

factors. Economic value of the fishery is one basis for making an allocation decision, but not the only consideration. The Halibut Act requires consideration of a range of factors when recommending new management measures, such as the GHL, that allocate or assign halibut fishing privileges among various United States fishermen. The Halibut Act requires that such allocation shall be fair and equitable to all such fishermen, based upon the rights and obligations in existing Federal law, reasonably calculated to promote conservation, and carried out in such manner that no particular individual, corporation, or other entity acquires an excessive share of the halibut fishing privileges.

*Comment 3:* The GHL will not conserve the resource. The EA/RIR/IRFA prepared for the GHL proposed rule states that “the [Commission] has determined that resource conservation is not a factor in such allocative decisions,” and by implication establishing a GHL based on concerns about possible localized depletion of the halibut resource are inappropriate.

*Response:* In 1993, the Council became concerned about both localized depletion and “the potential reallocation of greater percentages of the CEY from the IFQ fishery to the guided recreational fishery” (See 67 FR 3867, January 28, 2002). While the EA/RIR/IRFA notes that “the effect on the halibut resource of allocating halibut between user groups is negligible,” it also notes that “if there was a resource conservation concern, the [Commission] would be the responsible management body, however, since this is an allocative issue, the management responsibility is delegated to the Council.”

The EA/RIR/IRFA notes that “while there may be biological concerns associated with localized depletion of halibut stocks, the guided recreational fishery sector may not be the only contributor to localized depletions. In summary, none of the alternatives would be expected to have a significant impact on the environment.” This indicates that the basis for this action is largely one based on concerns for allocation and that the potential effect of this action on the environment is not significant. The commenter correctly notes that the EA/RIR/IRFA does not provide conclusive evidence of localized depletion attributable to the guided recreational fleet.

Although concerns about the potential effects of the guided fishery on localized depletion of halibut stocks may have diminished over the past several years while the Council considered this action

and NMFS developed this final rule, the allocative concerns have not. The Council and NMFS have the authority and responsibility to address allocation concerns. This rule addresses those concerns by establishing a mechanism for notifying the Council that it may wish to consider additional rulemaking to restrict the guided recreational fleet if the GHL is exceeded.

*Comment 4:* The GHL could constrain harvests and force guided recreational fishery vessels to target other stocks (e.g., salmon and lingcod) that may be fully exploited. The EA/RIR/IRFA notes that “other species of salmon, as well as rockfish and lingcod stocks would be impacted if guided recreational fishery operators increased their fishing effort on these stocks in response to a GHL on halibut. ADF&G has expressed conservation concerns for lingcod and rockfish stocks in most areas of Southeast Alaska. Based on these concerns the Board has adopted very restrictive regulations for yelloweye rockfish in the Sitka and Ketchikan areas and for lingcod in the Sitka area. Increased exploitation by the guided sector due to a GHL would add to these conservation concerns.”

*Response:* The implementation of the GHL without any regulatory restrictions would not be expected to have any distributional effects on the guided fishery fleet, and is not expected to have a significant effect on the human environment. Additionally, ADF&G and the Board may choose to implement additional management measures if the implementation of the GHL is perceived to have an adverse effect on state managed resources. At the time that any additional management measures are developed, those considerations may be addressed.

*Comment 5:* The GHL proposed rule contradicts NMFS’ commitment to promote recreational fisheries under E.O. 12962. (E.O. directing Federal agencies to enhance recreational fishing opportunities).

*Response:* This rule does not diminish that productivity or countermand the intent of E.O. 12962. Because this final rule does not impose any regulatory restrictions on the guided recreational fishery it would not limit or otherwise curtail participation in the guided recreational fishery. E.O. 12962 was signed in 1995, and directs Federal agencies to improve the quantity, function, sustainable productivity, and distribution of aquatic resources for increased recreational fishing opportunities “to the extent permitted by law and where practicable.” This E.O. does not diminish NMFS’ responsibility to address allocation

issues, nor does it require that NMFS or the Council limit their ability to manage recreational fisheries. E.O. 12962 provides guidance to NMFS to improve the potential productivity of aquatic resources for recreational fisheries.

*Comment 6:* The Council developed the proposed rule without any consideration of analysis of potential socio-economic impacts.

*Response:* The EA/RIR/IRFA analyzes, among other issues, the socio-economic impacts of the proposed rule for the GHL and the associated harvest restriction measures. This analysis addresses the potential socio-economic impacts of the GHL proposed rule using the best available data. The FRFA prepared for this final rule reviews the economic effects of this final rule.

*Comment 7:* Public access to the resource will be diminished by the implementation of the GHL.

*Response:* This rule does not limit guided recreational harvests or public access to fishery resources. This rule serves only to notify the public on an annual basis of the GHLs in Areas 2C and 3A, to codify the GHL policy and to provide a mechanism for NMFS to notify the Council once the GHL has been exceeded.

*Comment 8:* The accuracy of the Logbook data used to determine the GHL is suspect, should not have been used in this process, and should not be used in any future management decisions. The author of the letter notes that in a September 2001 memorandum, ADF&G raised some concerns about the use of Logbook data for management purposes.

*Response:* The GHL is based on 125 percent of the average of 1995–1999 guided recreational harvests using data gathered from the ADF&G Harvest Survey. The GHL is not based on data from the Logbook. The Harvest Survey is considered accurate for purposes of estimating guided recreational harvests on a fleetwide basis. ADF&G is no longer collecting data on halibut harvests using the Logbook. Fleetwide harvests would be monitored relative to the GHL using the Harvest Survey. Because this rule does not implement harvest restriction measures, data from the Logbook would not be used to implement this final rule. NMFS currently is reviewing alternative means of gathering data for collecting data and monitoring harvests in the guided recreational fleet for other management purposes.

*Comment 9:* The absence of Logbook data will not allow NMFS to implement any possible GHL restrictions without a two-year delay, which is unacceptable.