



NORTH PACIFIC FISHERY MANAGEMENT COUNCIL

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Action Memo

File Number: HAL 14-002

Agenda Date 2/3/2014

Agenda Number: C-4

Eric Olson, Chairman
Chris Oliver, Executive Director

SUBJECT:
Definition of a Fishing Guide

ESTIMATED TIME:
2 hours

ACTION REQUIRED:
Final Action

BACKGROUND:

The Council is considering whether to amend the definition of "sport fishing guide services" in Federal regulations that govern the charter halibut fishery in Southeast (Area 2C) and Southcentral (Area 3A) Alaska to be more consistent with State of Alaska regulations. A few businesses have developed a guide-assisted model that allows them to provide indirect assistance to anglers to harvest halibut for compensation from shore or adjacent vessels. This practice is not considered to be "sport fishing guide services" in Federal regulations because the guide is not on board the vessel. As a result, anglers on these vessels are allowed to fish under more liberal regulations in effect for unguided anglers. State of Alaska regulations do not require the guide to be onboard the same vessel as the angler to be considered a sport fishing guide.

In February 2013, the Council adopted a problem statement and a suite of alternatives and options for a proposed action to revise the Federal definition of "sport fishing guide services." In June, the Council revised its problem statement and range of alternatives and options during initial review. The Council approved release of a revised analysis for public review and it requested recommendations from Federal and State agency staff on proposed options to define "assistance" and "compensation."

The analysis was distributed to the Council on January 10, 2014 and is attached. The suite of alternatives that was adopted by the Council is provided below. While deeming Pacific halibut regulations is not required under the Council's policy, the Council may wish to request that NMFS consult with the Council on draft regulatory text prior to publishing the proposed rule in the *Federal Register* to ensure its consistency with Council intent.

Alternative 1. No action

Alternative 2. Revise and clarify Federal definitions.

Option 1. Revise the definition of sport fishing guide services to remove the language "by being on board a vessel with such person."

Option 2. Define 'compensation' within the context of sport fishing guide services.

Suboption a. The definition of 'compensation' would be aligned with the State of Alaska

definition.

“Compensation” (1) means direct or indirect payment, remuneration, and other benefits received in return for services, regardless of the source; in this paragraph, “benefits” includes (A) wages or other employment benefits given directly or indirectly to an individual or organization, and (B) dues, payments, fees, and other remuneration given directly or indirectly to a fishing club, business, organization, or individual who provides sport fishing guide services; (2) does not include reimbursement for the actual daily expenses for fuel, food, or bait;

Suboption b. The definition of ‘compensation’ would be aligned with the State of Alaska definition, with one word substitution.

“Compensation” means direct or indirect payment, remuneration, or other benefits received in return for services, regardless of the source; in this paragraph, “benefits” includes wages or other employment benefits given directly or indirectly to an individual or organization, and any dues, payments, fees, or other remuneration given directly or indirectly to a fishing club, business, organization, or individual who provides sport fishing guide services; and does not include reimbursement for the reasonable daily expenses for fuel, food, or bait;

Option 3. Define ‘assistance’ within the context of sport fishing guide services.

“Assistance” means accompanying or physically directing the sport fisherman in sport fishing activities during any part of a sport fishing trip.

In addition to the no action alternative (Alternative 1), Alternative 2, Option 1 would remove a requirement that a guide be onboard the same vessel as the guided angler. The Council also adopted possible definitions of “compensation” under Alternative 2, Option 2 and “assistance” under Alternative 2, Option 3 in the Federal definition for sport fishing guide services. Alternative 2, Option 2a proposes State regulatory text for the Federal definition; Alternative 2, Option 2b proposes a one word change to the State text. The Council may proceed with final action on Option 1 alone, or Options 1 and 2, even if a preferred alternative under Option 3 cannot be identified at the time of final action. Agency staff recommended Alternative 2, Option 2b, if the Council identifies Alternative 2, Option 1 as its preferred alternative. Additional agency staff guidance regarding Alternative 2, Option 3 may be provided during final action. Enforcement Committee comments also will be provided during the meeting.