

January 24, 2014

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Ms Scheurer and DiCosimo

The following are our comments from the January 10, 2014 draft of the **Regulatory Impact Review/Initial Regulatory Flexibility Analysis to Revise the Federal Definition of Sport Fishing Guide Services**. We have also included our comments to the May 20, 2013 draft because some of those remain unaddressed in the new draft document. Rather than go paragraph by paragraph through the document our comments are confined to four areas of concern. We believe that it is in the best interest of the council to choose option 1, status quo as the preferred option. The comments fall into the four categories below:

- **The council states that it is concerned with a fishing practice that may not be consistent with management policy but the proposed solutions also conflict with management policies and goals.**
- **The proposed alternatives are in conflict with other federal definitions, council intent, and create an enforcement issue.**
- **The discussion of the proposed changes seem to indicate that it is intended to fix data reporting to the state administered Saltwater Charter Logbook program but does not include simpler solutions.**
- **The document provides ample support that Alternative 1, Status Quo, is far superior for adoption by the council.**

Comment 1 – consistency with management policies.

The council state that it is not looking at the Charter Halibut Limited Access Program (CHLAP) and does not desire any changes to it. However, the proposed changes are designed to either include or exclude some operators and thereby are changes to the program. The council also states, correctly, that many of these operations were in business prior to the implementation of the CHLAP. The CHLAP permit award process only allowed established businesses to participate. It is inferable that it was the intent of the CHLAP to include established businesses as a management policy. As stated below in our comments to the May 10, 2013 draft, the self-guided operations were excluded from participation in the CHLAP by design.

The council is focusing on a few small operators of self-guided fishing operators whose harvest is minimal compared to commercial fishermen, subsistence harvests, and charter boat operations. The

proposed Alternatives 2 and 3 will have no measurable impact on halibut resources. The draft document repeatedly identifies problems that will be created by both alternatives 2 and 3 that are much more difficult and expensive to resolve than choosing to stay with the status quo.

Most of the small, non-charter boat operators existed before the 2009 regulations and associated limited entry was instituted. Several of those operators qualified for the CHP's based on years of operation. However, Alaska Department of Fish and Game did not require logbooks; in fact they would not issue them to these operators, until 2006. Therefore, based on the requirement to have filled out log books in either 2004 or 2005 these operations could not qualify even though they were operating businesses. The current situation has resulted because of the failure to recognize the self-guided industry when the CHP system was established. Additionally, when log books requirements were instituted the number of required guide licenses was for the guide boats only and did not reflect the number of boats actually fishing.

Our previous comments pointed out multiple problems with implementation of the CHLAP process. If it is the intent of the council to include the self-guided operations as part of the CHLAP, the proposed changes do nothing to correct this issue. Indeed, if a self-guided operator wishes to participate the document instructs that they will need to procure permits from other holders. The permit requirements state that each fishing vessel would need a permit. At between \$30,000 to \$60,000 per permit, this cost is unbearable and directly conflicts with intended management policies of inclusion by age. If it was the intent to include self-guided businesses in the CHLAP, then the committee will need to address this issue and make permits available to the self-guided industry.

Comment 2 – Proposed definitions are confusing and will be unenforceable.

The proposed definitions and discussion indicate that the committee still does not fully understand how the self-guided operations work and cast doubt on their understanding on how halibut fishing in general is accomplished. This lack of understanding creates a real conflict between state and federal rules. Below we provide a few examples for the committee's consideration that show how the proposed changes will be in conflict.

Example 1. A charter vessel trip begins when lines are deployed and ends upon disembarkation at the dock (paraphrased). An angler is considered guided if they receive assistance upon the water. In the self-guided operation, clients will fish for salmon, halibut, bait, rockfish, cod, etc., at their leisure and on their own schedule. They will often switch multiple times between the species throughout the day as tides, currents, whim, and other conditions impact their fishing. Under the proposed definition changes, anglers would be considered guided for halibut even if they only received assistance for salmon fishing if they changed to halibut fishing **even if they received no "halibut" assistance**. This is in direct conflict with the areas of responsibility based on species of fish. The federal government is responsible for halibut while the state has control of the salmon resource. Additionally, the draft paper frequently switches between halibut and fishing and does little to clarify this issue. If the council decides to proceed with changes to the federal definitions, it will need to amend the Charter Vessel Fishing Trip definition as well. This change will need to be done in conjunction with the other proposed definition changes or it will create multiple enforcement issues.

Example 2. In self-guided operations, anglers routinely catch non-target fish. While trolling for salmon it is not uncommon for someone to pickup a halibut when passing over a more shallow area. Also, when

fishing with downriggers for deeper salmon such as Kings or Chums anglers will also routinely pick up halibut. A self-guided vessel receiving “salmon assistance” that catches a halibut would therefore be in violation of the proposed changes.

Example 3. In self-guided operations anglers in the same vessel may target both halibut and salmon at the same time. Some anglers on a vessel may cast or mooch for salmon while others are simultaneously ground fishing for halibut. Under the state rules, a guide would be allowed to approach the boat to assist with salmon fishing. Such assistance could include fishing reports, technique assistance, replacing of broken equipment, instructions on electronics, and replacing depleted tackle and bait. Since many of these items are useable in both fisheries it would be impossible to separate the activities and the regulations would be in direct conflict. This conflict would make the proposed changes unenforceable by the different entities. It would also create a situation where regulation could be circumvented. For instance a vessel running low on halibut bait (herring) would be able to procure bait by simply changing what they are fishing for and then they could simply switch back after receiving the salmon bait (again herring).

These examples clearly show circumstances in which the proposed changes would increase confusion and fail to clarify regulations.

Comment 3 – Management Data Issues

The discussion of the data collection quality and biases in the logbook program seem to indicate that the real intent of the Council is to have a system where halibut catch data is recorded only for the charter industry and does not include the self-guided industry. In our discussions with Charter associations and with the State of Alaska it appears that this is ultimately what they desire. The discussions have led us to loosely believe that the real motivation behind the charter fleet appears to be to not include more entities into their segment of the catch while the motivation of the State of Alaska is to improve data quality for resource management reasons. The discussion in the draft document indicates that the State of Alaska is able to gather the data they require from self-guided operations through the Statewide Harvest Survey (SWHS). A simple solution to meet the motivations of both these groups is simply to use the existing federal definitions for charter halibut catch. The “guide on board” provision would mean that no halibut would be recorded on logbooks and the charter fleet would not have to contend with dilution of their allotment by inclusion of new entities. This would also solve issues mentioned earlier about the need to revisit the CHLAP process.

Comment 4 – Status Quo support and Conclusion

The discussion of Alternative 1, Status Quo, cites a 2009 NMFS decision memorandum which states that a potential shift from guided to un-guided may result. The review of the logbook data included in the draft document does not support that this has occurred (see Table 6, column C). The data indicates that there was fluctuation in the number of self-guided operations as regulations and the CHLAP were implemented but that the potential shift has not occurred as worried. We believe that a shift will not occur due to significant barriers to entry for self-guided operations.

We believe that the issues raised in the Analysis of Impacts, Alternative 1, are proven in the draft document and would therefore indicate that no action is the best course. The data demonstrates repeatedly that the self-guided industry is small and limited in scope. The examples we have provided

also demonstrate that creating and maintaining consistency between State and Federal regulations are not necessary because those agencies are regulating different fisheries. Additionally, the Analysis of Impacts, Alternative 2 Option 2, clearly states that the federal enforcement staff is currently able to enforce regulations and as we have pointed out, the proposed changes will make them unenforceable. Simply changing logbook reporting requirements would alleviate most of the discrepancies the council is trying to address.

Finally, the conclusion of the document itself states that “none of the alternatives are likely to change fishing patterns or harvest amount to an extent that would result in an impact on the halibut stock or other environmental impacts.” If this is the case, then why is the council spending energy and effort on this? New regulations, where regulations are not needed to protect a resource are never a good idea. We feel the council would be better served addressing the by catch of the commercial fleet, the fairly unregulated and poorly controlled subsistence harvest, and other resource impactful activities. As always we request the industry to be included directly in the discussion and invite the council to come get firsthand knowledge of the industry and resource they wish to address.

Sincerely,

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*****Second Document Begins*****

June 27, 2013

Ms Julie Scheurer
NOAA Fisheries
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Dear Ms Scheurer:

The following are our comments on the May 20, 2013 draft of the **Initial Regulatory Impact Review to Revise Federal Definition of Sport Fishing Guide Services**. We have chosen to comment in five specific areas rather than going paragraph by paragraph through the draft document.

- **Some of the terminology and examples indicate strong bias against the guided sport fishing industry**
- **The newly proposed alternatives will have a large negative impact on data collection pertaining to the sport fish harvest of halibut**
- **The only identified impact of the proposed alternatives are in the enforcement arena and suggested changes would greatly complicate the definitions of what is legal and what is illegal**
- **The proposal to only allow one segment of the guided fishing industry to use IFQ fish is discriminatory**
- **The proposed definitions of Assistance reflect a strong lack of knowledge of the Council in the actual operation of the guided sport fishing industry**

On page 4 of the draft document several **terminology** comments seem to be very bias and misleading concerning guiding, particularly the self-guided sport fishing industry. For example: in paragraph 4 the statement is made that self-guided practices are meant to circumvent fishing constraints. While this may be true in a few instances, most of the self-guided operations were in business many years before the 2009 regulations were put in place and they were using the self-guided business model. Personally, our business has been self-guiding since 1981. It is both bias and untrue to suggest that all self-guided operations are trying to circumvent current regulations.

Also on page 4 of the draft document an extrapolation is made that “over 6,600 anglers may fish for halibut under charter each day.” This is extremely misleading. To reach that number of anglers fishing on a given day, every charter boat would have to be fishing at capacity (6-people-per-boat) and that will never happen. The statement suggests that the charter anglers pose a great threat to the population even though throughout the draft document it is clearly stated that these proposed alternatives are projected to have no measurable impact on halibut stocks.

Data collection on halibut harvest in the sport fishery will clearly suffer under all changes recommended in the draft document. Under current ADF&G guidelines we report 100% of our catch and catch-and-release, by area, in the logbooks. The data collected by creel surveys (SWHS), both in person and by mail, represent about 5% of the total catch as reported in the draft document. Furthermore, logbooks are assigned to specific providers which largely identify the local areas where fishing occurs. Pages 21 and 22 clearly identify the problems that will occur in data collection.

Does anyone on the Council understand the burden it would place on the businesses to collect logbook data on bare-bones fishing operations. Who will pay for the extra employees required to obtain the data? Currently the data collection process requires our business to employ a person 20 to 30 hours a week just to comply. The intent from the original logbook data collection process was for a 5 to 10 minute process.

In discussing the **Impact** of the proposed Alternatives the draft document details on page 3, paragraph 5 the following:

- Current practice is legal
- No regulatory agency has requested nor recommended Council action
- All sport halibut harvest removals are being estimated
- No specific conservation concern has been identified
- This is a policy concern

The council is focusing on a few small operators of self-guided fishing operators whose harvest is minimal compared to commercial fishermen, subsistence harvests, and charter boat operations. The proposed Alternatives 2 and 3 will have no measurable impact on halibut resources. The draft document repeatedly identifies problems that will be created by both alternatives 2 and 3 that are much more difficult and expensive to resolve than choosing to stay with the status quo.

Most of the small, non-charter boat operators existed before the 2009 regulations and associated limited entry was instituted. Several of those operators qualified for the CHP's based on years of operation. However, Alaska Department of Fish and Game did not require log books; in fact they would not issue them to these operators, until 2006. Therefore, based on the requirement to have filled out log books in either 2004 or 2005 these operations could not qualify even though they were operating businesses. The current situation has resulted because of the failure to recognize the self-guided industry when the CHP system was established. Additionally, when log books requirements were instituted the number of required guide licenses was for the guide boats only and did not reflect the number of boats actually fishing.

The whole issue could have been avoided by recognizing the self-guided industry as part of the charter boat industry in the beginning. How many self-guided fishing operations are there in Alaska? How many in southeast Alaska? Where are they located? Almost all of these operations are located close to communities where they have access to fuel, food, and transportation. Additionally, remote land which will accommodate these small operations is scarce to non-existent. In cities such as Ketchikan, Sitka, and Juneau if anglers want to get out to the good halibut fishing they hire charter boats; they don't use self-guided businesses.

How many self-guided operations in Area 2 use "chase boats"? I know of one such operation in all of SE Alaska. Other operations keep in touch by radio or phone, or occasionally go out to "check" on their guests. Table 6 indicates this whole process is addressing bag limits of two businesses. Is that correct? Page 18, paragraph 4 "Across all years, logbook data indicate that three individual businesses may have routinely offered guide-assisted halibut fishing that did not meet the Federal definition."

The purpose for allowing use of IFQ's by Charter Boats is not clearly explained.

Page10 Section 1.3.3 Paragraph 2:

- What is the purpose of allowing limited use of IFQ's by Charter Boats?

- Is the intent to eventually have halibut to be declared a “commercial” fish and the only way a sport fishing guiding operation can catch halibut is by obtaining part of an IFQ?
- Will the IFQ’s just be leased for a period or can the IFQ be purchase by Sport Fishing guides? If parts can be sold how does this then impact the current guidelines on who can purchase a halibut IFQ (fishing experience parameters must currently be met)? If the IFQ’s cannot be purchased by Sport Fishing guide operations then those owning the IFQ’s will ultimately control portions of the guided sport fishery.
- Will the group of providers currently listed as non-charter boat guides also be allowed to purchase IFQ’s? If the Council adopts Alternative 2, they would need to decide if GAF would be allowed for use on “guide-assisted” vessels. Surely denying access to these permits by the guide-assisted businesses, as suggested by the NMFS staff, would need to be based on some criteria besides personal preference. Why would it even be a consideration not to extend to the charter boats and guide-assisted boats the same privileges?
- How do we interpret the last phrase in this paragraph where it states this is a process for “determining harvest restrictions for charter anglers”? Since the first objective is to allocate between charter and commercial fisheries, and the second is to restrict the charter boat harvest, do we assume the restrictions to the charter boats will be added to the commercial fishery?

Section 1.3.3 Paragraph 5:

- If the new policy would provide a chance for charter boats to circumvent the 1-fish policy by using IFQ quotas then why is there a concern about Alternative 1—Status Quo? As stated on page 3, paragraph 5 this is not a conservation issue.

The discussion on “Assistance” seems to shows a lack of understanding of business operations within self-guided enterprises and difficulty of enforcement. This would be supreme over-regulation as a proposed cure for a simple problem created by other regulation. Are we trying to solve regulation-created problems by adding more regulations?

Alternative 2. Revise and clarify Federal definitions.

Options 1 and 2.

- If the language “by being onboard a vessel with such person” is removed does this mean that anyone who is selling any part of the services or equipment used on that fishing trip is liable for prosecution?
- Does this prohibit a clerk in a store from telling a person, to whom they are selling halibut tackle, where they have been catching halibut and giving them coordinates? The clerk is compensated for helping the angler.

Alternative 2, Option 3, Suboption 1:

- The example of assistance by providing GPS units containing coordinates is unreasonable and probably unenforceable. How could enforcement personnel determine who put coordinates into the GPS, how long they had been in the system, and where the coordinates originally came from? If the handheld GPS were a personal unit and the owner received coordinates from any provider of fishing tackle or information, would the holder still be in violation? If anglers swapped GPS coordinates would they be breaking the law? If anglers posted the coordinates where they had been fishing would they be breaking the law? Would GPS coordinates provided before the “chartered vessel fishing trip” be considered assistance? Would that mean that NOAA, Lowrance, and other organizations, who provide the depth charts and coordinates, also be required to be a licensed guide?
- If self-guided operators discussed fishing locations, while located on their own property and not on the water, and enforcement regulations prohibited such conversations would that be violation of 1st Amendment Rights?
- If a self-guided angler is fishing for salmon using coordinates provided by facility operators and started fishing for halibut using the same coordinates would the operator be subject to legal action?
- How close to a coordinate would an angler need to be to be considered “on” the coordinates?

Option 3,

- The regulations already prevent self-guided operators from being onboard to help anglers capture fish. Would the proposed definition of “assistance” prohibit operators from talking with their guests by phone, by radio, by text, or any other measure once the guests get on the water? How can this be enforced? Are phones and radios going to be tapped and monitored?
- This option specifies that assistance cannot be given during any part of a sport fishing trip. The trip is defined as beginning at the time tackle is put into the water and ending when guests are off-loaded. How can this be reconciled if people are

shown where to fish and then the “guide” leaves before the anglers put their tackle into the water.

1.4.2.3 Option 3: Assistance

- A charter vessel fishing trip for purposes of 33.65(d), 300.66, and 300.67 would seem to preclude most types of “assistance” listed in Table 7.
- The activities listed in Table 7 range from unconstitutional to unenforceable to implementation of a Big Brother society. They clearly point out the difficulties and impossibilities of trying to implement the new option 3 on assistance. It would surely create additional inconsistencies. Table 7, though just a collection of ideas, clearly identified a lack of understanding of how the self-guided businesses operate. Was there a representative of the self-guided industry invited to attend the council meetings and provide input? Is there any intent of the council to visit or gain first-hand knowledge of the industry before they write regulations that will be impossible to implement and enforce? The charter industry is well-understood, the self-guided industry is not.

1.4.1 Alternative 2

- Does this mean on-the-water assistance cannot be given to anglers that are fishing for salmon or other non-halibut species? Is it possible that while fishing for salmon a guide could freely communicate and visit with guest anglers, but the instant they put a halibut line in the water the guide would be restricted in conversation.
- How would we handle a situation where anglers in the same boats were fishing for different species? If several anglers are mooching for salmon and someone else in the same boat is bottom fishing would a guide be in danger of violating policies if he came up alongside and talked with all of them.

Conclusions:

- 1. The self-guided sport fishing industry is equal in importance to the charter boat industry and should be recognized and treated as such. The initial CHP criteria may have inadvertently precluded the self-guided sport fishing industry from participating in the CHP process due to the unavailability of logbooks to this industry during qualifying years.**
- 2. Alternatives 2 and 3 will either reduce the amount of catch data provided by the guided fishing industry or put a much greater burden on the business owners.**
- 3. The impact of Alternatives 2 and 3 on the population of halibut will not be measurable, but the impacts of the businesses and law enforcement will be overwhelmingly negative.**
- 4. The purpose of allowing IFQ’s to be used by the guided industry is not clearly explained, and there appears to be no justifiable reason for not allowing both the Charter Boat and Self-Guided industry to use IFQ’s if they are made available.**
- 5. There is no clear way to define Assistance. Attempts to do so will create more problems than would be solved.**

One final thought: This whole process reminds one of a person who had a small nail poking up from a board in his dock so he brought in a pile-driver to knock it back down.

Sincerely,

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Proposed Action to Revise Sport Fish Guide Definition

2 messages

Ken Larson <l Larson_ken@hotmail.com>

Tue, Jan 28, 2014 at 3:46 PM

To: "npfmc.comments@noaa.gov" <npfmc.comments@noaa.gov>, Chris Oliver <chris.oliver@noaa.gov>

Gentlemen:

Reference is made to your 3-10 Feb 2014 NPFMC Seattle Meeting Agenda Item **C4 HAL 14-002, Proposed Action to REVISE the FEDERAL DEFINITION of SPORT FISHING GUIDE SERVICES**, as indicated in Jim Balsiger's 10 Jan 2014 Letter.

For the record, and after reviewing your confusing and misleading 39 page Proposal, I wish to indicate that **Prince William Sound Charter Boat Assn's preference is to stay with the Status Quo alternative**, unless you are able to clean up the language. It must be made very clear that if the state definition is adopted by the Feds that no halibut catch by "bareboat charters" (i.e., anyone without a CHP) will be counted against the CHP permit holders' annual catch limits.

The crux of our problem with your proposal is covered on page 7 of your 39-page proposal. In the 1st paragraph of Section 1.2, you state "*...under Federal regulations...if a guide is "on board the vessel" with the charter angler and is providing "sport fishing guide services" during the fishing trip...(they) are subject to charter fishery restrictions....*". To us that means CHP Charter daily limits and ADF&G Log Book use applies. However, in the 2nd paragraph of Section 1.2, you also state "*...State of Alaska sport fish regulations do not require a guide to be on board the same vessel as the angler for the trip to be considered guided fishing. If fishing guide services (as defined by the State) are provided to the angler, the State considers those harvest as charter removals.*" Therein lies the problem IF the Feds adopt this State Definition, because that would also mean that any "bareboat charters" operating under the indirect (Un-occupied boat guides) supervision of guides would have to be subject to CHP Charter daily limits and ADF&G Log Book use. How would their catch be counted any other way except as Charter Halibut Removals counted against the charter annual catch limits?

Please stay with the status quo definitions until such time as you can clean up the glaring differences in language. Thank you.

Ken L Larson

Secretary

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NPFMC comments - NOAA Service Account <npfmc.comments@noaa.gov>

Tue, Jan 28, 2014 at 3:46 PM

To: larson_ken@hotmail.com

Thank you for your comment, if this comment was received after January 28, 5:00pm, it is considered a late comment and will not be copied for February briefing books.