

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Charter Operators of Alaska,
a non-profit corporation, et al.

CIVIL ACTION

Plaintiffs,

CASE NO: 11-664-EGS

vs.

The Honorable Gary W. Locke, in his
official capacity as Secretary of the U.S.
Department of Commerce,
Office of the Secretary, Room 5852
14th Street and Constitution Ave., NW
Washington, DC 20230

Jane Lubchenco, in her official capacity
as Administrator of the National
Oceanographic and Atmospheric
Administration
Department of Commerce, Room 5128
14th Street and Constitution Ave., NW
Washington, DC 20230

**PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION**

Eric C. Schwaab, in his official capacity
as Administrator of the National Marine
Fisheries Service
Department of Commerce, Room 14636
1315 East-West Highway
Silver Spring, MD 20910

Defendants.

PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

PLAINTIFFS file this, their *Motion for Preliminary Injunction*, pursuant to Fed. R. Civ. Procedure 65 and Local Rule LCvR 65.1, to enjoin the implementation of a final rule titled *Pacific Halibut Fisheries; Limited Access for Guided Sport Charter Vessels* in Alaska as published in the Federal Register on January 5, 2010 (75 Fed. Reg. 554) and

codified as 50 C.F.R. Chapter III, Part 300, Subpart E, §§ 300.61, 300.66 and 300.67. As grounds therefore Plaintiffs assert:

1. Plaintiffs are owners and operators of charter fishing operations in Alaska identified by the International Pacific Halibut Commission (IPHC) as regulatory areas 2C (Southeast Alaska) and 3A (Central Gulf of Alaska).

2. The rule limits the issuance of Charter Halibut Permits (CHPs) to charter fishing operators who meet certain participation requirements. The charter operator must meet minimal participation requirements during a *qualifying period* (February 1 through December 31 of 2004 or 2005) and a *recent participation period* (February 1 through December 31 of 2008). Charter operators and lodge owners who have taken out loans and spent their life savings to invest in and establish active halibut charter operations after 2005 no longer qualify for permits needed to continue their operations.

3. In direct conflict with the Halibut Act of 1982, the Defendant agencies have conceded that this rule serves no identifiable conservation purpose stating in the preamble to the final rule that curtailing *growth* of guided sport fishing capacity will not limit halibut harvest. “This rule is not designed to limit the harvest of halibut by charter vessel anglers, but rather to curtail the growth of fishing capacity by the charter halibut fishery.” 75 Fed. Reg. at 571.

4. Absent an order from this Court enjoining implementation of the rule, Plaintiffs will be unable to honor halibut fishing reservations, pay expenses, meet debt service and will suffer immediate and irreparable harm through the immediate loss of revenues and ultimately the loss of their businesses altogether. Plaintiffs have no action

at law for recovery of the damages sustained and damages that Plaintiffs will incur unless Defendants are enjoined for further implementation of the rule.

5. In support of this motion, Plaintiffs rely upon their complaint as filed, the accompanying memorandum in support of this motion and the affidavits or declarations of Plaintiffs.

6. The undersigned has contacted the Office of General Counsel for each of the named defendants and advised of Plaintiffs' intent to seek a preliminary injunction and has provided counsel with copies of pleadings and related documents filed to date in this action.

7. Plaintiffs respectfully request a hearing on this motion, pursuant to Fed. R. Civ. P. 65 and Local Rule LCvR 65.1(d), as soon as possible and no later than 21 day after filing as provided in Local Rule LCvR 65.1(d).

Respectfully submitted this 4th day of April, 2011.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been furnished to the following by electronic mail and/or U.S. Mail, this 4th day of April, 2011:

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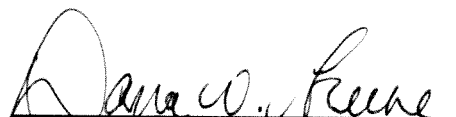
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