

2. The proposed regulatory restructuring at § 300.63 erred by including obsolete text in paragraph (b). The purpose of this restructuring, detailed more completely in the preamble of the proposed rule, is to better distinguish halibut fishery management measures that are applicable to IPHC Area 2A from those that are applicable to waters in and off Alaska. Until now, these management measures, all of which were developed by either the Pacific Fishery Management Council or the North Pacific Fishery Management Council under authority of the Halibut Act and approved by NMFS, have been implemented primarily by regulations at § 300.63. The addition of these subsistence rules would make this section structurally too cumbersome. This action will distinguish Area 2A management measures from those applicable to waters in and off Alaska by moving the "Alaska" provisions formerly in § 300.63 to a revised § 300.65 and a new § 300.66 (prohibitions).

This restructuring is intended to have no effect on the Area 2A management measures. To avoid confusion in the amendatory text of each instruction in the proposed rule, the full text of each paragraph in § 300.63 was reiterated in the proposed rule. Unfortunately, some of that text was obsolete by the time the proposed rule was published. If that mistake were repeated in this final rule, it would unintentionally undermine the halibut fishery management program in Area 2A. Hence, to avoid that mistake, this final rule does not attempt to republish existing regulatory text in § 300.63 pertaining to Area 2A because it may be changed again before this final rule becomes effective. Only revised text in the introductory paragraph (which is redesignated as paragraph (a)) is published in this final rule and unrevised text in former paragraph (a) or redesignated paragraph (b) is indicated by 3 stars.

3. Comment 32 indicated that Figure 1 mistakenly depicts Sitka Sound as a non-rural area in which subsistence fishing would be prohibited. Based on the description of the four non-subsistence areas in the preamble to the proposed rule and the proposed rule text, Figure 1 in the proposed rule is clearly wrong. This was caused by a technical error in transferring graphic data files for publication and was not meant to add a new non-subsistence area not otherwise described and explained. This technical mistake is corrected in this action by publishing Figure 1 as originally intended. Figure 1 is not substantially different from the

previously existing Figure 1 in § 300.65 and its purpose is to depict the boundaries of the Sitka Sound LAMP. It is republished in this rule as part of the restructuring of regulatory text described in the preamble to the proposed rule in which the text description of the Sitka Sound LAMP is moved from § 300.63(d) to § 300.65(d).

A separate but related change in the proposed rule is made to correct an inadvertent error in the text description of the Sitka Sound LAMP. Due to a drafting oversight in the proposed rule text at § 300.65(d)(1)(i)(C), Cape Edgecumbe was incorrectly described at 57° 59' 54" N. latitude, 135° 51' 27" W. longitude. Although this was the coordinate originally published in the LAMP implementing rule, it was later corrected to be 56° 59' 54" N. latitude, 135° 51' 27" W. longitude (66 FR 36208, July 11, 2001). Hence, this rule makes a technical change to include the correct coordinate for Cape Edgecumbe.

4. The limitation on using more than 30 hooks on fishing gear to harvest subsistence halibut applies to each authorized subsistence halibut fisher. This limitation was clear in the Council's recommendation and was clear in the preamble to the proposed rule. The regulatory text published in the proposed rule, however, was not clear. This lack of specificity and potential ambiguity in the proposed regulatory text was pointed out in comment 4. Hence, the regulatory text at § 300.65(g)(1)(i) is changed from the proposed rule to clarify that the hook limitation applies to each person eligible to conduct subsistence halibut fishing under this rule.

5. A minor technical change was suggested in comment 5 to require setline gear used for subsistence halibut fishing to be identified as such by including an "S" on the buoys marking the gear. This labeling requirement is in addition to the name and address of the fisher. This additional marking requirement is intended to help distinguish subsistence halibut fishing gear from commercial halibut fishing gear, to which a hook limit does not apply.

6. Another technical change in the harvest survey instrument, based on recommendations in comments 1 and 18, would provide a finer level of geographic specificity than the IPHC regulatory area. This specificity is desirable to be able to respond to potential grounds preemption and allocation questions that may arise in the future. Hence, NMFS changed the regulatory text at § 300.65(h)(4) from what was published in the proposed rule to include the local water body

where subsistence halibut harvests were made in the harvest survey. A local water body would be, for example, Sitka Sound (in Area 2A), Kachemak Bay (in Area 3A), or Beaver Inlet (in Area 4A).

7. The proposed rule at §§ 300.65(h) and 300.66(e) indicates that a subsistence halibut fisher must possess a valid SHARC before he or she begins subsistence halibut fishing. The term "possess" was meant to indicate that a subsistence halibut fisher must have the SHARC physically with him or her while fishing. Comments 12 and 19 note, however, that this meaning is not necessarily clear. Hence, NMFS changed text from the proposed rule at § 300.66(e) to clarify the original intent of being able to document authority to conduct subsistence halibut fishing while fishing for subsistence halibut. This clarification is made by requiring a valid SHARC to be available for inspection by an authorized officer.

Making this clarifying change in this rule is consistent with the rationale for the registration system given in the preamble to the proposed rule. Although the primary purpose for requiring the registration of subsistence halibut fishers is to provide the basis for collecting subsistence halibut harvest data, an important secondary purpose is to be able to distinguish between those persons who are eligible to fish for subsistence halibut and those who are not eligible. Although possession of a registration certificate on a vessel conducting subsistence halibut fishing is not necessary for the first purpose, it is necessary for the second purpose.

8. The proposed rule preamble (67 FR 54770, column 2, last paragraph) described the SHARC as being valid for either 2 or 4 years depending on a person's basis for being eligible for a SHARC as a resident of a specified rural community or member of a specified Alaska Native tribe, respectively. The preamble also described the rationale for a multi-year SHARC and reason for having different expiration periods. Due to a drafting oversight, however, the regulatory text of the proposed rule failed to specifically provide for denominating SHARCs with dates of eligibility. Therefore, this action corrects that oversight with language at section 300.65(h)(3) that allows NMFS to specify on the certificate the period of time during which the SHARC will be valid. This new regulatory text also clarifies that persons eligible to harvest subsistence halibut may renew their SHARCs that are expired or will soon (within 3 months) expire by following the specified registration procedures. This change is consistent with the explanation and rationale of the