


MEMORANDUM

TO: Council, SSC and AP Members

FROM: Chris Oliver   
Executive Director

DATE: March 30, 2010

SUBJECT: Charter Halibut Permit Endorsements

ESTIMATED TIME 4 HOURS
---------------------------

**ACTION REQUIRED**

Review analysis and take final action to clarify permit endorsements.

**BACKGROUND**

In February 2010 the Council received a report from NMFS regarding implementation of the charter halibut limited entry (moratorium) program in Southeast and South Central Alaska. The Council was concerned that the final rule implemented a more liberal permit endorsement system than the Council intended. The Council felt that excessive fishing capacity in the charter halibut sector could result from the methodology used to assign angler endorsements (the number of anglers allowed to fish for halibut on a trip) to charter halibut permits held by charter halibut businesses that would be initially issued more than one permit. The Council noted its intent to more closely align angler endorsements with the actual greatest number of anglers for each vessel that gave rise to *each* permit.

The alternatives under consideration for this action are listed below.

- Alternative 1. Status quo. All permits issued to a business receiving multiple permits would be issued with an angler endorsement equal to the greatest number of charter vessel anglers onboard any vessel used by the business to generate a permit as reported to ADF&G on any bottom fish logbook trip in 2004 or 2005, but not less than 4.
- Alternative 2. One permit would be issued to a business with an endorsement equal to the greatest number of charter vessel anglers onboard any vessel used by the business to generate a permit as reported to ADF&G on any bottom fish logbook trip in 2004 or 2005, but not less than 4. Each subsequent permit issued to the same business would be issued with an endorsement equal to the next greatest number of charter vessel anglers onboard any other vessel used by the business to generate a permit, whose catch history has not already been used by the business to determine an angler endorsement, as reported to ADF&G on any trip in 2004 or 2005, until all permits are issued. The year selected for determining angler endorsements must be the year selected by the applicant for permit qualification.

The Council also could consider two options to address the fair and equitable requirement of the Halibut Act. The Council could (1) expand the scope of this action by using the applicant-selected year to determine the angler endorsement for permits issued to all businesses, or (2) remove the requirement to use the applicant-selected year for determining angler endorsements, maintain the status quo methodology for assigning angler endorsements to the first permit issued to all businesses, and change the methodology for assigning angler endorsements to each subsequent permit issued to businesses receiving multiple permits. All options are listed in the executive summary, attached as Item C-2(1).

NMFS released the analysis for public review on March 22, 2010. Final action is scheduled for this meeting and implementation is intended to occur prior to initial issuance of permits.

## Executive Summary

The North Pacific Fishery Management Council is considering recommending an amendment to regulations that implemented a limited entry program for the charter halibut sector in International Pacific Halibut Commission Area 2C (Southeast Alaska) and Area 3A (South Central Alaska). This document contains a Regulatory Impact Review (RIR) with a cost-benefit analysis of proposed revisions and an Initial Regulatory Impact Review (IRFA) with an analysis of impacts on small entities. The analyses in this document address the statutory requirements of the Presidential Executive Order 12866 (E.O. 12866) and of the Regulatory Flexibility Act (RFA).

On January 5, 2010, NMFS published a final rule implementing a moratorium, or limited entry, program in the halibut charter fishery in International Pacific Halibut Commission (IPHC) Areas 2C and 3A. The program, as published, will create a limited number of permits for the fishery in each area. Halibut charter business operators will be required to have a charter halibut permit onboard beginning on February 1, 2011. After the permit application period is complete, each permit will be issued with an angler endorsement, limiting the number of anglers authorized to catch and retain halibut on a fishing trip. Permits will be issued to firms, and the endorsement on each permit issued to a firm will be equal to the largest number of clients (as recorded in State of Alaska logbooks) taken on a groundfish fishing trip by the firm in 2004 or 2005. The program adopted by NMFS was based on recommendations passed by the Council.

At its February 2010 meeting, the Council indicated that NMFS has misinterpreted its intent with respect to the way endorsements would be assigned to permits. The Council had intended that NMFS use a method that created a firm-specific set of endorsements that corresponded more closely to the distribution of the largest client loads on the vessels the firm had used to qualify for its permits. In a problem statement adopted in February, the Council said, "The methodology used to assign angler endorsements to charter halibut permits held by charter halibut businesses initially issued more than one permit could result in excessive fishing capacity in the charter halibut fishery. The Council intends to more closely align angler endorsements with the actual greatest number of anglers for each vessel that gave rise to each charter halibut permit."

The **purpose** of this action is to clarify regulatory language to more accurately reflect the intent of the Council's March 2007 preferred alternative for a charter halibut limited entry program. This action is **needed** to clarify the regulatory text, following clarification of Council intent regarding the methodology used by NMFS to determine the maximum number of permit endorsements, which occurred in February 2010. The **objectives** of this action are to revise the regulatory text to modify the regulations to match Council intent to reduce excessive fishing capacity in the charter halibut fishery from the status quo, without changing other elements of the program, and without delaying the effective date of the program in the 2011 charter halibut fishing season.

The alternatives under consideration for this action are:

- Alternative 1. Status quo. **All** permits issued to a business receiving multiple permits would be issued with an angler endorsement equal to the greatest number of charter vessel anglers onboard any vessel used by the business to generate a permit as reported to ADF&G on any bottom fish logbook trip in 2004 or 2005, but not less than 4.
- Alternative 2. **One** permit would be issued to a business with an endorsement equal to the greatest number of charter vessel anglers onboard any vessel used by the business to generate a

permit as reported to ADF&G on any bottom fish logbook trip in 2004 or 2005, but not less than 4. **Each subsequent** permit issued to the same business would be issued with an endorsement equal to the next greatest number of charter vessel anglers onboard any other vessel used by the business to generate a permit, whose catch history has not already been used by the business to determine an angler endorsement, as reported to ADF&G on any trip in 2004 or 2005, until all permits are issued. The year selected for determining angler endorsements must be the year selected by the applicant for permit qualification.

### *Regulatory Impact Review*

This action will not affect the numbers of qualified applicants for permits, or the numbers of permits, transferable permits, or nontransferable permits that will be issued. There are an estimated 229 qualified applicants in Area 2C, and an estimated 501 permits. Of the permits, an estimated 341 will be transferable. There are an estimated 291 qualified applicants in Area 3A, and an estimated 410 permits. Of the 3A permits, an estimated 316 will be transferable.

Under the status quo, NMFS estimates that 3,001 angler endorsements will be issued in Area 2C; an estimated 2,103 will be assigned to transferable permits and 898 will be assigned to nontransferable permits. In Area 3A, there will be an estimated 3,524 angler endorsements. Of these, 2,813 will be assigned to transferable permits, and 711 will be assigned to nontransferable permits.

The problem statement and Alternative 2 as proposed by the Council in February 2010 (Option 1 in this analysis), would change the methodology for assigning angler endorsement to permits issued to businesses receiving multiple permits.

#### Option 1

##### **Problem Statement**

The methodology used to assign angler endorsements to charter halibut permits held by charter halibut businesses initially issued more than one permit could result in excessive fishing capacity in the charter halibut fishery. The Council intends to more closely align angler endorsements with the actual greatest number of anglers for each vessel that gave rise to each charter halibut permit.

##### **Alternatives for businesses that would be issued multiple permits:**

- Alternative 1. **Status quo.** All permits issued to a business receiving multiple permits would be issued with an angler endorsement equal to the greatest number of charter vessel anglers onboard any vessel used by the business to generate a permit as reported to ADF&G on any bottom fish logbook trip in 2004 or 2005, but not less than 4.
- Alternative 2. **One** permit would be issued to a business with an endorsement equal to the greatest number of charter vessel anglers onboard any vessel used by the business to general a permit as reported to ADF&G on any bottom fish logbook trip in 2004 or 2005, but not less than 4. **Each subsequent** permit issued to the same business would be issued with an endorsement equal to the next greatest number of charter vessel anglers onboard **any other vessel** used by the business to generate a permit, whose catch history has not already been used by the business to determine an angler endorsement, as reported to ADF&G on any trip in 2004 or 2005, until all permits are issued. The year selected for determining angler endorsements must be the year selected by the applicant for permit qualification.

Option 1 would use two different methodologies to assign angler endorsements to the first charter halibut permit issued to a business, depending on whether the business would be issued a single permit or multiple permits. For businesses receiving multiple permits, the angler endorsement assigned to the first permit would be equal to the greatest number of charter vessel anglers reported onboard any vessel in the year selected by the applicant (2004 or 2005) as its "best" year for purposes of determining the number and transferability status of the permits it receives (applicant-selected year). Each subsequent permit would be issued with an angler endorsement equal to the next greatest number of charter vessel anglers in the applicant-selected year onboard any other vessel used by the business to generate a permit that has not been used to determine an angler endorsement. This procedure would continue until all of the business's permits were issued. For businesses issued a single permit, the angler endorsement on the single permit would be equal to the greatest number of charter vessel anglers recorded by that business on a logbook fishing trip in 2004 or 2005.

These different approaches to assigning angler endorsements to the first permit issued to a business may not meet the fair and equitable requirement under the Halibut Act. The first permit issued to a business receiving multiple permits under the status quo method of assigning angler endorsements does not contribute to potential excessive fishing capacity in the charter sector because the angler endorsement would be based on the greatest number of anglers reported in 2004 or 2005 on a vessel that gave rise to a permit for that business. Thus, under Option 1, it is unclear why it would be fair and equitable for the angler endorsement for the first permit issued to businesses receiving multiple permits to be determined differently than the angler endorsement for businesses receiving a single permit under Alternative 2. If the Council recommends Option 1, it should provide a clear rationale for why using different methodologies for determining angler endorsements for single and multiple permit businesses meets the requirements of the Halibut Act.

The Council also could consider two options for revising Option 1, to address the fair and equitable requirement of the Halibut Act: (1) expand the scope of this action by using the applicant-selected year to determine the angler endorsement for permits issued to all businesses, or (2) remove the requirement to use the applicant-selected year for determining angler endorsements, maintain the status quo methodology for assigning angler endorsements to the first permit issued to all businesses, and change the methodology for assigning angler endorsements to each subsequent permit issued to businesses receiving multiple permits. The first of these two options is Option 2, and the second is Option 3 in this analysis.

#### Option 2

Option 2 would explicitly expand this action to apply to all businesses that would be issued charter halibut permits. The Council could revise its problem statement and statement of intent that Alternatives 1 and 2 would apply only to businesses that would be issued multiple permits. Alternative 2 would not be revised:

#### **Problem Statement**

The methodology used to assign angler endorsements to charter halibut permits held by charter halibut businesses ~~initially issued more than one permit~~ could result in excessive fishing capacity in the charter halibut fishery. The Council intends to more closely align angler endorsements with the actual greatest number of anglers for each vessel that gave rise to each charter halibut permit.

#### ~~Alternatives for businesses that would be issued multiple permits:~~

Alternative 1. Status quo. All permits issued to a business receiving multiple permits would be issued with an angler endorsement equal to the greatest number of charter vessel anglers onboard any vessel used by the business to generate a permit as reported to ADF&G on any bottom fish logbook trip in 2004 or 2005, but not less than 4.

Alternative 2. **One** permit would be issued to a business with an endorsement equal to the greatest number of charter vessel anglers onboard any vessel used by the business to general a permit as reported to ADF&G on any bottom fish logbook trip in 2004 or 2005, but not less than 4. **Each subsequent** permit issued to the same business would be issued with an endorsement equal to the next greatest number of charter vessel anglers onboard **any other vessel** used by the business to generate a permit, whose catch history has not already been used by the business to determine an angler endorsement, as reported to ADF&G on any trip in 2004 or 2005, until all permits are issued. The year selected for determining angler endorsements must be the year selected by the applicant for permit qualification.

### Option 3

Option 3 would leave the problem statement unchanged from Option 1 and revise Alternative 2 to maintain the focus of this action on businesses that would be issued more than one permit and address concerns about meeting the fair and equitable allocation requirement of the Halibut Act. Alternative 2 could be revised to remove the requirement that the applicant-selected year be used to determine the angler endorsement on all permits received by a business that would be issued multiple permits:

#### **Problem Statement**

The methodology used to assign angler endorsements to charter halibut permits held by charter halibut businesses initially issued more than one permit could result in excessive fishing capacity in the charter halibut fishery. The Council intends to more closely align angler endorsements with the actual greatest number of anglers for each vessel that gave rise to each charter halibut permit.

#### **Alternatives for businesses that would be issued multiple permits:**

Alternative 1. Status quo. **All** permits issued to a business receiving multiple permits would be issued with an angler endorsement equal to the greatest number of charter vessel anglers onboard any vessel used by the business to generate a permit as reported to ADF&G on any bottom fish logbook trip in 2004 or 2005, but not less than 4.

Alternative 2. **One** permit would be issued to a business with an endorsement equal to the greatest number of charter vessel anglers onboard any vessel used by the business to generate a permit as reported to ADF&G on any bottom fish logbook trip in 2004 or 2005, but not less than 4. **Each subsequent** permit issued to the same business would be issued with an endorsement equal to the next greatest number of charter vessel anglers onboard any other vessel used by the business to generate a permit, whose catch history has not already been used by the business to determine an angler endorsement, as reported to ADF&G on any trip in 2004 or 2005, until all permits are issued. ~~The year selected for determining angler endorsements must be the year selected by the applicant for permit qualification.~~

Options 1, 2 and 3, were developed by ranking a firm's endorsements generated by individual vessels and matching them to the firm's permits. The largest endorsements were matched to transferable permits, and lower endorsements to the firm's nontransferable permits. If a firm had more vessels than permits, the excess endorsements, the firm's lowest, were dropped, and not matched to a permit. The estimated numbers of endorsements under each option are compared to those under the status quo in the following tables.

Estimated endorsement issuance in Area 2C under the action options

	Status quo	Action Alternative		
		Option 1: Council language	Option 2: Apply to all businesses	Option 3: Vessel's best year
Numbers of businesses, permits, transferable permits, and nontransferable permits				
Businesses	229	229	229	229
Total permits	501	501	501	501
Tran permits	341	341	341	341
Ntrans permits	160	160	160	160
Numbers of endorsements, transferable endorsements, and nontransferable endorsements				
Total end.	3,001	2,533	2,499	2,618
Tran end.	2,103	1,772	1,743	1,830
Ntran end.	898	761	756	788
Change in numbers of endorsements from status quo				
Chg total end	n.a.	-468	-502	-383
Chg trans end	n.a.	-331	-360	-273
Chg ntrans end	n.a.	-137	-142	-110
Percent change in the numbers of endorsements from the status quo				
Pct chg total end	n.a.	-16%	-17%	-13%
Pct chg trans end	n.a.	-16%	-17%	-13%
Pct chg ntrans end	n.a.	-15%	-16%	-12%

Notes: NMFS, AKR. A-aa1-diagnostic.do, A-aa2-diagnostic.do, A-aa3-diagnostic.do.

Estimate endorsement issuance in Area 3A under the action options

	Status quo	Action Alternative		
		Option 1: Council language	Option 2: Apply to all businesses	Option 3: Vessel's best year
Numbers of businesses, permits, transferable permits, and nontransferable permits				
Businesses	291	291	291	291
Total permits	410	410	410	410
Tran permits	316	316	316	316
Ntrans permits	94	94	94	94
Numbers of endorsements, transferable endorsements, and nontransferable endorsements				
Total end.	3,524	3,053	2,914	3,122
Tran end.	2,813	2,501	2,379	2,537
Ntran end.	711	552	535	585
Change in numbers of endorsements from status quo				
Chg total end	n.a.	-471	-610	-402
Chg trans end	n.a.	-312	-434	-276
Chg ntrans end	n.a.	-159	-176	-126
Percent change in the numbers of endorsements from the status quo				
Pct chg total end	n.a.	-13%	-17%	-11%
Pct chg trans end	n.a.	-11%	-15%	-10%
Pct chg ntrans end	n.a.	-22%	-25%	-18%

Notes: NMFS, AKR. A-aa1-diagnostic.do, A-aa2-diagnostic.do, A-aa3-diagnostic.do.

While the three action alternative options reduced the number of total endorsements, a comparison of the remaining endorsements with industry activity in 2008 suggested that the action under any of the options presented in this analysis would not have more than a *de minimus* impact on current industry capacity, or on its ability to expand that capacity.

There are two potential timing scenarios for implementing the action alternative. In the first scenario, NMFS would initially issue charter halibut permits to all qualifying business owners after the regulatory amendment for this action, if approved, was implemented. This scenario would be feasible if the final rule for this regulatory amendment is effective by mid-December 2010. The second scenario would occur if the approved regulatory amendment was implemented any time after mid-December 2010. Under both scenarios, NMFS would notify all business owners affected by an angler endorsement change on the business's permit(s). Business owners could challenge the modified angler endorsement(s) and would also have an opportunity to appeal if their challenge is denied.

The action may impose some costs through impacts on permit flexibility and implementation expenses. Costs associated with impacts on harvest are expected to be minimal.

This program will have distributional impacts by reducing the allocation of endorsements to individuals. These costs would tend to be incurred by the original recipients of the permits. Persons who subsequently enter the fishery by buying permits would be compensated, on average, for any reduced earning potential because they would pay a lower price to buy the permit.

#### *IRFA*

The entities directly regulated by this action are guided charter businesses that would qualify for halibut charter moratorium permits in IPHC Areas 2C and 3A. There are an estimated 229 qualifying firms in Area 2C and 291 in Area 3A. As discussed in earlier analyses of this industry, while quantitative information on individual firm revenues is lacking, almost all of these firms are believed to be small entities under the terms of the RFA. The only exceptions may be some lodge-based operations in Southeast Alaska. (NMFS, 2009).

Options 1 and 3 would only directly regulate qualifying businesses receiving more than one permit. NMFS estimates that under the status quo, 89 firms will receive more than one permit in Area 2C and that 69 firms will receive more than one in Area 3A.

An IRFA should include “a description of the projected reporting, recordkeeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record...” The procedure for implementing this action is described in Section 1.6 of the RIR. NMFS will notify qualified applicants of the status of their permit endorsements, and of changes in that status. The implementation process does not impose additional reporting, recordkeeping, or other compliance requirements on directly regulated entities.

An IRFA should include “An identification, to the extent practicable, of all relevant Federal rules that may duplicate, overlap or conflict with the proposed rule...” This analysis did not reveal any Federal rules that duplicate, overlap, or conflict with the action.

One of the requirements for an IRFA is that “Each initial regulatory flexibility analysis shall also contain a description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities. Consistent with the stated objectives of applicable statutes, the analysis shall discuss significant alternatives...” It is impossible to address this requirement pending Council action to choose an alternative and provide a rationale for its decision.



FAXED TO: (907) 271-2817 on 28 Mar 10

Dave Goldstein  
PWS Eco-Charters  
28 March 2010

Re: 8-14 April 2010 NPFMC Meeting, Item C-2 Charter Halibut Permit Endorsements

Eric Olson, et al  
NPFMC  
605 W. 4<sup>th</sup> Ave., Suite 306  
Anchorage, AK 99501-2252

Dear Mr Olson:

I have been a Halibut Charter operator in Area 3A, fishing in Prince William Sound (PWS) since 2000 and operate out of Whittier, Alaska. I have attended many NPFMC meetings over the years and continue to be involved in issues that impact the charter industry.

You have received, or will shortly receive, letters regarding the unnecessarily complicated 45 page Public Review Draft document of March 2010 regarding **Amendment to Charter Halibut Permit Endorsements**. Simply put, I, too, find it unnecessarily complex and completely agree with others that it would have been much easier to just state that each vessel's Angler Endorsement is equal to the maximum number of paying clients listed in their logbook for the qualifying year selected. I also agree with others on the Skipper & Crew Fish Retention changes... which make understanding this much easier.

I also hope you and the Council will pursue a **Compensated Reallocation of COMFISH Halibut IFQ** between sectors. I firmly believe that one of the major problems facing the halibut fishery is the inability to easily transfer fish from one user group to another. Essentially, the "halibut pie" slices need to be adjustable...depending on the appetitel

Finally, I hope you and other Council members tackle the **Near Shore Depletion** of the halibut resource. Logical solutions center on segregating user groups, creating separate fishing areas and/or refining fishing depths for the different sectors.

Thank you very much for the opportunity to comment. I look forward to seeing progress on these and other issues during future Council discussions.

Respectfully,

David Goldstein  
PWS Eco-Charters

*Prince William Sound Charter Boat Association  
President Dan Eames*

FAXED TO: (907) 271-2817 on 28 Mar 10

Dan Eames  
Northern Magic Charters  
President PWSCBA  
28 March 2010

Re: 8-14 April 2010 NPFMC Meeting, Item C-2 Charter Halibut Permit Endorsements

Eric Olson, et al  
NPFMC  
605 W. 4<sup>th</sup> Ave., Suite 306  
Anchorage, AK 99501-2252

Dear Mr Olson:

I have been a Halibut Charter operator in Area 3A, fishing in Prince William Sound (PWS) since 1993, out of Whittier and, **Valdez Alaska**.

I have read over much of your 45-page Public Review Draft document of March 2010 regarding Amendment to Charter Halibut Permit Endorsements, and find it unnecessarily complicated in what it's trying to achieve. I think it would have been much simpler to just state that each vessel's Angler Endorsement is equal to the maximum number of paying clients listed in it's Logbook for the qualifying year selected. I.e., 6 AE's max for a 6-pak vessel, or the "T-Boat" COI AE max for the USCG inspected vessel, but not less than 4 AE's. The issue of Skipper & Crew Fish Retention could easily be addressed by stating that "When ever Skipper and Crew Fish Retention is Regulatorily permitted, their number of in-water fishing lines is in addition to the vessel's Angler Endorsement issue limit contained in the LEP."

I will again remind you that with what has transpired to date with NPFMC's lack of timely action on Halibut issues, and the resulting major investments made by both the COMFISH and Charter Industries, the only fair and viable allocation option left (even with a LEP), is a **Compensated Reallocation of COMFISH Halibut IFQ** to the Sport Fish and Subsistence sectors. It is only reasonable the responsible Government Agencies fund this reallocation since they have caused this problem due to their continued and untimely inaction and shortsightedness on Halibut Sport Fishing demand, and what it means to Alaska's economy. The Sport Fishery's large economic impact was last documented by ADF&G's 2007 Sport Fish Economic Impact study released on 14 Jan 2009.

One other major concern that must be immediately addressed by NPFMC is the **Halibut Near Shore Depletion** that has demonstrably occurred in Prince William Sound and elsewhere, since NPFMC's granting of COMFISH IFQ's in 1995. The expansion of the COMFISH season from two, 24-hour openings in mid-summer, to a March-November annual season has totally changed their fishing dynamic. The effect of that dynamic is the **displacement of Charter and private Sport Fisherman** from their historic and traditional under 50 fathom Near Shore fishing areas, and drastic reduction in catchable halibut. This effect is really obvious in PWS and Inside Passage fishing areas. ADF&G and IPHC stats readily demonstrate this effect. Thank you for your consideration and continued future actions.

Sincerely,

  
SIGNED //

Dan Eames

FAXED TO: (907) 271-2817 on 28 Mar 10

**SANITY CHARTERS of Valdez, Alaska**  
Capt Ken L Larson, [larsen\\_ken@hotmail.com](mailto:larsen_ken@hotmail.com)  
1074 Eliz Street, North Pole, AK 99705  
HM & FAX: (907) 488-2960 CELL: (907) 255-2798  
28 March 2010

Re: 8-14 April 2010 NPFMC Meeting, Item C-2 Charter Halibut Permit Endorsements

Eric Olson, et al  
NPFMC  
605 W. 4<sup>th</sup> Ave., Suite 306  
Anchorage, AK 99501-2252

Dear Mr Olson:

I have been a Halibut Charter and Lodge Operator in Area 3A, fishing in Prince William Sound (PWS) since 1984, out of **Valdez & Ellamar, Alaska**. I historically do overnight fishing charters with approx. 100 clients and 60-70 days on the water each year, for approx 250-300 client days on the water, and have been slowly growing my business since 1993. The severe economic downturn cut my business almost in half in 2009 and 2010 isn't shaping up much better.

I have read over much of your 45-page Public Review Draft document of March 2010 regarding Amendment to Charter Halibut Permit Endorsements, and find it unnecessarily complicated in what it's trying to achieve. I think it would have been much simpler to just state that each vessel's Angler Endorsement is equal to the maximum number of paying clients listed in it's Logbook for the qualifying year selected. I.e., 6 AE's max for a 6-pak vessel, or the "T-Boat" COI AE max for the USCG inspected vessel, but not less than 4 AE's. The issue of Skipper & Crew Fish Retention could easily be addressed by stating that "When ever Skipper and Crew Fish Retention is Regulatorily permitted, their number of in-water fishing lines is in addition to the vessel's Angler Endorsement issue limit contained in the LEP."

I will again remind you that with what has transpired to date with NPFMC's lack of timely action on Halibut issues, and the resulting major investments made by both the COMFISH and Charter Industries, the only fair and viable allocation option left (even with a LEP), is a **Compensated Reallocation of COMFISH Halibut IFQ** to the Sport Fish and Subsistence sectors. It is only reasonable the responsible Government Agencies fund this reallocation since they have caused this problem due to their continued and untimely inaction and shortsightedness on Halibut Sport Fishing demand, and what it means to Alaska's economy. The Sport Fishery's large economic impact was last documented by ADF&G's 2007 Sport Fish Economic Impact study released on 14 Jan 2009.

One other major concern that must be immediately addressed by NPFMC is the **Halibut Near Shore Depletion** that has demonstrably occurred in Prince William Sound and elsewhere, since NPFMC's granting of COMFISH IFQ's in 1995. The expansion of the COMFISH season from two, 24-hour openings in mid-summer, to a March-November annual season has totally changed their fishing dynamic. The effect of that dynamic is the **displacement of Charter and private Sport Fisherman** from their historic and traditional under 50 fathom Near Shore fishing areas, and drastic reduction in catchable halibut. This effect is really obvious in PWS and Inside Passage fishing areas. ADF&G and IPHC stats readily demonstrate this effect. Thank you for your consideration and continued future actions.

Sincerely,



// SIGNED //

Capt Ken L Larson



## *Aurora Charters*

*Capt. Stacey Mitchell*

*M/V Martie Kay*

*P.O. Box 2142*

*Valdez, AK 99686*

*(907) 835-2140*

*auroracharters@valdezak.net*

NPFMC  
605 W. 4<sup>th</sup> Ave., Suite 306  
Anchorage, AK 99501-2252

Re: April 8-14 meeting  
Item C-2 Charter Halibut Permit Endorsements

Dear Sirs:

I have read over much of your document of March 2010 regarding Charter Halibut Permit Endorsements. I saw nothing regarding endorsements for recipients of a single permit.

I believe that this problem would be very simply corrected if the Council just gave each permit (vessel) the number of persons (angler endorsements) which that vessel carried during the magic timeframe. For instance, ALL "6-pack" boats would be given an endorsement for 6 anglers and each individual "T-boat" or inspected vessel would be given an endorsement for the maximum number of persons fishing on any given day during the 2004 or 2005 season. This number should reflect not only paying passengers, but crew which fished as well. There was no restriction against crew fishing at that time and so crew members fishing should be counted in the whole.

The concept behind this program is to reduce the number of charter halibut fishermen. The way the program is set up would already greatly reduce the number of seats which were available during last season so you have accomplished your mission through reducing the number of permits available. Allowing those of us who have put in our time (at least 6 years) as charter business owners and operators to continue to operate to the maximum number of clients allowed by existing federal law is only fair. Issuing a permit for less than 6 anglers would render the permit virtually worthless as a transferrable item.

The problem addressed in your document unfortunately does not extend to single permit applicants. I do believe that any rule you come up with MUST extend to ALL applicants.

Sincerely,

A handwritten signature in black ink that reads "Stacey A. Mitchell". The signature is written in a cursive, flowing style.

Capt. Stacey A. Mitchell



March 30, 2010

Mr. Eric A. Olsen, Chairman  
North Pacific Fisheries Management Council  
605 W. 4th Avenue, Suite 306  
Anchorage, AK 99501  
Deliver via fax to (907) 271-2817

**Re: Item C2 in the April, 2010 NPFMC Meeting Agenda  
Public Review Draft – Regulatory Amendment to Revise Permit Endorsements for Charter Halibut  
Businesses that are Qualified to Receive Multiple Permits**

Dear Mr Olsen,

The Southeast Alaska Guides Organization, (SEAGO) represents charter operators, lodges, and our angler clients throughout the region. Sport fishing in Southeast contributes \$300M annually to the local economy, creates 3,000 jobs, and supports more than 400 small businesses.

We write to you over concern about changes proposed in the public review draft as follows:

**1. Problem Statement not Proven**

Nowhere in the document is the problem statement substantiated. This issue was first discussed during the February, 2010 NPFMC meeting where verbal comments asserted that excess angler endorsements of approximately 4% in Area 2C and 11% in Area 3A were discovered as the permit process was rolled out. A difference in interpretation emerged between NMFS staff and council members regarding issuance of permits to a business rather than to a specific vessel. At that time NMFS representatives argued that angler endorsements were calculated in accordance with the final regulation text that was published in the Federal Register in January, 2010. However no analysis has been published documenting the alleged 4% and 11% overages, and more importantly, whether it would have any negative impacts to the halibut fishery and local economies. Stakeholders and the public have no way of knowing if there is a problem or a need for a change to the existing regulation unless the analysis and other justification substantiating the 'problem' are offered.

Next, even if a small number of charter operators are granted a higher number of angler endorsements, this document provides no evidence that they will be used. We deem it highly unlikely that a charter operator would immediately change his business model by selling his current vessel and purchasing another, (for \$100k+), and then solicit additional customers just because he received a six person endorsement rather than a four person permit. Further, in the longer term, if charter operators do upgrade, total capacity is unlikely to increase due to an offset that is expected from fall-off in non-transferrable permits.

Finally, there is no discussion in this document about potential material impacts to the sustainability and conservation of halibut fishery resulting from the 'problem' in the angler



endorsement calculation as currently published. Without proving a strong basis for taking emergency action to amend the regulation, this whole issue is reduced to speculation and opinion. We strongly believe that all decisions must be based on sound science supported by hard data, and adhere to traditional business principles.

## **2. Endorsement Calculation Issues**

For the various options in Alternative-2 there is no mention of a minimum number of angler endorsements for the 2<sup>nd</sup> and subsequent permits so presumably we could end up with one or more permits with one, two, or three angler endorsements. At no time was consideration ever proffered about issuing permits with less than a four person angler endorsement.

By the report's estimate, the calculation methodology offered in Alternative-2 will cause a significant reduction in endorsements issued, i.e. 13-16%. Never in the whole multi-year regulation development process was there warning by the council that businesses that increased average passenger loads between 2004/05 and the year prior to implementation on vessels already engaged in the fishery would be cut back to 2004/05 levels. In fact the council explicitly stated that it was not your intention to restrict charter businesses from growth.

No mention is made of potential issues arising from multiple trips during a single day. In some instances the draft document refers to the "highest number of anglers on a trip" as a means to establish the angler endorsement. In other areas it alludes to the "highest number of anglers a single vessel carried in a day". A trip and a day are two very different things. Some vessels have "qualified" for an angler endorsement based on multiple trips within a day. For example, two trips of 5 anglers each in one day resulting in an angler endorsement of 10.

Finally, the new calculation methodology proposed in Alternative 2 results in a far greater reduction in angler endorsements than the 4-11% overage originally estimated in council testimony at the February meeting. Yet there is no justification/explanation for this increased restriction.

## **3. Implementation Timing Problem**

On page 7 of the document and then again starting on page 34 there are two different scenarios indicated that would result in charter operators not knowing how many endorsements we will have until at least mid-December, 2010 and perhaps later if a subsequent decision to change/modify individual permits is made. This will cause a major disruption to our annual marketing efforts. Typically our customers book well in advance of the season, often before they leave their current year's trip. By not knowing how many endorsements would be issued/rescinded in the following year, we will lose six or more month's marketing and likely lose business as a result. This would have a crippling impact on our businesses.

## **4. Economic Impact Trigger**



The changes proposed in the various Alternative-2 options affect the largest charter operators and therefore will create a significant negative economic impact. Further, if Alternative 2 is adopted, your analysis indicates a further reduction of 13-16% would occur on top of the 40%+ reduction in capacity announced earlier. A very simple financial analysis demonstrates that the annual impact will be in excess of \$100M requiring the council to conduct a more thorough Regulatory Impact Review. Finally, this change will result in significant negative impact not only to charter operators, but also to the communities where we live and work. We believe that such an action is contrary to the Halibut Act.

#### 5. Questionable Management Process

This is not the finest example of timely, open, and considerate disclosure of a potential regulatory change with a significant impact for the following reasons:

- The original regulation was published in April, 2009 with final publication on January 5, 2010. The council had ten months to identify and resolve any 'problems/issues' but after the program has already begun to be rolled out you are proposing to rush through significant changes in a single meeting. While we can support the council's overall intention to implement the moratorium program, we oppose the hurry-up approach on this substantial revision. It always takes longer than anticipated to put something like this through and our industry needs to know well ahead of February 1 what regulations we have to work with for the coming season.
- The public review draft document was published late on Friday afternoon of 3/26/10 on the NPFMC website with no public notification. Calls to NMFS, Juneau earlier on Friday requesting a copy of the document were not returned. This leaves less than two weeks for stakeholders to respond to the issue.
- Due to the publication timeline of this document, we have only two business days to respond in order to meet the deadline for written comments for the April NPFMC meeting.
- There has been no input from stakeholders or the public:
  - in the preparation of this document, nor
  - in the formulation of alternatives, nor
  - in consideration of resulting impacts to the halibut fishery, charter businesses, and the communities where we live and work.
- The council did not publish a revised agenda for the April NPFMC meeting with item C2 included until the middle of March resulting in less than a month to respond to this issue.

#### Recommendation

We strongly urge that the council take no action on this issue. The regulation has been in development literally for years, was published in the Federal Register in April, 2009 and January, 2010, and the permitting process is currently well underway. We concur with the council's desire to clarify the angler endorsement issue but we cannot support any action that will delay issuance of



the permits or hamper our ability to plan for our 2011 season. This issue does not have to be fixed immediately. The regulation as currently written will achieve the desired result of reducing the charter fleet by 40% and there appears to be no material fishery related reason to push through this emergency action. Any excess capacity created by the original determination would not be realized for several years, giving the council ample time to pursue amendments. This is not the time to make changes to an already complex program.

If however, you choose Alternative 2, we suggest option 3 with the following changes:

- set the minimum number of angler endorsements for 2<sup>nd</sup> and subsequent permits to be 4, and
- complete notification of expected endorsements to charter operators by June 1, 2010 so we can make advance bookings for the following year.

SEAGO would welcome the opportunity to work with all involved to arrive at decisions that are in the best economic interests of our communities, the sustainability and conservation of our halibut fishery, and the financial health of the guided sport sector.

Sincerely,

A handwritten signature in cursive script that reads "John Blair".

John A. Blair  
Executive Director  
Southeast Alaska Guides Organization  
[john@seagoalaska.org](mailto:john@seagoalaska.org)  
925-366-6638

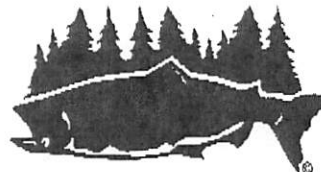
cc: James W. Balsiger, Administrator for Alaska Fisheries, NOAA, via email to: [jim.balsiger@noaa.gov](mailto:jim.balsiger@noaa.gov)



March 29, 2010

Eric Olson, Chairman  
NPFMC  
605 W. 4<sup>th</sup> Ave., Suite 306  
Anchorage, AK 99501-2252

By Fax: (907) 271-2817



**Sportsman's Cove Lodge**  
Alaska's Friendly World-Class Sportfishing

Reservations Office  
Box 8500  
Ketchikan, AK 99901

Inquiries 1 800-962-7889  
Business 907-247-7252  
Facsimile 907-247-7255  
info@alaskasbestlodge.com

Re: Item C-2 Charter Halibut Permit Endorsements

Dear Mr. Olson and members of the Council:

I have read over much of your 45-page Public Review Draft document of March 2010 regarding Amendment to Charter Halibut Permit Endorsements. I find Alternative 2 in its various forms, in each of the options is an acceptable method of resolving the issue.

However I do not see any reason why each vessel in an owner's fleet could not be issued its own discrete number of Angler Permits, thus nailing down exactly the number of anglers allowed on each vessel. I do not understand the need for a "one size fits all" approach to multiple boat operators."

**Further, in Area 2C I would further restrict the Angler Endorsements to a maximum of 6 Angler Endorsements per vessel. To do otherwise is to pervert the intent of the LEP as well as the original 1984 regulation that limited vessels in Southeast to six lines.**

I have major concerns regarding latent capacity. As a member of the Stakeholders Committee that helped draft this LEP I can tell you that latent capacity was very much on our minds throughout the process. When we (the Committee members) saw the way this was turning out, all of the members I spoke with expressed the same sentiment: "This is not at all what we intended!"

Thank you for your consideration.

*Larry "Mac" McQuarrie, Owner  
Sportsman's Cove Lodge*

[www.alaskasbestlodge.com](http://www.alaskasbestlodge.com)

*"We've been doing this awhile"*

March 29, 2010

NPFMC  
605 W. 4<sup>th</sup> Avenue  
West 4<sup>th</sup> Avenue, Ste 306  
Anchorage, AK 99501  
By Facsimile: 907-271-2817

National Marine Fisheries Service  
Alaska Regional Office  
Juneau, AK  
By Facsimile: (907) 586-7249

The Honorable Gary Locke  
Secretary  
Department of Commerce  
1401 Constitution Avenue NW  
Washington, DC 20230  
By Facsimile: 202-482-5168

President Barack Obama  
1600 Pennsylvania Ave., NW  
Washington, D.C. 20500  
By Facsimile: (202) 456-2461

The Honorable Hillary Clinton  
Secretary of State  
2201 C Street NW  
Washington, DC 20520

Mr. Rahm Emanuel  
Chief of Staff  
1600 Pennsylvania Ave., NW  
Washington, DC 20500  
By Facsimile: (202) 456-2461

Senator Mark Begich  
One Sealaska Plaza, Suite 308  
P.O. Box 21850  
Juneau, AK 99802  
By Facsimile: (907)586-7702

Senator Lisa Murkowski  
709 Hart Senate Office Building  
Washington, DC 20510  
Fax: (202) 224-5301

**Ref: Regulatory Amendment to Revise Permit Endorsements for Charter Halibut  
Businesses that are Qualified to Receive Multiple Permits  
Agenda C-2 April 2010  
PUBLIC COMMENT**

Comment from Charter Fishing business currently operating in area 3A, will not qualify under current rule. Comments are based on area 3A.

**PROBLEM 1**

Re: Regulatory Flexibility Act – President Clinton signed Executive Order 12866 (amended by EO 13258 and EO 13422) which states:

(12) Each agency shall draft its regulations and guidance documents to be simple and easy to understand, with the goal of minimizing the potential for uncertainty and litigation arising from such uncertainty.” Proposed rule published in April 2009 does not satisfy this requirement. It took 10 months, post comment period and publication of final rule, for NPFMC/NOAA to

comment that the angler endorsement (multiple permits) was seriously flawed. If the Federal entities do not understand their own rule, then how can the general public be expected to.

### **PROBLEM 2**

"Angler endorsement" per NMFS, is the "total clients" field as reported by charter operators in ADF&G logbooks. It has come to our attention that some six pack vessels in area 3A (and possibly 2C) will receive endorsements for more than six. This is illegal. An un-inspected passenger vessel of under 100 gross tons cannot carry more than 6 passengers when chartering (per 46 USC Section 2101). Crew are not clients and are providing the service, not using the service of the charter vessel guide (themselves). Any permits issued for angler endorsements which exceed the USCG licensing/safety regulations are in direct violation of federal regulations. Example: a business qualifying with a "six pack" vessel yet receiving a permit with an angler endorsement of 9 will be receiving a permit with a higher market value than they should legally be entitled to. This is not only a violation but it is not fair and equitable, especially to those charter operators who are being put out of business. Log books in 2004 and 2005 were CLEARLY marked to differentiate between clients and crew. Clients on a charter should never have exceeded the vessels' legal passenger capacity. Any charter boat that carried more passengers than it was legally allowed to do so was in violation of USCG regulation/Federal law. If you not only allow that but also award those operators for violating USCG rules, and, at the expense of other legal operators, then you are surely only allowing for potential lawsuits. Data is readily available to NMFS, NPFMC and ADF&G in order for them to verify the USCG passenger capacity of un-inspected or inspected vessels that operated in those years. Note: Moratorium Discussion Paper stated "Since the data do not identify whether a vessel was a 6-pack or some other type of vessel, it is not possible to determine the maximum number of clients a vessel should be allowed to carry" - this statement is not true for the finalization of angler endorsements as this data IS readily available and easily obtainable.

### **PROBLEM 3**

Data used to award permits and angler endorsements is inconsistent and flawed. Regulatory amendment shows "active vessels" in area 3A for years 2004, 2005, 2007 and 2008. This data does not match the data provided by ADF&G as of June 2009 and March 2010 (data verified twice) nor does it match data from 2008 review draft - there are at least three different numbers for the same fields. Trip data for this area also fluctuates. This data should be absolute - it is not based on estimates such as harvest so should be the same on all reports, especially as this is established, final data.

\*\*\*"Evaluation of the 2006 ADF&G Charter Logbook" document states "Much higher rates of reporting errors were documented in Area 3A logbook data for the years 1998-2004 (internal ADF&G memo)" - permits and angler endorsements are, in many cases, based on 2004 participation and data that ADF&G have admitted is seriously flawed. Livelihoods are being wiped out based on incorrect information. 2004 and 2005 information should be thrown out as it is proven to be flawed and flawed data should not be used to decide the futures of law abiding and hard working Americans. The Council can choose later dates which provide more accurate information, per notice of Control Date - [Docket No. 060127018-6018-01; I.D. 012506E] RIN 0648-AR96 which states, the council has the right to "choose a different control date, or it may choose a management regime that does not make use of such a date. Finally, the Council may choose to take no further action to control entry or access to the charter halibut fishery."

Furthermore, the \*\*\*"Evaluation of the 2006 ADF&G Charter Logbook" document states the department was concerned about the quality of self-reported information while NPFMC was considering IFQ's for the charter fleet. The IFQ motion was not rescinded until a motion was

adopted in December 2005 which means data prior to that date would likely be compromised as per ADF&G. The threat of limited entry could also compromise data which is why the alternative plan in item 4 below would both remove questionable, compromised and flawed data and is more fair and equitable than the current plan adopted by NMFS.

**\*\* A report to the NPFMC, October 2009 - prepared by ADF&G**

#### **PROBLEM 4**

Regulatory Flexibility Act states that federal agencies must "seek less burdensome alternatives", and the IRFA states the analysis shall "minimize any significant economic impact of the proposed rule on small entities". The Council could have accomplished their intended purposes with the following, easy and much less burdensome alternative than the current, flawed rule. Currently, some entities will receive permits because they operated a charter in 2004 or 2005 and 2008 but then retired, sold their business or downsized their operation – thereby voluntarily giving up their dependence on the charter fishery. They will receive valuable, transferable permits even though they had no active vessels after those dates to apply the permits to. These businesses should not receive permits as they made a CHOICE to downsize, retire or sell the business. They were not forced into the decision they made. They have already reaped the monetary rewards by disposing of their assets and should therefore not be entitled to a "handout" at the expense of others – "American people deserve a regulatory system that works for them, not against them".

In 2009, most recent year that data is available, area 3A had 564 active vessels (per ADF&G – 03/25/10). You are currently proposing to issue 410 permits in area 3A. In addition, CQE permits could add another 98 permits to this total - whether they are issued or not, is irrelevant as the option to issue 98 permits is available. Add to this the excessive angler endorsements issued above the legal passenger capacity of boats currently qualifying (rough estimate of 285 endorsements = 47 permits with an angler endorsement of 6 per permit) and you would likely have enough permits to provide all active participants as of 12/31/09 with a permit allowing them to continue with their business. This will ensure that the long time charters stay in business, provided they did not sell out or retire which is fair. It will also ensure that newcomers to the business are allowed to continue with their investment (some "newcomers" could have been in business for 4 years and do not qualify under your proposed plan). All permits should be issued as "non-transferable" so that a business selling or downsizing would surrender the permit to the State for them to issue to the new owner, for a small nominal fee to cover administration costs to effect the transfer. If the business is not being sold but filing bankruptcy or leaving the industry entirely, then the permits would go back to the State to be issued to another wanting to start a new business. The other alternative would be to throw out the years currently in use which are full of flawed data and replace them with years where the quality of data collected improved and is more accurate. This would be after 2006 and likely not until 2007. Executive order 12866 states "Each agency shall base its decisions on the best reasonably obtainable scientific, technical, economic, and other information concerning the need for, and consequences of, the intended regulation or guidance document" - this is currently not the case as the ADF&G report told the Council that more accurate data was available.

#### **FINAL COMMENT**

There is apparently no legal requirement to implement the same rules in area 3A as those imposed in area 2C. The IPHC have published guided estimated halibut harvest for area 3A in 2009 and it is under the GHL by just under 30% (1.086 million pounds) - per 2009 Halibut Sport Fishery Review - Greg H. Williams IPHC Report of Assessment and Research Activities 2009. Overall, since 2003 we have been under the GHL by 5% and this number is projected to be lower

still over the next few years due to the recession and the state of the economy. Furthermore, your own responses to public comments contradict one another and prove there is no legal requirement whatsoever, to treat 3A the same as 2C when it comes to fishery management:-

Public Comment #95 - Halibut Charter Limited Entry Final Rule

Why is Area 3A being treated the same as Area 2C? The proposed rule states that "the Council recommended no change in management of the charter vessel fishery in Area 3A because that fishery appeared stable." Also, a comparison of the number of active vessels and the level of harvest shows cases where the number of vessels appears to be inversely related to the level of harvest. The proposed rule states that "the intended effect is to curtail growth of fishing capacity in the guided sport fishery for halibut" and that "open access in the charter vessel fleet has resulted in virtual unlimited increases in charter harvests." The vessel and harvest data cited refute this.

*Response:* The first quote in the comment is from the preamble to the proposed rule published April 21, 2009 (74 FR 18178) in the third column on page 18180 in a discussion of Council actions in 2007 with respect to the GHL. In fact, the quoted sentence has additional text the reads, "\*\*\* appeared stable at about its GHL." In developing and implementing this rule, the Council and Secretary determined that applying a limited access system in Area 2C only would quickly result in excessive charter capacity in the adjacent Area 3A. Hence, applying this limited access system to both areas at the same time avoids a disjointed stepwise approach which would be more disruptive to the charter industry than this rule.

HOWEVER:-

Public Comment # 29 - Restrictions for area 2C - Final Rule published 05/28/08

The one-fish daily bag limit should be imposed on the whole state, not just one area.

*Response:* The harvest of halibut by the charter vessel fishery in Area 2C has exceeded the annual GHL each year since 2004 by significant amounts. Conversely, the charter vessel harvest of halibut in Area 3A has not exceeded the annual GHL and restrictions on this fishery are unwarranted at this time. NMFS recognizes that different restrictions for the charter vessel sector in different IPHC regulatory areas off Alaska may influence where potential clients choose to fish. However, applying different regulations and bag limits to different areas is a common practice in fishery management. Although a one-fish daily bag limit in Area 2C may change the demand for charter trips if anglers are unwilling to substitute other species, many clients associated with cruise vessels likely will continue to fish in Area 2C because their fishing time is limited to half-day trips, which may not provide enough time to harvest two halibut.

*\*\* Note - Area 3A under the GHL in 2008 and 2009 by 7.45% and 29.75% respectively.*

Our livelihoods are at stake yet it appears NMFS and NPFMC are picking and choosing both their data and their reasons in order to force through a rule which is in violation of Executive Order 12866 both in the quality of data chosen, in seeking to ease the burden on small businesses and in crafting a rule which is simple and easy to understand.

Respectfully submitted,

Richard and Jenni Zielinski  
Homer, Alaska (Area 3A)



# Winter King Charters



All Season Salmon and Halibut Charters  
Smooth Comfortable Ride • 32' Heated Catamaran



March 29, 2010

Eric Olson, Chairman  
North Pacific Fisheries Management Council  
605 W 4<sup>th</sup> Avenue, Suite 306  
Anchorage, AK 99501-2252

Dear Chairman Olson,

I am writing today to comment on Item C2 of the April North Council agenda, an amendment to revise permit endorsements for charter halibut businesses that are qualified to receive multiple permits. Reviewing the analysis, the status quo alternative would have awarded many more angler endorsements than earned to a number of businesses operating multiple boats, so it is clear that something has to be done. Reviewing the options however, I suggest that the methods used to determine angler endorsements as well as permit transferability are confusing. For instance, the Council should consider the methods disclosed on page 6 of the analysis:

“Options 1, 2 and 3, were developed by ranking a firm’s endorsements generated by individual vessels and matching them to the firm’s permits. The largest endorsements were matched to transferable permits, and lower endorsements to the firm’s nontransferable permits. If a firm had more vessels than permits, the excess endorsements, the firm’s lowest, were dropped, and not matched to a permit.”

As a member of the Halibut Charter Stakeholder committee, I am certain my intent was that individual vessel logbook histories were to be used to determine eligibility, transferability and endorsements for a single permit, with multiple vessel histories allowed if a vessel had been replaced. In the cited passage, I am surprised to see permit transferability matched to the largest number of endorsements of possibly another vessel, rather than number of trips made by the qualifying vessel.

In addition, in the same correspondence to NMFS identifying the problem currently being addressed by the Council, a second issue was identified where many single boat businesses received green sheets indicating angler endorsements in excess of their vessel’s legal client carrying capacity. This problem is likely caused by data that was either incorrectly entered on logbook sheets, or incorrectly transcribed into or read from the electronic logbook database.

Mr. Chairman, the issuance of a single unearned angler endorsement corresponds to possibly thousands of pounds of additional removals from an already small allocation. As well, a single unearned endorsement represents thousands of dollars on the permit market. Both problems are substantial and both require the Council’s attention prior to implementation of the program.

Rex Murphy owner/operator

P.O. Box 3309 • Homer, AK 99603 • 907-235-9113 • [www.winterking.com](http://www.winterking.com)

I suggest the following alternative, applicable to all businesses, to fix both endorsement problems while more closely aligning NMFS issuance of permits with Council intent:

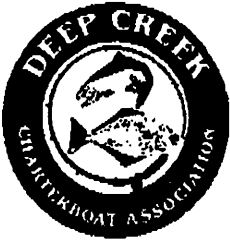
1. Business owners must identify to NMFS which vessel logbook history (or histories) to be used to generate qualifying history for a particular permit.
2. Logbook history from a particular vessel can only be used to qualify for a single permit.
3. Permit transferability and angler endorsements are determined by the qualifying history of that permit.
4. Angler endorsements for a permit cannot exceed the legal client capacity of the largest vessel used to qualify for the permit.

In closing, I suggest that the Council delay final action on the first angler endorsement problem until the second problem is analyzed. In addition, I suggest that the Council verify that NMFS awarding of permit transferability and angler endorsements matches Council intent.

Sincerely,



Rex Murphy



# Deep Creek Charterboat Association

P.O. Box 423—Ninilchik, AK 99639

**President**  
Rod Van Saun  
567-3547

[vanbatters@hotmail.com](mailto:vanbatters@hotmail.com)

**Vice President**  
Doug Blossum  
262-3171

[blossum@acsalaska.net](mailto:blossum@acsalaska.net)

**Secretary/Treasurer**  
Jan Evers  
567-3631

[janevers@acsalaska.net](mailto:janevers@acsalaska.net)

**Member-at-Large**  
Mel Erickson  
262-2980

[ganeshlegale@a.net](mailto:ganeshlegale@a.net)

**Member-at-Large**  
Tom Mahoney  
567-3663

[tom@jpyecompanycharter.com](mailto:tom@jpyecompanycharter.com)

North Pacific Fisheries Management Council  
907-271-2817

Re: Halibut Moratorium Angler Endorsement Overages

Council Members,

Many of our members are concerned that there is an issue of Excessive Angler Endorsement within the soon to be issued Moratorium Permits.

The Draft on issues relating to Businesses being issued more than one permit does not address this issue.

There are reportedly numerous businesses who qualified for their permits using 6 pack boats and USCG 6 pack licenses yet are being slated for angler endorsements of greater than 6. Permits issued of size greater than the business' legal capacity to fish are a potential unwarranted windfall for recipients and unnecessarily add the latent capacity of the fleet.

The feeling of our membership is a business should only qualify for the greatest number of anglers they fished up to the maximum legal capacity the combination of their boat and USCG License would allow. Issuing more than that goes against the grain of what the Moratorium is trying to accomplish and rewards individuals for breaking federal law by carrying more passengers than legal. Businesses also should not benefit from a data error.

As some of the reported overages in Angler Endorsement are double or even greater than the boats should have qualified for it appears there have been mistakes made within the data and not by the Charter filling out the logbooks.

If this were a taxi permit would we give a permit to drive a bus to an individual who qualified driving around in a 4 passenger vehicle?

A good suggestion would be that any business qualifying for an angler endorsement greater than 6 anglers per vessel would have to document their boat and captain's licenses during the qualifying years had legal carrying capacity to justify their claimed/stated endorsement.

The Deep Creek Charterboat Association respectfully asks that this issue be addressed in the interest of fairness to all qualifiers/non-qualifiers and in the interest long term stability in the fleet. It is very important to the integrity of the Moratorium Program. No Permit Recipient should receive more than they legally qualify for.

Sincerely Rod Van Saun  
President Deep Creek Charterboat Association



Alaska Charter Association  
PO Box 478  
Homer, AK 99603

March 30, 2010

Eric Olson, Chairman  
North Pacific Fisheries Management Council  
605 W 4<sup>th</sup> Avenue, Suite 306  
Anchorage, AK 99501-2252

Dear Chairman Olson,

The Alaska Charter Association (ACA) is a statewide organization representing over 150 charter and associated businesses. Its mission is to preserve and protect those fishing rights and resources necessary for the Alaska charter fleet to best serve the recreational fishery.

ACA is writing to inform the Council of three issues with the charter halibut limited entry program. First, a second issue has been identified involving angler endorsements on Charter Halibut Permits (CHPs) under the program. Next, under certain circumstances, stacking of permits could result in "stranded" angler endorsements. Finally, the definitions in part 300.61 can result in private recreational halibut trips being considered charter vessel fishing trips.

**Issue One: Excess Angler Endorsements**

When NMFS sent out CHP application packets, it supplied a "green sheet" indicating the number of endorsements it estimated the permit(s) would receive. For unclear reasons, many green sheets for single vessel operations indicate endorsements exceeding the capacity of the qualifying vessels. ACA has been informed of multiple instances of this problem all across the state, with some single vessel UPV operations receiving green sheets indicating up to 14 angler endorsements. This issue may also exist with some permits for multiple boat operations, but may be masked by the first angler endorsement problem identified at the February Council meeting.

According to the USCG, as long as there was one paying angler on the trip, the maximum number of passengers is limited to 6 for UPVs or the COI for inspected vessels. This means that under no circumstances should the number of clients listed on a logbook sheet ever exceed the paying passenger capacity of the vessel.

The cause of the flawed data is unclear. It could be indicative of logbook data that was incorrectly transcribed into or incorrectly read from ADF&G's database. It could be mistakes in data logging by the charter operator. It could be a combination of reasons. Regardless of cause, the bottom line is the data being used to determine endorsement eligibility contains multiple invalid entries.

ACA hopes that the Council agrees that the fair allocation of Charter Halibut Permits and associated angler endorsements depends heavily on the quality of the data used to make that allocation. ACA is enclosing a problem statement and alternatives for the Council's consideration.

**Issue Two: Stacking resulting in stranded angler endorsements.**

The final rule for charter halibut limited entry allows stacking and un-stacking of CHPs, providing some flexibility in how a business chooses to serve charter vessel anglers. However, stacking becomes problematic when an operator is forced to stack permits with total angler endorsements in excess of vessel capacity. When this happens, the extra endorsements are unusable or "stranded". For instance, in Area 2C, the minimum number of angler endorsements on a CHP permit is four, but most vessels are capable of carrying 6 anglers. In order to carry 6 passengers, a permit holder with endorsements for 4 or 5 anglers would have to stack a second permit (with 4 endorsements minimum), stranding 2-3 angler endorsements. Of course, the permit holder could attempt to buy a permit with 6 endorsements and sell the original permit, but availability of permits is unknown and who would want to buy a 4 pack permit if there was no easy way to increase capacity to 6?

In the final rule, comment number 93 identified this issue and NMFS response included the following passage:

"This rule does not provide for splitting permits as this would potentially multiply the number of permits initially allocated contrary to the intent of this rule."<sup>1</sup>

ACA notes that with the passage of the CHP program, the total number of angler endorsements was effectively capped at the same time the total number of permits was capped.<sup>2</sup> Splitting or stacking permits does not change the total number of angler endorsements; therefore the intent of the rule is in no way compromised by the addition of a provision allowing splitting of permits into sub-permits.

ACA hopes the Council agrees that the stranding of angler endorsements is an undesirable consequence of the stacking provisions built in to the CHP program. ACA proposes the addition of a provision allowing the splitting of a permit into sub-permits in angler endorsement increments, and has included a problem statement and alternatives for the Council's consideration.

**Issue Three: 300.61 Definitions**

ACA notes two issues with the definitions contained in 50 CFR § 300.61, as modified for the GHF and limited access program for the guided sport halibut fishery. First, under common circumstances, the definitions of Charter vessel angler, Charter vessel guide, and Sport fishing

<sup>1</sup> Federal Register /Vol. 75, No. 2 /Tuesday, January 5, 2010 p. 583

<sup>2</sup> Not including extra permits and endorsements resulting from the CQE program

guide services could be interpreted to include private recreational halibut anglers sharing trip expenses. Second, even with no paying passengers on board, virtually any halibut fishing trip conducted by a charter vessel guide is considered a Charter vessel fishing trip.

Charter Vessel Angler is defined in 50 CFR § 300.61 as:

*"Charter vessel angler, for purposes of §§ 300.65(d), 300.66, and 300.67, means a person, paying or non-paying, using the services of a charter vessel guide."*

The definition of Charter vessel angler depends on the definition of Charter vessel guide:

*Charter vessel guide, for purposes of §§ 300.65(d), 300.66 and 300.67, means a person who holds an annual sport guide license issued by the Alaska Department of Fish and Game, or a person who provides sport fishing guide services.*

The definition of Charter vessel guide in turn depends on the definition of Sport fishing guide services:

*Sport fishing guide services, for purposes of §§ 300.65(d) and 300.67, means assistance, for compensation, to a person who is sport fishing, to take or attempt to take fish by being onboard a vessel with such person during any part of a charter vessel fishing trip. Sport fishing guide services do not include services provided by a crew member.*

The definition of Sport fishing guide services depends on the definition of Charter vessel fishing trip:

*Charter vessel fishing trip, for purposes of §§ 300.65(d), 300.66, and 300.67, means the time period between the first deployment of fishing gear into the water from a vessel after any charter vessel angler is onboard and the offloading of one or more charter vessel anglers or any halibut from that vessel.*

The first problem arises when a group of anglers go on a halibut fishing trip together. In most cases, one of the anglers will own and operate the boat, and the other anglers are friends who are willing to share customary expenses such as fuel and bait. In its response to comment 92 in the final rule, NMFS states the following:

*"NMFS agrees that a distinction exists between a charter vessel angler and a non-guided angler. The former uses the services of a charter vessel guide (pursuant to the definitions at 50 CFR 300.61) and the latter does not. Several friends in a boat sport fishing for halibut and sharing the costs of bait, fuel, or other supplies are not charter vessel anglers unless one of them is providing sport fishing guide services."<sup>3</sup> (Emphasis added)*

---

<sup>3</sup> Federal Register /Vol. 75, No. 2 /Tuesday, January 5, 2010 /Rules and Regulations p 583

The problem is the vessel operator, who is ultimately responsible for the safety of his passengers, will invariably assist someone to take or attempt to halibut, by gaffing, harpooning, possibly shooting and boating and subduing another angler's halibut. Such an operator is therefore providing sport fishing guide services according to the definitions, and in the eyes of NOAA OLE, this operator is conducting a charter vessel fishing trip, and would be subject to enforcement action if not properly licensed.

The second problem arises when a Charter vessel guide conducts a halibut fishing trip with no paying passengers on board. NOAA OLE considers such a trip to be a Charter vessel fishing trip. This effectively precludes a charter vessel guide from retaining any halibut at all unless he takes the boat out by himself.

Both issues have allocative as well as enforcement implications, since they include what used to be a private sport fishing trip into the guided sport category.

Fortunately a three part solution may clear up both issues:

1. Exclude the equal sharing of trip expenses such as fuel, bait and food from the definition of compensation or payment in the context of the definitions contained in 300.61.
2. If there are no paying anglers on board, the trip is not a charter vessel fishing trip.
3. If there are one or more paying anglers on board, the trip is a charter vessel fishing trip

ACA is enclosing a problem statement and alternatives for the definitions issues.

In closing, ACA realizes that issues will arise with a program as complex as the charter halibut limited entry program. ACA suggests that the sooner the issues are addressed, the more robust the resulting program will be. ACA feels that all three of the issues identified in this document warrant the Council's immediate attention.

Sincerely,



Greg Sutter, President

Encl: Problem Statements and Alternatives for three LEP issues,  
Email correspondence with NOAA OLE on Definitions issues

**Issue One: Excess Angler Endorsements****Problem Statement:**

The use of invalid logbook data to assign angler endorsements to charter halibut permits could result in excessive fishing capacity in the charter halibut fishery. Numerous single vessel businesses have received green sheets from NMFS indicating expected endorsements in excess of the legal capacity of the qualifying vessel. This problem may also exist in multiple vessel fleets, but may be masked by the angler endorsement problem identified at the February Council meeting. The Council intends to more closely align angler endorsements with the actual greatest legal number of paying anglers in each vessel's history used to issue a charter halibut permit.

**Alternatives for all businesses:**

- Alternative 1. Status quo. Some Charter halibut permits issued to a business would be issued with an angler endorsement greater than the legal paying passenger capacity of the vessel whose history was used to qualify for the permit.*
- Alternative 2. The owner of each vessel that appears to qualify for a CHP must attest to the legal paying passenger capacity of the vessel(s) whose history is the basis for that permit's qualification. If permit qualifying history reflects carriage of clients in excess of the legal paying passenger capacity of the vessel, that history is corrected to the legal paying passenger capacity of the vessel and is counted toward qualifying history and angler endorsements.*
- Alternative 3. Rather than pre-calculate CHP eligibility and endorsements, require operators to specify on their application how many permits and how many endorsements they qualify for. Require operators to provide the ADF&G logbook number(s) and page numbers that substantiate their claims. Validate this logbook data against the original paper copy submitted to ADF&G, as well as against the legal paying client capacity of the qualifying vessel, bypassing the electronic logbook database entirely.*

**Issue Two: Stacking resulting in stranded angler endorsements.****Problem Statement:**

Charter halibut permits (CHP) may be issued with angler endorsements that do not fully utilize the capacity of the boat they are used on. Stacking a second permit allows full utilization of boat capacity, but may result in stranded angler endorsements, where total angler endorsements exceed the capacity of the boat, because of the absence (per regulation) of permits with fewer than 4 angler endorsements. This is a likely scenario in the cases of UPVs that received angler endorsements for fewer than 6, and a possible scenario with larger boats also.

**Alternatives:**

- Alternative 1. Status quo. To remedy the situation above, a boat owner must either purchase a CHP with the capacity he/she is seeking, or stack a permit, possibly resulting in stranded angler endorsements.*
- Alternative 2. Allow a CHP to be split into CHP sub-permits, with the sum of angler endorsements for all sub-permits equaling the angler endorsement on the original permit. Each sub-permit inherits the transferability/non-transferability of its parent and may be stacked.*

**Issue Three: Definitions****Problem Statement:**

The definitions included in 50 CFR § 300.61 include the sharing of normal trip expenses such as fuel, bait and food as compensation, resulting in the inclusion of private recreational fishing trips in the definition of Sport Fishing guide services, charter vessel fishing trip, charter vessel guide and charter vessel angler. In addition, the definitions in 300.61 define a non-compensated halibut fishing trip conducted by a Charter vessel guide to be a Charter vessel fishing trip. Both issues have enforcement as well as allocative implications.

**Alternatives:**

*Alternative 1. Status quo. If customary trip expenses (e.g. fuel, bait, food) are shared, and the operator of the vessel assists a person who is sport fishing, to take or attempt to take fish by being onboard a vessel, the operator is a Charter vessel guide, is providing Sport fishing guide services, the trip is a Charter vessel fishing trip and the anglers are Charter vessel anglers. Any halibut fishing trip conducted by a Charter vessel guide is considered to be a Charter vessel fishing trip.*

*Alternative 2.*

- A. Customary trip expenses (fuel, bait, food) are excluded from consideration as compensation or payment for the purposes of 300.61.*
- B. If there are no paying anglers on board, the trip is not a charter vessel fishing trip.*
- C. If there are one or more paying anglers on board, the trip is a charter vessel fishing trip.*

**Rex Murphy**

---

**From:** Ronald.Antaya [Ronald.Antaya@noaa.gov]  
**Sent:** Friday, March 26, 2010 9:32 AM  
**To:** Rex Murphy  
**Cc:** Rachel Baker  
**Subject:** Re: 50 CFR 300.61 Definitions Questions Recap

Rex -

The regulatory language that was published in the Federal Register is pasted below. My answers are in blue text.

On 3/25/2010 5:17 PM, Rex Murphy wrote:

Hi Ron,

To consolidate our discussions to date, I would like to use the following scenario to ask 4 questions.

Person A accepts compensation from Persons B through D for equal shares (split evenly between person A and Persons B through D) of fuel, bait and food expenses incurred on a halibut fishing trip.

Person A assists Persons B through D in taking or attempting to take fish by being onboard a vessel with such persons during a halibut fishing trip.

In NOAA OLE and NOAA GC's eyes, and according to the definitions found in 50 CFR § 300.61:

Is Person A providing Sport fishing guide services? Yes. See definition of Sport fishing guide services.

Is Person A a Charter vessel guide? Yes. See definition of Charter vessel guide.

Is the trip a Charter vessel fishing trip? If fishing gear is deployed, yes. See definition of Charter vessel fishing trip.

Are the persons B through D Charter vessel anglers? Yes. See definition of Charter vessel angler.

Thanks in advance for your help.

Rex



**Rex Murphy**

---

**From:** Ronald.Antaya [Ronald.Antaya@noaa.gov]  
**Sent:** Tuesday, March 30, 2010 8:18 AM  
**To:** Rex Murphy  
**Cc:** Rachel Baker  
**Subject:** Re: Question on Charter vessel angler definition

If the person providing assistance is not receiving compensation, your scenario would not be considered a charter vessel fishing trip.

If the person providing assistance is a Charter vessel guide, your scenario would be considered a charter vessel fishing trip.

On 3/29/2010 9:14 AM, Rex Murphy wrote:  
Thanks Ron,

*Scenario 3: A person assists a person who is sport fishing, to take or attempt to take fish by being onboard a vessel, but not for compensation.*

*Is that person providing Sport fishing guide services, and therefore a Charter vessel guide on a Charter vessel fishing trip serving Charter vessel anglers?*

Rex

---

**From:** Ronald.Antaya [mailto:Ronald.Antaya@noaa.gov]  
**Sent:** Monday, March 29, 2010 8:51 AM  
**To:** Rex Murphy  
**Cc:** Rachel Baker  
**Subject:** Re: Question on Charter vessel angler definition

If sport fishing gear is deployed - yes, that would be considered a charter vessel fishing trip.

*Charter vessel angler , for purposes of §§300.65(d), 300.66, and 300.67, means a person, paying or non-paying, using the services of a charter vessel guide.*

*Charter vessel fishing trip , for purposes of §§300.65(d), 300.66, and 300.67, means the time period between the first deployment of fishing gear into the water from a vessel after any charter vessel angler is onboard and the offloading of one or more charter vessel anglers or any halibut from that vessel.*

*Charter vessel guide , for purposes of §§300.65(d), 300.66 and 300.67, means a person who holds an annual sport guide license issued by the Alaska Department of Fish and Game, or a person who provides sport fishing guide services.*

*Sport fishing guide services, for purposes of §§300.65(d) and 300.67, means assistance, for compensation, to a person who is sport fishing, to take or attempt to take fish by being onboard a vessel with such person during any part of a charter vessel fishing trip. Sport fishing guide services do not include services provided by a crew member.*

On 3/26/2010 3:48 PM, Rex Murphy wrote:  
Hi Ron,

Here's another 300.61 definitions question:

Reviewing the definition of "Charter Vessel Angler" you will note that it includes non-paying persons. (The definition was added in the one fish rule last May)

Fromm 300.61:

*Charter vessel angler*, for purposes of §§ 300.65(d), 300.66, and 300.67, means a person, paying or non-paying, using the services of a charter vessel guide.

If a charter vessel guide takes a group of all non-paying anglers out on a halibut trip, is this considered a *Charter vessel fishing trip*?

Rex

Eric Olson, Chairman  
North Pacific Fisheries Management Council  
605 W 4<sup>th</sup> Avenue, Suite 306  
Anchorage, AK 99501-2252

Dear Chairman Olson,

I am writing today to comment on Item C2 of the April North Council agenda, an amendment to revise permit endorsements for charter halibut businesses that are qualified to receive multiple permits. Reviewing the analysis, the status quo alternative would have awarded many more angler endorsements than earned to a number of businesses operating multiple boats, so it is clear that something has to be done. Reviewing the options however, I suggest that the methods used to determine angler endorsements as well as permit transferability are confusing. For instance, the Council should consider the methods disclosed on page 6 of the analysis:

“Options 1, 2 and 3, were developed by ranking a firm’s endorsements generated by individual vessels and matching them to the firm’s permits. The largest endorsements were matched to transferable permits, and lower endorsements to the firm’s nontransferable permits. If a firm had more vessels than permits, the excess endorsements, the firm’s lowest, were dropped, and not matched to a permit.”

Having attended nearly all Halibut Charter Stakeholder meetings, I am certain my intent was that individual vessel logbook histories were to be used to determine eligibility, transferability and endorsements for a single permit, with multiple vessel histories allowed if a vessel had been replaced. In the cited passage, I am surprised to see permit transferability matched to largest number of endorsements of possibly another vessel, rather than number of trips made by the qualifying vessel.

In addition, in the same correspondence to NMFS that identifying the problem currently being addressed by the Council, a second issue was identified where many single boat businesses received green sheets indicating angler endorsements in excess of their vessel’s legal client carrying capacity. This problem is likely caused by data that was incorrectly entered on logbook sheets, or incorrectly transcribed into or read from the electronic logbook database.

Mr. Chairman, the issuance of a single unearned angler endorsement corresponds to possibly thousands of pounds of additional removals from an already small allocation. As well, a single unearned endorsement represents thousands of dollars on the permit market. Both problems are substantial and both require the Council’s attention prior to implementation of the program.

I suggest the following alternative, applicable to all businesses, to fix both endorsement problems while more closely aligning NMFS issuance of permits with Council intent:

1. Business owners must identify to NMFS which vessel logbook history (or histories) to be used to generate qualifying history for a particular permit.
2. Logbook history from a particular vessel can only be used to qualify for a single permit.

3. Permit transferability and angler endorsements are determined by the qualifying history of that permit.
4. Angler endorsements for a permit cannot exceed the legal client capacity of the largest vessel used to qualify for the permit.

In closing, I suggest that the Council delay final action on the first angler endorsement problem until the second problem is analyzed. In addition, I suggest that the Council verify that NMFS awarding of permit transferability and angler endorsements matches Council intent.

Sincerely,



Bryan Bondioli

Po Box 46

Honolulu AK



PO Box 22073  
Juneau, AK 99802-2073  
(+25) 949-1810msg (206) 260-9111efax

halibutcoalition@gmail.com  
www.halibutcoalition.org

March 30, 2010

Mr. Eric Olson  
Chair  
North Pacific Fishery Management Council  
605 West 4th Ave, Ste 306  
Anchorage, AK 99501

Dear Mr. Olson,

**Re: Agenda Item C-2: Charter Halibut Limited Entry Permit Endorsements**

The Halibut Coalition appreciates the Council's effort to address the identified problem with initial issuance of the Charter Halibut Limited Entry permit endorsements, and urges adoption of Alternative 2. We believe this action is necessary to ensure the program fairly and equitably addresses fishing capacity in the charter halibut fishery without changing other elements of the program and without delaying the effective date. We recognize that this correction to permit endorsements more accurately reflects Council intent and will better serve both the resource and the charter industry.

Members of the Coalition would like to remind the Council that the goals and elements of the Charter Halibut Limited Entry Program were developed by the Halibut Charter work group appointed by the Council. The work group was primarily composed of charter industry representatives. During development of the program, the overwhelming majority of the charter operators participating in the Council process testified in favor of the limited entry or moratorium program, and claimed that the industry was over-capitalized and beyond viable capacity levels. Although the Council's halibut charter limited entry program was not anticipated to control harvest, it was intended to reduce capacity from status quo levels and stabilize the industry to some degree. Halibut charter operators have sought such a limited entry program for many years, as is evidenced by written and oral testimony submitted to the

Alaska Longline Fishermen's Association • Cordova District Fishermen • Deep Sea Fishermen's Union •  
Fishing Vessel Owners Association • Halibut Association of North America • Kachemak Bay Fisheries  
Association • North Pacific Fisheries Association • Petersburg Vessel Owners Association • Sea Food  
Producers Cooperative • Southeast Alaska Fishermen's Alliance • United Cook Inlet Driftnetters Association  
• United Fishermen's Marketing Association • United Southeast Alaska Gillnetters Association

Council since the mid-1990s. The Halibut Coalition supports the charter industry in securing this limited entry program, and believes the proposed amendment is consistent with Council intent and the charter industry's goals for the program.

Thank you for the opportunity to comment.

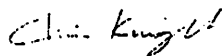
Sincerely,



Jeff Stephan, United Fishermen's Marketing Association



Robert Alverson, General Manager, Fishing Vessel Owners Association



Chris Knight, United Southeast Alaska Gillnetters



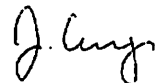
Linda Behnken, Alaska Longline Fishermen's Association



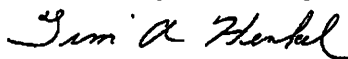
Peggy Parker, Executive Director, Halibut Association of North America



Kathy Hansen, Executive Director, Southeast Alaska Fishermen's Association



Julianne Curry, Petersburg Vessel Owners Association



Tim Henkel, President, Deep Sea Fishermen's Union



David Polushkin  
Kachemak Bay Fisheries Association

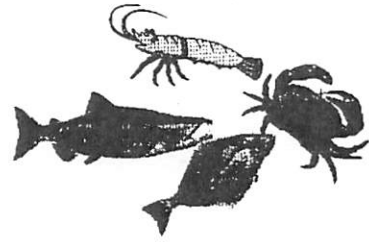
## Southeast Alaska Fishermen's Alliance

9369 North Douglas Highway

Juneau, AK 99801

Phone: 907-586-6652 Email: [seafa@gci.net](mailto:seafa@gci.net)

Fax: 907-523-1168 Website: <http://www.seafa.org>



---

March 29, 2010

North Pacific Fisheries Management Council

Eric Olson, Chair

605 W. 4<sup>th</sup> Avenue, Suite 306

Anchorage, AK 99501

RE: C-2 Charter Halibut Permit Endorsements

Southeast Alaska Fishermen's Alliance appreciates the NPFMC fast action on the charter halibut permit endorsements so that implementation of the program is not delayed. We have read the analysis and support the staff options 2. This option addresses the issue of "fair and equitable" treatment between charter operators irrespective of whether they will be receiving one or multiple permits. The need for this action is to correct the difference between the NPFMC intent and the regulations as issued.

As a member of the stakeholder committee that developed the halibut charter limited entry/moratorium program, we believe that this action initiated by the NPFMC is reflective of the intent and recommended to the Council by the stakeholder group to limit the amount of latent capacity in the industry. The Stakeholder committee actually recommended to the Council a higher threshold of trips necessary to qualify for a permit to further address latent capacity.

The limited entry program was meant to be the first of several steps to a long-term solution that includes the ability for the charter fleet to increase their allocation through compensated reallocation. Therefore as the analysis pointed out the change in the number of angler seats should be adequate for the short term and into the long term when the compensated reallocation solution is finalized.

Sincerely,

A handwritten signature in black ink that reads "Kathy Hansen" followed by a long horizontal line.

Kathy Hansen  
Executive Director

# Halibut Charter Endorsements Action

North Pacific Fishery Management Council  
April 2010 Meeting

## Background

- NMFS is currently implementing charter halibut permit program for IPHC Areas 2C and 3A
- Limited number of transferable, non-transferable, and community charter halibut permits
- Permits issued to qualifying charter business owners— NOT tied to specific vessels
- Permits will have an angler endorsement—the maximum number of charter vessel anglers that can catch and retain halibut on the vessel

2

## Background (2)

- Operators required to carry permit starting February 1, 2011
- Permit application period open from February 4 to April 5, 2010
- In February 2010, Council determined NMFS had misinterpreted its intent for assigning angler endorsements
- Council intends to review analysis and take final action at this meeting so NMFS can issue permits with revised angler endorsements in time for 2011 season

3

## Angler endorsements - status quo

- Under final rule, angler endorsement assigned to permit equal to the greatest number of clients reported on any logbook fishing trip in 2004 OR 2005
- All permits issued to a business would have the same angler endorsement

Vessel	Reported Clients-2004	Reported Clients-2005	Permit	Angler Endorsement
Vessel 1	4	6	Permit 1	6
Vessel 2	4	4	Permit 2	6
Vessel 3	4	none	Permit 3	6

4



# REVISING ANGLER ENDORSEMENTS

5

### Council motion

Alternatives for businesses that would be issued multiple permits:

**Alternative 1.** Status quo. All permits issued to a business receiving multiple permits would be issued with an angler endorsement equal to the greatest number of charter vessel anglers onboard any vessel used by the business to generate a permit as reported to ADF&G on any bottom fish logbook trip in 2004 or 2005, but not less than 4.

**Alternative 2.** One permit would be issued to a business with an endorsement equal to the greatest number of charter vessel anglers onboard any vessel used by the business to generate a permit as reported to ADF&G on any bottom fish logbook trip in 2004 or 2005, but not less than 4. Each subsequent permit issued to the same business would be issued with an endorsement equal to the next greatest number of charter vessel anglers onboard any other vessel used by the business to generate a permit, whose catch history has not already been used by the business to determine an angler endorsement, as reported to ADF&G on any trip in 2004 or 2005, until all permits are issued. The year selected for determining angler endorsements must be the year selected by the applicant for permit qualification.

6

### Council motion (2)

**Status quo**

Vessel	Applicant-selected year		Permit	Angler Endorsement
	Clients 2004	Clients 2005		
Vessel 1	4	0	Permit 1	0
Vessel 2	4	4	Permit 2	0
Vessel 3	4	none	Permit 3	0

**Council motion**

Vessel	Applicant-selected year		Permit	Angler Endorsement
	Clients 2004	Clients 2005		
Vessel 1	4	0	Permit 1	4
Vessel 2	4	4	Permit 2	4
Vessel 3	4	none	Permit 3	4

7

### Applicant-selected year

- Under final rule, charter operators could choose whether NMFS would use 2004 or 2005 activity to calculate:
  - number of transferable permits
  - number of non-transferable permits
- Charter operators indicated this choice on application for permit (applicant-selected year)

8

**Applicant-selected year (2)**

The permit application material:

- stated applicant-selected year would be used only to determine number of transferable and non-transferable permits
- did not provide data on total clients reported

9

**Effects of alternatives**

Council identified two alternatives for businesses that would receive multiple permits:

No action or status quo

- greatest client count in 2004 or 2005 determines endorsements for all businesses

Action alternative

- applicant-selected year determines endorsements for businesses receiving multiple permits (more restrictive)
- greatest client count in 2004 or 2005 determines endorsements for businesses receiving one permit (less restrictive)

10

**Fairness and equity issue**

- Under the Council's action alternative (Option 1) different methods would be used to assign endorsements to firms receiving one permit and firms receiving multiple permits
- This raises fairness and equity concerns under the Halibut Act (16 U.S.C. 773c(c)):

If it becomes necessary to allocate or assign halibut fishing privileges among various United States fishermen, such allocation shall be fair and equitable to all such fishermen...

- If the Council chooses to pursue action alternative it should provide rationale for using different methods

11

**Options for action alternative**

Three options for action alternative:

Option 1 - Council's approach

- multiple permit businesses
- applicant-selected year

Option 2 - Same approach as Option 1 applied to all businesses

- all businesses
- applicant-selected year

Option 3 - Keep Council's approach for vessel-specific endorsement but drop applicant-selected year requirement

- multiple permit businesses
- use greatest total clients in either 2004 or 2005 rather than applicant-selected year

12

**Effects of action alternative options**

Option 1 and Option 2

Vessel	Applicant-selected year		Permit	Angler Endorsement
	Clients 2004	Clients 2005		
Vessel 1	4	0	Permit 1	4
Vessel 2	4	4	Permit 2	4
Vessel 3	4	none	Permit 3	4

Option 3

Vessel	Applicant-selected year		Permit	Angler Endorsement
	Clients 2004	Clients 2005		
Vessel 1	4	0	Permit 1	0
Vessel 2	4	4	Permit 2	4
Vessel 3	4	none	Permit 3	4

13

**RESULTS OF THE ANALYSIS**

14

**Council motion (2)**

Status quo

Vessel	Applicant-selected year		Permit	Angler Endorsement
	Clients 2004	Clients 2005		
Vessel 1	4	0	Permit 1	0
Vessel 2	4	4	Permit 2	0
Vessel 3	4	none	Permit 3	0

Council motion

Vessel	Applicant-selected year		Permit	Angler Endorsement
	Clients 2004	Clients 2005		
Vessel 1	4	0	Permit 1	4
Vessel 2	4	4	Permit 2	4
Vessel 3	4	none	Permit 3	4

15

**Effects of action alternative options**

Option 1 and Option 2

Vessel	Applicant-selected year		Permit	Angler Endorsement
	Clients 2004	Clients 2005		
Vessel 1	4	0	Permit 1	4
Vessel 2	4	4	Permit 2	4
Vessel 3	4	none	Permit 3	4

Option 3

Vessel	Applicant-selected year		Permit	Angler Endorsement
	Clients 2004	Clients 2005		
Vessel 1	4	0	Permit 1	0
Vessel 2	4	4	Permit 2	4
Vessel 3	4	none	Permit 3	4

16

**Sample table for estimated endorsements in Area XX**

	Status Quo: clients from firm's best trip in 2004-2005 assigned to all permits	Option 1: Use best vessel-selected trips from user selected year for firms with multiple permits	Option 2: Just like Option 1, except that applies to all firms	Option 3: Use vessel best year rather than user selected year for firms with multiple permits
Businesses				
Permits				
Total endorsements				
Transferable endorsements				
Non-transferable endorsements				

17

**2C Estimated endorsements**

	Status Quo	Option 1	Option 2	Option 3
Businesses	229	229	229	229
Permits	501	501	501	501
Total endorsements	3,001	2,533	2,499	2,618
Transferable endorsements	2,103	1,772	1,743	1,830
Non-transferable endorsements	898	761	756	788

18

**3A Estimated endorsements**

	Status Quo	Option 1	Option 2	Option 3
Businesses	291	291	291	291
Permits	410	410	410	410
Total endorsements	3,524	3,053	2,914	3,122
Transferable endorsements	2,813	2,501	2,379	2,537
Non-transferable endorsements	711	552	535	585

19

**Other issues**

- As explained earlier, Option 1 raises fairness and equity issues under the Halibut Act. If the Council chooses this option it should make a point of explaining its reasons for the record.
- Options 1 and 2 may increase the number of appeals
- None of the options appear to significantly constrain the ability of the affected fleets to meet existing levels of angler demand, or to increase output to some extent.

20

**Other issues**

- None of the options appears to impact harvest or recreational fishing safety
- NMFS intends to meet NEPA requirements with a categorical exclusion. This overall program has already been determined to be not significant in an EA. This action constrains environmental impact somewhat but probably not much.
- All action alternative options will create increased uncertainty until permits are issued.

21

**Other issues**

- Some firms will receive smaller numbers of endorsements and less valuable permits.
- This won't hurt firms that eventually buy these permits because they will pay less.
- Competitors of impacted firms may benefit, although the large number of endorsements, and region-wide usability will probably constrain this.
- Existing USCG limits may reduce any impact.
- Impact on party boat competitors will be limited by the ability of firms to stack permits.

22

# PUBLIC TESTIMONY SIGN-UP SHEET

Agenda Item:     C-2    Charter Halibut    

	NAME (PLEASE PRINT)	TESTIFYING ON BEHALF OF:
1	JOHN BLAIR (SEAGO)	SOUTHEAST ALASKA GUIDES ORGANIZATION
2	REX MURPHY	SELF
3	GREG SUTTER (ACA)	ALASKA CHARTER ASSOCIATION
4	RICHARD YAMADA (AOC)	ALASKA OUTDOOR COUNCIL
5	Linda Behnken	Halibut Coalition
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

NOTE to persons providing oral or written testimony to the Council: Section 307(1)(I) of the Magnuson-Stevens Fishery Conservation and Management Act prohibits any person "to knowingly and willfully submit to a Council, the Secretary, or the Governor of a State false information (including, but not limited to, false information regarding the capacity and extent to which a United State fish processor, on an annual basis, will process a portion of the optimum yield of a fishery that will be harvested by fishing vessels of the United States) regarding any matter that the Council, Secretary, or Governor is considering in the course of carrying out this Act.