

commercial gear and has incorporated this requirement in the final rule.

*Comment 6:* Although the need for a subsistence halibut harvest in Alaska is recognized, the proposed rule should be changed. Without an annual limit on the harvest of each individual, a daily limit of 20 halibut per day, per person is unquestionably excessive. The subsistence halibut rules should include an annual individual harvest limit.

*Response:* The 20-halibut-per-day catch limit is not considered excessive in light of its purpose, which is to provide a reasonable daily catch limit for a subsistence fisher to supply food for his family and community. Proxy fishing is not provided for in this rule. Therefore, the daily catch limit should be sufficient to allow the fisher to supply fish to persons other than himself. Moreover, subsistence fishers typically do not harvest more fish than they actually need and will use. The customary and traditional practice of subsistence fishing does not include wasting fish.

Nevertheless, subsistence use of halibut may conflict with other uses of the resource, particularly in more populated areas of Alaska. In response to this concern, the Council studied various alternative approaches and in April 2002, adopted a recommendation to NMFS to revise the 20-halibut-per-day catch limit in certain parts of IPHC regulatory areas 2C and 3A. This and other recommendations made by the Council at that time are under review and proposed implementing rules will be published in the **Federal Register** for public comment.

*Comment 7:* The definition of "customary trade" wrongly suggests that the sale of any fish could be something other than a commercial activity and that \$400 worth of halibut is not significant. Allowing the sale of subsistence halibut should be eliminated.

*Response:* NMFS disagrees. Customary trade is a customary and traditional use of halibut and should be an integral part of any subsistence policy. The Council recommended and NMFS approved this customary trade policy and the \$400-per-year monetary limit because it was considered an insignificant amount. The Council determined and NMFS agrees that the \$400 limit would allow a subsistence fisher to be reimbursed for the cost of his or her fuel or other incidental expenses incurred while subsistence fishing for halibut. Such customary trade can occur without subsistence halibut being deemed as entering commerce.

*Comment 8:* Subsistence halibut should be required to be marked or identified in some manner, and mandatory logs or reports of fishing locations, quantities harvested and amounts of gear used should be required.

*Response:* The overall harvest of subsistence halibut and certain species taken incidental to subsistence halibut fishing will be estimated under this rule based on surveys of subsistence fishers. NMFS disagrees, however, that the estimation of subsistence harvests needs to be any more precise or the reporting requirements any more robust than those used for estimating the sport harvest of halibut which is estimated to be substantially larger than subsistence harvests.

*Comment 9:* These liberal subsistence rules will be unenforceable and will not prevent subsistence halibut from entering commercial venues. These rules could apply to the most remote and isolated rural areas without much risk of abuse, but in larger communities with road and airline connections, enforcement will be much more difficult if not impossible. In Sitka, for example, where a cash economy and subsistence harvest are blended in a population of many thousands, the individual harvest limit of 20 fish per day could result in hundreds of thousands of pounds being bartered for goods and services anywhere because the rule does not limit customary trade to the rural community where the fish are caught. This presents a potential to reduce or eliminate the volume of halibut available to commercial IFQ fishers.

*Response:* Enforcement of the subsistence rules in larger rural communities, such as Sitka, may be more challenging than in smaller rural communities. NMFS intends to cooperate with Alaska Native tribes and community organizations in publicizing subsistence halibut rules, and some Alaska Native tribes already have indicated their intent for their members to fully comply with the subsistence rules. Non-compliance likely would result in the Council recommending and NMFS approving more restrictive subsistence rules. NMFS further intends to monitor subsistence harvests in cooperation with State of Alaska, tribal and community agencies to provide reasonable estimates of fishing mortality from this fishery for conservation and management purposes. Although it is possible in theory for the subsistence fishery to preempt the commercial fishery, it is highly unlikely. Subsistence halibut harvests overall are expected to be about one percent or less of the total catch of halibut,

substantially less than the sport halibut harvest and virtually insignificant compared to the commercial halibut harvest and other sources of halibut fishing mortality.

*Comment 10:* Subsistence fishers need to be able to set out 50 hooks overnight about four times a year, and need to trade or get money for about 200 pounds of fish four times a year.

*Response:* The Council considered alternative hook limits ranging from 2 to 60 hooks (see final EA/RIR/FRFA). Based on an analysis of the potential impacts of the alternative hook limits and public testimony, the Council recommended a 30-hook limit as a reasonable balance of the interests of subsistence and commercial fishers. Although some subsistence fishers may prefer no hook limit, most appear to find the 30-hook limit to be acceptable.

The rule specifies no limit on customary trade in terms of pounds of halibut that may be traded per year. The only specified limit on customary trade is on the amount of money that may be received by a subsistence fisher for subsistence halibut in a year. Subsistence halibut could be exchanged for goods other than money. In developing this policy, the Council chose not to recommend a non-monetary limit on the value of goods or services that may be exchanged in customary trade for subsistence halibut. The Council was clear, however, that it did not intend for items of significant value (e.g., a new car or truck) to be traded for subsistence halibut, although it did not specify the meaning of "significant value." Trading subsistence halibut for items of significant value would suggest a commercial enterprise, which is prohibited. Hence, 200 pounds of subsistence halibut could be exchanged in customary trade each year providing that any monetary payment for this fish does not exceed \$400.

*Comment 11:* A recent survey conducted by the Yakutat Tlingit Tribe and Division of Subsistence (ADF&G) indicates halibut is the top subsistence species for the community of Yakutat.

*Response:* NMFS notes this indication of the importance of subsistence halibut in the community of Yakutat, Alaska.

*Comment 12:* There needs to be a valid subsistence halibut registration certificate to allow fishing for subsistence halibut. It is not clear, however, whether the requirement to "hold" a certificate means that a subsistence fisher must have the certificate in possession during fishing or to simply obtain a certificate prior to fishing.

*Response:* The proposed rule (67 FR 54767, August 26, 2002) at section