municipality	Clark's Point	Municipality
Klukwan	Census Designated Place	Council	Census Designated Place
Metlakatla	Census Designated Place	Dillingham	Municipality
Meyers Chuck	Census Designated Place	Eek	Municipality
Naukati		Egegik	Municipality
Pelican	Municipality	Elim	Municipality
Petersburg	Municipality	Emmonak	Municipality
Point Baker	Census Designated Place	Golovin	Municipality
Port Alexander	Municipality	Good News Bay	Municipality
Port Protection	Census Designated Place	Hooper Bay	Municipality
Saxman	Municipality	King Salmon	Census Designated Place
Sitka	Municipality	Kipnuk	Census Designated Place
Skagway	Municipality	Kongiganak	Census Designated Place
Tenakee Springs	Municipality	Kotlik	Municipality
Thorne Bay	Municipality	Koyuk	Municipality
Whale Pass	Census Designated Place	Kwigillingok	Census Designated Place
Wrangell	Municipality	Levelock	Census Designated Place
Halibut Regulatory Area 3A		Manokotak	Municipality
Akhiok	Municipality	Mekoryak	Municipality
Chenega Bay	Census Designated Place	Naknek	Census Designated Place
Cordova	Municipality	Napakiak	Municipality
Karluk	Census Designated Place	Napaskiak	Municipality
Kodiak City	Municipality	Newtok	Census Designated Place
Larsen Bay	Municipality	Nightmute	Municipality
Nanwalek	Census Designated Place	Nome	Municipality
Old Harbor	Municipality	Oscarville	Census Designated Place
Ouzinkie	Municipality	Pilot Point	Municipality
Port Graham	Census Designated Place	Platinum	Municipality
Port Lions	Municipality	Port Heiden	Municipality
Seldovia	Municipality	Quinhagak	Municipality
Tatitlek	Census Designated Place	Scammon Bay	Municipality
Yakutat	Municipality	Shaktoolik	Municipality
Halibut Regulatory Area 3B		Sheldon Point	
Chignik Bay	Municipality	(Nunam Iqua)	Municipality
Chignik Lagoon	Census Designated Place	Shishmaref	Municipality
Chignik Lake	Census Designated Place	Solomon	Census Designated Place
Cold Bay	Municipality	South Naknek	Census Designated Place
False Pass	Municipality	St. Michael	Municipality
Ivanof Bay	Census Designated Place	Stebbins	Municipality
King Cove	Municipality	Teller	Municipality
Nelson Lagoon	Census Designated Place	Togiak	Municipality
Perryville	Census Designated Place	Toksook Bay	Municipality
Sand Point	Municipality	Tuntutuliak	Census Designated Place
Halibut Regulatory Area 4A		Tununak	Census Designated Place
Akutan	Municipality	Twin Hills	Census Designated Place
Nikolski	Census Designated Place	Ugashik	Census Designated Place
Unalaska	Municipality	Unalakleet	Municipality
Halibut Regulatory Area 4B		Wales	Municipality
Adak	Census Designated Place	White Mountain	Municipality
Atka	Municipality		

Table 2 List of additional eligible places by area under the Alternative 2 and Alternative 3 (the preferred alternative).

Place	General Description	Area	Population	Population by Area
Covenant Life CDP	Part of Haines Borough	2C	348	
Cube Cove CDP	Southeast Alaska	2C	0	
Excursion Inlet CDP	Part of Haines Borough	2C	12	
Game Creek CDP	Southeast Alaska	2C	19	
Hobart Bay CDP	Southeast Alaska	2C	1	
Kupreanof	Near Petersburg	2C	26	
Lutak CDP	Part of Haines Borough	2C	40	
Mosquito Lake CDP	Part of Haines Borough	2C	150	
Mud Bay CDP	Part of Haines Borough	2C	141	
Thoms Place CDP	Southeast Alaska	2C	7	
Whitestone Logging Camp CDP	Southeast Alaska	2C	NA	744
Afognak	Kodiak Island Borough	3A	0	
Aleneva CDP	Kodiak Island Borough	3A	48	
Cape Yakataga	Near Yakutat	3A	NA	
Chiniak	Kodiak road system	3A	42	
Eyak	Part of Cordova	3A	137	
Kaguyak	Kodiak Island; abandoned	3A	0	
Kodiak Station CDP	Kodiak Island Borough road system	3A	1,817	
Portlock	Near Nanwalek; abandoned	3A	NA	
Seldovia Village CDP	Road connected to Seldovia city	3A	161	
Uganik	Kodiak Island	3A	NA	
Uyak	Kodiak Island	3A	NA	
Womens Bay	Kodiak road system	3A	830	
Woody Is.	Kodiak road system	3A	0	3,035
Ayakulik	Kodiak Island abandoned	3B	NA*	
Belkofski	Near King Cove; abandoned	3B	0	
Pauloff Harbor	On Sanak Island near False pass; abandoned	3B	0	
Sanak	Near False Pass; abandoned	3B	NA	
Squaw Harbor	Near Sand Point; abandoned	3B	NA	
Unga	Near Sand Point; abandoned	3B	NA	0
Attu	Aleutian islands abandoned	4	15	
Bill Moores	Yukon Delta	4	0	
Choolunawick	Yukon Delta	4	0	
Ekuk	Nushagak Bay; no one year round	4	0	
Fort Glenn	Aleutian islands	4	NA	
Hamilton	Yukon Delta	4	0	
King Island	Near Nome; abandoned	4	0	
Mary's Igloo *	Near Nome	4	0	
Paimiut	Near Hooper Bay	4	2	
Port Clarence CDP	Near Nome	4	23	
Port Moller	Near Nelson Lagoon; few if any year-round	4	NA	
Shemya Station	Aleutians, a.k.a. Earekson Air Force Station	4	27	
Umkumiute	Nelson Island	4	NA	67
	Total		3,846	3,846

*NA is not available

Source: Alaska Dept. Labor Place Estimates <http://almis.labor.state.ak.us/?PAGEID=67&SUBID=171>

Table 3 Upper Estimate of Additional Population from Affected Boroughs and Census Designated Places by Area that Could Qualify Under Alternative 2 and Alternative 3 (the preferred alternative).

Place	Area	Population	Pop. by Area
Remainder of Haines Borough	2C	92	
Remainder of Prince of Wales Census Area	2C	273	
Remainder of Skagway-Hoonah-Angoon Census Area	2C	30	
Remainder of Wrangell-Petersburg Census Area	2C	370	765
Remainder of Chugach Census Subarea	3A	121	
Remainder of Kodiak Island Borough	3A	4,478	
Remainder of Yakutat Census Area	3A	25	4,624
Remainder of Lake and Peninsula Borough	3B	22	22
Remainder of Aleutians East Borough	4	1	
Remainder of Aleutians West Census Area	4	28	
Remainder of Lower Kuskokwim Census Area	4	4	
Remainder of Bristol Bay Borough	4	0	
Remainder of Dillingham Census Area	4	30	
Remainder of Nome Census Area	4	118	181
Total		5,592	5,592

Basing eligibility on a set of legal boundaries (i.e., 10 statute miles), in addition to the current list of eligible places (No Action Alternative) and proposed list of eligible places (e.g., Kodiak Island Archipelago) (Alternative 2 and the preferred alternative), would minimize potential future discrepancies that may arise, as the boundaries for CDPs with low populations could change every 10 years as a result of the decennial census. While the list of eligible communities only would change if the Secretary of Commerce approved an amendment to the regulations, the public could become confused if the census designation (or the rural status) for their place of residence changed.

Population estimates from Table 2 and Table 3 identify an upper estimate of additional potentially affected individuals under Alternative 2. The population estimates from Table 3 may 1) double count some residents who are included in Table 2 and 2) count some Alaska residents who live outside of the 10-mile strip and would not be subject to this action⁷. Only a few single family homesteads are believed to occur within the strip, and the subsistence harvest of those residing on them is expected to be small.

Most of the population, referenced in Table 3, is composed of the “remainder of Kodiak Island Borough,” which is almost entirely the population along the island road system outside of the city, Women’s Bay, Kodiak station, and Chiniak. Along with the population referenced in Table 2, these places are within the 10 mile strip proposed to be added to the program. Until 2007, anyone living in this area was eligible to receive a SHARC, and those harvests were included in Fall et al. (2007). While Table 3, for example, identifies 4,478 Kodiak residents proposed for eligibility, some of these people received SHARCs at the beginning of the program. No new harvest results from clarifying (and confirming) their eligibility. Table 2 also includes some remote populations in the remainders of the Lake and Peninsula Borough, Dillingham census area, and Nome census area that are not within the strip (J. Fall, personal communication), therefore, the estimate of 5,592 people is likely an upper projection of affected individuals.

Table 4 summarizes the number of SHARCs issued by NMFS Restricted Access Management (RAM) since the subsistence halibut program was implemented in 2003. SHARCs issued in 2004 are considered new permits to those issued in 2003 because rural SHARCs have two-year durations. For example, rural residents fishing with SHARCs in 2004 include those permits issued in both 2003 and 2004. Fall et al. (2007) report that less than 51 percent of rural SHARCs were used.

⁷ While the current list of eligible places includes places on the Kuskokwim River up to Bethel, it does not include places in the Yukon River delta and places on the Nushagak River, including Portage Creek, Ekwok, New Stuyahok, and Koliganek, because they do not have customary and traditional uses of halibut.

Table 4 Number of two-year rural subsistence fishing permits by IPHC area, 2003-2007

Year of issue of 2-year permit	2C	3A	3B	4A	4B	4C	4D	4E
2003	4,104	1,669	62	84	18	12	3	113
2004	679	464	15	27	7	1	0	25
2005	3,275	1,489	60	82	7	1	0	63
2006	900	548	14	28	2	2	0	20
2007	2,950	1,423	50	72	27	0	0	60

Source: NMFS RAM Division.

Anecdotally, RAM staff has noted that while each member of some families received a SHARC, all applicants probably do not harvest subsistence halibut, based on their reported ages. More than 100 SHARC holders were born in 2000 and 2001 (7 and 8 year olds); more than 15 were born in 2004 (3 to 4 years old); six were born in 2006 (2 years old); and three are under the age of 1 (born in summer 2007). There could be many reasons for children receiving SHARCs 1) parents think everyone on the vessel, or in the family, has to have one; 2) parents think that the children may be left out of a future program without a SHARC; and 3) parents are trying to maximize the number of hooks they can fish, even though there are no hook limits in Area 4C/D/E. RAM staff concludes that it is possible that the older the child, the more likely the family would obtain a SHARC, perhaps to maximize the amount of fish they can harvest (J. Gharrett and T. Buck, personal communication). Therefore, the number of annual SHARCs is a poor index of annual participation, because of their two-year duration and the high percentage of unused SHARCs.

Table 5 summarizes the estimated number of SHARC fishermen and pounds harvested in 2006, from a survey conducted by ADF&G Subsistence Division (Fall et al. 2007). More SHARCs, fishermen, and halibut harvest occur in Southeast and Southcentral Alaska (Area 2C and Area 3A) than westward (Area 3B and Area 4), due to the demographic distribution of Alaska residents. Average subsistence harvest was highest in westward Alaska (216 lb/fisherman), followed by Area 3B and 3A (211 lb/fisherman and 202 lb/fisherman, respectively). It was lowest in Area 2C (157 lb/fisherman).

Table 5 Number of rural SHARC permits issued and used, number and pounds of halibut harvested by IPHC area in 2006.

AREA	# ELIGIBLE	# SHARCS	# FISHERMEN	% ACTIVE/ ELIGIBLE	#FISH	#LB	LB/ FISHERMAN	% TOTAL HALIBUT REMOVALS
2C	27,271	4,510	2,196	8.1	16,147	344,210	157	2.33
3A	18,878	2,245	1,192	6.3	11,002	240,794	202	0.68
3B	2,320	82	54	2.3	605	11,373	211	0.03
4	33,852	246	92	0.3	898	19,912	216	0.13
TOTAL	82,321	7,083	3,534	4.3	28,651	616,290	174	0.65

Source: Fall et al. 2007 and IPHC 2007.

Tables 2 and 3 provide an upper estimate of 9,400 rural residents who could be eligible under Alternative 2, as this total includes an unknown number of ineligible residents in the populations of the “remainder” portion of 14 boroughs (Table 3), which inflates the estimate of potentially affected individuals. Even fewer residents from the eligible populations of places listed in Tables 2 and 3 are expected to 1) hold SHARCs and 2) actively fish them, based on participation by currently eligible Alaska rural residents (Table 1). Thus, up to 600 rural residents are expected to receive SHARCs under Alternative 2. Those SHARC holders are expected to harvest up to 105,000 lb of subsistence halibut (Table 6). This is a small amount of removals compared with total removals of halibut by all commercial, sport, and subsistence users.

The Council’s preferred alternative, Alternative 3, contains the same provisions as Alternative 2, but differs from it by adding clarity to the list of areas that would be affected, as described in Section 5. It clarifies Council intent, eliminates public confusion, and best conforms to the Council’s original intent and present purpose.

Table 6 Number of rural SHARC permits expected to be issued and used, number and pounds of halibut harvested by IPHC area under Alternative 2 and Alternative 3 (the preferred alternative).

AREA	EXPECTED # ELIGIBLE (Table 2)	EXPECTED # ELIGIBLE (Table 3)	EXPECTED TOTAL # ELIGIBLE	% ACTIVE (Table 5)	EXPECTED % ACTIVE SHARC HOLDERS	LB/ FISHERMAN (Table 5)	TOTAL HALIBUT REMOVALS
2C	744	765	1,509	8.1	122	157	19,190
3A	3,035	4,624	7,659	6.3	483	202	97,468
3B	0	22	22	2.3	1	211	107
4	67	181	248	0.3	1	216	161
TOTAL	3,846	5,592	9,438	4.3	606	174	105,443

A summary of the benefits and costs provides a qualitative comparison of the net benefits of Alternative 2 and the preferred alternative, compared to the status quo (Table 7). Alternative 3 (the preferred alternative) appears to have the largest net benefit, as compared to the two other alternatives under consideration. It recognizes the legitimate need of rural residents to access resources to feed their families and seeks to provide a means to that end. In addition to the benefits and costs identified in Table 7, the preferred alternative best conforms to the Council’s original intent and present purpose. In addition to those that accrue directly to subsistence harvesters and their families, indirect benefits or costs may also accrue to businesses providing equipment and services used by subsistence anglers. But these are believed to be limited as the need for frequent fishing trips, under a two-hook and two-fish daily personal use limit, may be replaced with fewer, but more efficient, trips to harvest halibut under subsistence regulations. Those regulations limit the legal gear for harvesting subsistence halibut to setline and handheld gear of not more than 30 hooks, including longline, hand line, rod and reel, spear, jig, and hand-troll gear, and limit the daily retention of subsistence halibut to 20 halibut per person, except there is no daily limit in Areas 4C, 4D, and 4E. A proposed rule would revise the subsistence gear restrictions for Kodiak Island, and add seasonal gear and vessel limits in Sitka Sound under 73 FR 2008.

Revising regulations is a recurring agency function, as management solutions are found to problems in the fisheries or to correct errors. For example, in 2007 NMFS staff identified that perhaps as many as 50 percent of Kodiak Island Borough residents who do not live within the Kodiak city limits, or one of the six other eligible communities on the island, should not be eligible to receive SHARCs, based on the language under 50 CFR 300.65(g)(1). ADF&G staff has determined that 1,700 SHARC holders reported mailing addresses for the Kodiak Road system at the end of 2006. About 12,700 people lived along the island’s road system, with only about half of those living within the city limits. Therefore about 850 SHARC holders (1/2 of 1,700) would be ineligible to receive rural SHARCs under current regulatory language. These SHARC holders are, functionally, part of the Kodiak community and have the same subsistence use patterns for halibut and other resources as those who live within the city limits (J. Fall, personal communication).

The listing of “Kodiak City” as the eligible rural place in the regulations may have been shorthand for “Kodiak City Area,” a phrase that was used in some tables in the original 2003 Council analysis (NPFMC 2003). Numerous Council documents use data that ADF&G staff provided to support inclusion of Kodiak on the list, which included Kodiak residents along the entire road system not just people within the city limits. All the analyses prepared in support of the subsistence halibut regulations were based on including the entire road system in the eligible category, even if the final rule shortened the name of this area from “Kodiak City Area” to “Kodiak City.” The intent of the Council was to include the entire road-connected population of Kodiak Island, and not only those living in the more limited geographical limits identified in the regulations (NPFMC 2003).

Another example of the problem with the current regulatory language can be found in Petersburg, where perhaps as many as 100 rural residents do not live within the legal boundaries of Petersburg but have the same subsistence use patterns as those living within the city limits. Many residents of Petersburg and Kodiak have returned their SHARCs to remain in compliance with federal regulations. No information is available for where the same issue may occur in other parts of the state. The proposed action would

amend the regulations to bring the subsistence halibut program regulations into conformity with the Council’s original intent for the program.

Table 7 Benefits and costs to potentially affected groups of persons by alternative.

	Alternative 1	Alternative 2	Alternative 3
Description of alternative	This is the status quo, no action alternative.	Some rural Alaskan residents were excluded from eligibility, because they lived in locations of fewer than 25 persons (which was the minimum threshold used to develop the list of eligible rural places), or they lived outside the legal boundaries of eligible rural places.	The preferred alternative adds clarity to Council intent by specifying the locations to be included in the proposed action. In adopting its preferred alternative, the Council revised the language of Alternative 2 by 1) specifying that Nelson Island, St. Lawrence Island, and the entire Kodiak Archipelago were intended to be included in the proposed action and 2) replaced general text that referenced “a line of latitude that approximates the Naknek River” with specific coordinates for that location.
Does this alternative accomplish the purposes of the action?	No. This alternative does not correct the error of excluding some rural residents.	Yes. This alternative includes rural residents who were inadvertently excluded from the subsistence halibut program and provides them the subsistence fishing opportunities contemplated in the original subsistence program.	Yes. In addition, the preferred alternative adds clarity to the regulatory language and decreases public confusion about the effects of the proposed action.
Impact on rural residents	None. There is no legal subsistence halibut fishing by rural residents who live outside the eligible rural places, but who are living a subsistence lifestyle comparable to the neighbors who happen to reside in eligible areas. These rural residents became ineligible to continue their customary and traditional practices, when the original regulations were implemented.	As many as 600 rural residents would be expected to avail themselves of this opportunity. As much as 105,000 lb of halibut could be harvested for personal consumption by these families, reducing their cost of acquiring protein in their diets. Some of these residents had previously received a SHARC but were later found not to be eligible based on a closer examination of the regulatory language. These rural residents may be feeding their families with halibut harvested under personal use regulations or by purchasing other protein sources from commercial industries. Perhaps as many as 9,400 residents deemed eligible under the Alternative 2 would benefit through customary and traditional practices of sharing food.	The preferred alternative has the same effect as Alternative 2.
Impact on other halibut fishermen	None. There is probably little or no impact on other halibut fishermen under current conditions.	Very little. The contribution of these rural residents, who are likely feeding themselves, their family, and other members of their small location, for halibut removals of approximately 105,000 lb should be insignificant, compared to total halibut removals.	The preferred alternative has the same effect as Alternative 2.

Impact on support businesses	None.	Rural residents likely fished for halibut under personal use regulations rather than buying commercially caught halibut. Businesses supporting subsistence fishing may benefit, as fewer trips using more gear and bait may be expected. Fewer trips, with higher harvest rates may actually reduce demand for some consumable goods (e.g., fuel) with resulting loss of sales to local businesses. Such reductions should be small, and cash not spent on multiple halibut personal-use trips would be available for alternative purchases.	The preferred alternative has the same effect as Alternative 2.
Assessment of net impacts	None. This alternative is the baseline against which the preferred alternative is measured.	It is impossible to make a quantitative assessment of benefits from this action. On balance, benefits are likely to be positive. The costs of subsistence fishing for affected rural residents should be reduced and their benefits from subsistence should be increased.	The preferred alternative has the same effect as Alternative 2.

7 References

- Alaska Department of Fish and Game. 2004. A Report to the Alaska Board of Fisheries on Subsistence Halibut Fishing Eligibility Appeals, 2004. Division of Subsistence, Alaska Department of Fish and Game, Juneau, Alaska. 12 p.
- Fall, J., D. Koster, and M. Turek. 2007. Subsistence Harvests of Pacific Halibut in Alaska. Technical Paper No. 333. Alaska Department of Fish and Game. Division of Subsistence. Juneau. December. <http://www.subsistence.adfg.state.ak.us/TechPap/TP333.pdf>.
- International Pacific Halibut Commission. 2007. 2007 IPHC Annual Meeting Handout (“Bluebook”) for the International Pacific Halibut Commission Eighty-third Annual Meeting. 130 p. <http://www.iphc.washington.edu/halcom/pubs/annmeet/2007/bluebook/iphcb07.pdf>.
- North Pacific Fishery Management Council. 2003. Environmental Assessment and Regulatory Impact Review for a Regulatory Amendment to Define a Halibut Subsistence Fishery Category in Convention Waters. Avail. from NPFMC, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501. 185 pp. <http://www.alaskafisheries.noaa.gov/analyses/subsistence/halibut0403.pdf>
- _____. 2004. Regulatory Impact Review for a Regulatory Amendment to Amend Subsistence Halibut Fishery Regulations in Convention Waters. Avail. from NPFMC, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501. 99 pp. http://www.alaskafisheries.noaa.gov/npfmc/current_issues/halibut_issues/SubsistenceIII_1104.pdf
- U.S. Department of Commerce. 1994. Economics and Statistics Administration. Bureau of the Census. Geographic Areas Reference Manual. <http://www.census.gov/geo/www/garm.html>.

8 Authors

Jane DiCosimo
North Pacific Fishery Management Council
Anchorage, Alaska

Steve Lewis
National Marine Fisheries Service, Alaska Region
Juneau, Alaska

Lewis Queirolo, Ph.D.
National Marine Fisheries Service, Alaska Region
Camano Island, Washington

9 Contributors

Jim Fall, Ph.D.
Alaska Department of Fish and Game
Subsistence Division
Anchorage, Alaska

Nicole Kimball
North Pacific Fishery Management Council
Anchorage, Alaska

Jeff Passer, Ron Antaya
NOAA Office of Law Enforcement
Juneau, Alaska

Jay Ginter, Peggy Murphy, Jessica Gharrett, Tracy Buck
National Marine Fisheries Service, Alaska Region
Juneau, Alaska

John Lepore
NOAA Office of General Counsel
Juneau, Alaska

APPENDIX. Proposed maps of 10 statute mile strip proposed under the Preferred Alternative.









