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## ABBREVIATIONS

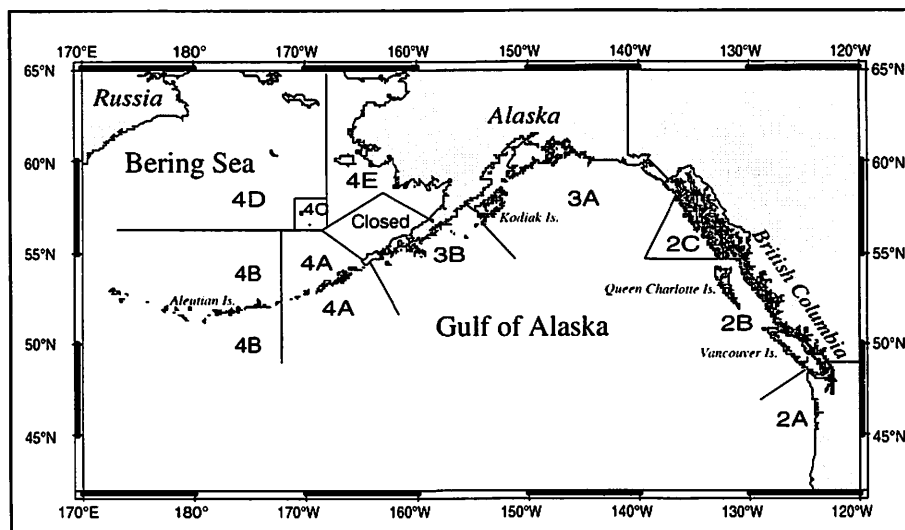
ADF&G	Alaska Department of Fish and Game
BOF	Alaska Board of Fisheries
CEY	Constant Exploitation Yield
E.O.	Presidential Executive Order
GHL	Guideline Harvest Level
IPHC	International Pacific Halibut Commission
IRFA	Initial Regulatory Flexibility Analysis
ISER	University of Alaska, Anchorage Institute for Social and Economic Research
lb	Pounds
M	Million
NPFMC	North Pacific Fishery Management Council
OMB	Office of Management and Budget
RFA	Regulatory Flexibility Act
RIR	Regulatory Impact Review
SBA	U.S. Small Business Administration
SWHS	Statewide Harvest Survey

## 1.0 ENVIRONMENTAL ASSESSMENT

This Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) addresses an amendment to federal fishery regulations affecting the charter halibut fishery. The National Environmental Policy Act (NEPA), Executive Order 12866, and the Regulatory Flexibility Act require a description of the purpose and need for the proposed action, as well as a description of alternative actions that may address the problem. The purpose and need is addressed in Section 1.2. Section 1.3 describes the alternatives considered for analysis. Section 1.4 describes the affected environment. Section 1.5 discusses the biological and environmental impacts of the alternatives as required by NEPA, as well as impacts on endangered species and marine mammals. The RIR and IRFA are contained in Chapters 2 and 3, respectively.

### 1.1 Introduction

This analysis assesses the potential biological, social, and economic impacts of implementing regulations to limit entry into the halibut charter fisheries in IPHC Areas 2C and 3A (Figure 1).



**Figure 1 IPHC regulatory areas for the commercial halibut fishery (Source: IPHC)**

Federal agencies share management of Pacific halibut *Hippoglossus stenolepis*. The domestic fishery is managed by the IPHC as provided by the Convention Between the United States and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and the Bering Sea (Convention) and the Northern Pacific Halibut Act of 1982 (Halibut Act). The Act authorizes the Council to:

*"...develop regulations governing the United States portion of Convention waters, including limited access regulations, applicable to nationals or vessels of the United States, or both which are in addition to and not in conflict with regulations adopted by the Commission. Such regulations shall only be implemented with the approval of the Secretary, shall not discriminate between residents of different States, and shall be consistent with the limited entry criteria set forth in Section 303(b)(6) of the Magnuson Act. 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, based upon the rights and obligation in existing Federal law, reasonably calculated to promote conservation, and carried in such manner that no particular*

*individual, corporation, or other entity acquires an excessive share of the halibut fishing privileges...”*

In general, the language in the Magnuson-Stevens Fisheries Conservation and Management Act (MSA), the Halibut Act, and the Convention has been interpreted to assign responsibility to the Council on halibut management issues concerning allocations and limited entry. Other applicable law, including E.O. 12866 and 12962, NEPA, Endangered Species Act (ESA), Marine Mammal Protection Act (MMPA), and the RFA, all mandate that certain issues be examined before a final decision is made. These analytical requirements are addressed in this analysis.

Management authority to manage halibut off Alaska resides with the IPHC, National Marine Fisheries Service (NMFS), and the Council. State authority to directly regulate the halibut fishery in Convention waters is preempted by federal law. However, the State of Alaska is pursuing an amendment to the Northern Pacific Halibut Act of 1982. Such an amendment is intended to provide delegation of limited authority for States to regulate recreational fishing for halibut, upon such recommendation by the appropriate regional council and Secretary of Commerce. Such delegation would require a recommendation by a council to the Secretary, based on an analysis and NMFS rulemaking.

## **1.2 Purpose and Need for the Action**

Charter halibut harvests, along with other non-commercial harvests, are unrestricted because there is no specific allocation to the sectors. This results in a reallocation to the charter sector from the commercial sector. Therefore as the charter fishery expands, its harvests reduce the allocation to the commercial halibut fishery and, subsequently, the value of quota shares (QS) in the commercial halibut IFQ Program.

Since 1993, the Council has investigated different methods to cap growth of the charter halibut harvests in Areas 2C and 3A. Various types of limited entry programs have been considered by the Council in previous analyses (NPFMC 1995, 1997, 2001, 2005), but were rejected primarily due to lack of adequate data for individual charter businesses and the Council’s previous interest in managing these fisheries under a quota share program, another form of limited entry. Alaska Department of Fish and Game charter halibut logbook data were collected during 1998-2001, but was discontinued due to an increasing discrepancy between the logbook reported harvest for Pacific halibut and Statewide Harvest Survey estimates, which were not observed for other fish species in Area 3A, and was somewhat lesser in magnitude for the Area 2C fisheries<sup>1</sup>. Charter halibut logbook data is required for 2006 under a revised data collection protocol. See **Appendix 1** for a detailed history.

This analysis was initiated in 2006, after the Council reviewed the recommendations of its Charter Halibut Guideline Harvest Level Committee and Charter Halibut Stakeholder Committee for a solution to the reallocation of halibut harvests from the commercial sector to the charter sector. A (moratorium) limited entry program was recommended as a step in controlling charter harvest.

## **1.3 Problem Statement**

The Pacific halibut resource is fully utilized and harvest by the charter sector is demonstrating steady growth. To provide long term stability of the charter sector and lessen the need for regulatory adjustments, which destabilize the sector, the Council is embarking on development of a new management framework. In the interim, to address allocation issues between the charter and commercial sectors, the former is operating under a guideline harvest level (GHL). Harvest data since 2004 indicate that the GHLs in Area 2C have been exceeded and are near levels established for Area 3A. This has

<sup>1</sup>ADF&G memo from Allen Bingham to Kevin Duffy, September 21, 2001.

resulted in a renewed effort to find a long-term solution. To that end, the Council formed a stakeholder committee of affected charter and commercial user groups to consider management options and formulate recommendations for Council consideration in developing a management plan for the charter sector. Some of the options previously considered include limiting entry or awarding quota share based on past participation in the fishery. To address the potential against the rush of new entrants into the charter fishery, the Council is considering establishing a moratorium on the charter sector.

## 1.4 Description of the Alternatives

The Council adopted the following alternatives and options in June 2006, based on recommendations from its committees, staff, and the public. The Council revised the language of the options in response to a staff discussion paper on the options in December 2006.

### 1.4.1 Alternative 1. No action

The Council may choose to take no further action to control entry or access to the charter halibut fishery. The publication of the December 9, 2005 control date for determining historical or traditional participation in the charter sport fishery for halibut does not commit the Council or Secretary to any particular management regime or criteria for entry to the charter halibut fishery. Charter vessel operators are not guaranteed future participation in the charter halibut fishery regardless of their date of entry or intensity of participation in the fishery before or after the control date. The Council may choose a different control date, or it may choose a management regime that does not make use of such a date.

### 1.4.2 Alternative 2. Implement a moratorium on entry into the charter halibut fisheries in Areas 2C and 3A

#### Features of the proposed moratorium (limited entry) program<sup>2</sup>

1. Permits<sup>3</sup> may be held by U.S. citizens or U.S. businesses with 75 percent U.S. ownership of the business. Businesses<sup>4</sup> may receive multiple permits due to charter halibut activity by vessels reported by the businesses in ADF&G logbooks. Initial permit recipients may be "grandfathered" below the U.S. ownership level and above proposed use caps until any change in ownership of the business occurs<sup>5</sup>.
2. **Permit would be designated for either Area 2C or Area 3A.** If a business owner qualified for a permit in both areas, the he would be issued a permit for only one area of his choosing.
3. **Permit would be issued to licensed guide business owner.**
4. **Permit applicant would be required to sign affidavit** attesting that all legal requirements were met.<sup>6</sup>
5. **Transfers** of permits (permanent) would be allowed up to use caps
6. **Leasing** of permits (annual) would not be allowed

<sup>2</sup> Military (Morale, Welfare, and Recreational) boats are exempted, but harvests still count against the GHL.

<sup>3</sup> Through initial issuance and transfers

<sup>4</sup> A business means a business licensed by the State of Alaska as a sport fish guide operator.

<sup>5</sup> Transferred permits would not be grandfathered below the US ownership cap, even upon sale of a business, but would be grandfathered above the use cap upon sale of the entire business (see Issue 11)

<sup>6</sup> The only tangible evidence is the ADF&G logbook, which requires meeting all State legal requirements.

7. **Permit Endorsement for Number of Clients on Board** equal to the highest number on any trip in 2004 or 2005 (but not less than 4)
8. **Permits** may be stacked up to use caps<sup>7</sup>
9. **Evidence of participation** ADF&G logbook entry with bottomfish statistical area, rods, or boat hours.

#### 10. Qualification period

Option 1. Each licensed guide business owner(s) who reported a minimum of 1, 5, 10, or 20 bottomfish logbook trips during 2004 or 2005 and year prior to implementation<sup>8</sup> would be issued a permit(s) based on the number of trips summed for all vessels in his best year of the qualification period, unless an unavoidable circumstance<sup>9</sup> occurred. A business would be limited to the number of permits equal to the highest number of vessels used in any one year during the qualifying period.

*Example: a business owner operated 3 vessels with 6, 10, and 8 trips, respectively (summed trips = 24) in his best year. He would be issued 1 permit under a 20 trip minimum ( $24/20 = 1$ ); 2 permits under a 10 trip minimum ( $24/10 = 2$ ); or 3 permits under a 5 trip minimum ( $24/5 = 4$ , but the maximum number of vessels in that year is 3).*

Option 2. Each licensed guide business owner(s) who reported a minimum of 1, 5, 10, or 20 bottomfish logbook trips during 2004 or 2005 and year prior to implementation<sup>7</sup> would be issued a permit(s) for each vessel based on the number of trips in his best year during the qualification period, unless an unavoidable circumstance<sup>8</sup> occurred. Trips by vessels operated by a licensed guide business owner that do not individually meet qualification criteria may be combined to meet the criteria. A business would be limited to the number of permits equal to the highest number of vessels used in any one year during the qualifying period.

*Example: Under a 5 trip threshold, a vessel with 10 trips generates 1 permit; second and third vessels with 3 trips each earn 1 permit by combining their trips.*

11. **Use caps**, with grandfather<sup>10</sup> provision. The AFA 10 % ownership rule for affiliation<sup>11</sup> will be applied to determine the number of permits associated with an entity under the use cap.
  - Option 1. 1 permit
  - Option 2. 5 permits
  - Option 3. 10 permits

#### 12. Community provisions for Area 2C and 3A communities previously identified under GOA FMP Amendment 66

<sup>7</sup> A business can use, for example, two 6-pack license endorsements on one vessel.

<sup>8</sup> "Year prior to implementation" practically means two years prior to implementation; e.g., the threshold must be met in 2007 for implementation in 2009

<sup>9</sup> Acceptable circumstances will be adjudicated on a case by case basis through the National Marine Fisheries Appeals Division, but includes medical emergencies, military exemptions, constructive losses. An individual who was assigned to active military duty during 2004 or 2005 and who qualifies as "active" during the year prior to implementation<sup>7</sup> and who demonstrated an intent to participate in the charter fishery in Area 2C or 3A.(prior to the qualifying period) shall be eligible for a moratorium permit.

<sup>10</sup> A business whose permit is endorsed in excess of the use cap maintains that exemption for those permits that remain in its control after other permits are sold, but those sold permits lose that grandfather status in perpetuity. Grandfathered permits that are sold in total when a business owner sells his entire business/fleet maintain that grandfathered status. Grandfathered status refers to permits, not to vessels.

<sup>11</sup> Any entity in which 10 percent or more of the interest is owned or controlled by another individual or entity shall be considered to be the same entity as the other individual or entity.



A Community Quota Entity (CQE), representing a community in which [5 or fewer or 10 or fewer] active<sup>12</sup> charter businesses terminated trips in the community in each of the years 2004, 2005, and year prior to implementation, may request limited entry permits.

Area 2C – use cap of 3, 5, or 7 requested permits per eligible community.

Area 3A – use cap of 5, 10, or 15 requested permits per eligible community.

Overall use caps for CQEs are 1, 3, or 5 times those selected for permit holders under Issue 11. Different use caps may be selected for CQEs representing communities in Area 2C and 3A.

Provisions for CQE requested permits:

- Must be used within the first full season after receiving the permit or it will not be renewed. CQEs can re-apply for permits in the future
- Designated for the area in which the community represented by the CQE is located
- Endorsed for 6 clients
- Not allowed to be sold (i.e., transferred)

## 1.5 Probable Environmental Impacts

An environmental assessment (EA) is required by NEPA to determine whether the actions considered will result in significant impact on the human environment. If the action is determined not to be significant, the EA and resulting finding of no significant impact would be the final environmental documents required by NEPA. An environmental impact statement would be prepared for major Federal actions if the actions are determined to significantly affect the human environment.

The environmental impacts generally associated with fishery management actions are effects resulting from (1) harvest of fish stocks, which may result in changes in food availability to predators and scavengers, changes in the population structure of target fish stocks, and changes in the marine ecosystem community structure; (2) changes in the physical and biological structure of the marine environment as a result of fishing practices (e.g., effects of gear use and fish processing discards); and (3) Alaska groundfish fisheries (NMFS 2004).

### 1.5.1 Potential Impacts on Pacific Halibut Stocks

**Abundance.** The IPHC sets area catch limits in proportion to halibut abundance. This harvest philosophy protects against overharvest of what may be separate, but unknown, genetic populations, and spreads fishing effort over the entire range to prevent regional depletion. Small scale local depletion does not have a significant biological effect for the resource as a whole. The IPHC considers the halibut resource to be a single population. Egg and larval drift and subsequent counter migration by young halibut cause significant mixing within the population. Ultimately, counter migration and local movement tend to fill in areas with low halibut density, although continued high exploitation will maintain local depletion. However, biomass estimates and local movement rates are not available to manage small areas.

As described by Clark and Hare (2005), exploitable biomass is estimated by fitting a stock assessment model using available data from the commercial fishery and scientific surveys in each area. Total CEY is calculated by applying a fixed harvest rate (22.5 %) to the exploitable biomass estimate. The fishery CEY is calculated by subtracting an estimate of all from the total CEY (Figure 2). The IPHC sets a quota only for commercial fisheries for setline or longline gear.

<sup>12</sup> “Active” is defined as it is under Issue 10 (e.g., 1, 5, 10, or 20 bottomfish trips).

The most recent halibut stock assessment was conducted by the IPHC in December 2005.<sup>13</sup> The halibut resource is considered to be healthy, with total catch near record levels. The estimate of coast wide exploitable biomass from the 2005 assessment is 382 M net lb (IPHC 2005). The estimates of abundance are little changed in most areas. The 2006 Area 2C estimate is down by about 10 percent because of a lower commercial CPUE in 2005 and another low survey CPUE in 2005 following last year's 20 percent drop (Figure 3).

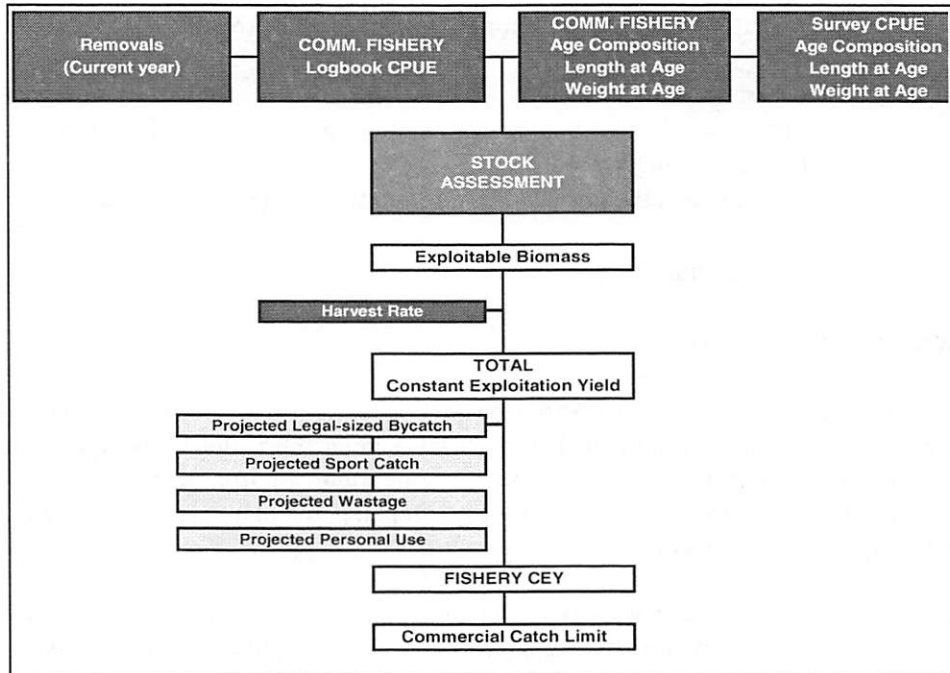


Figure 2 IPHC stock assessment and catch limit setting process

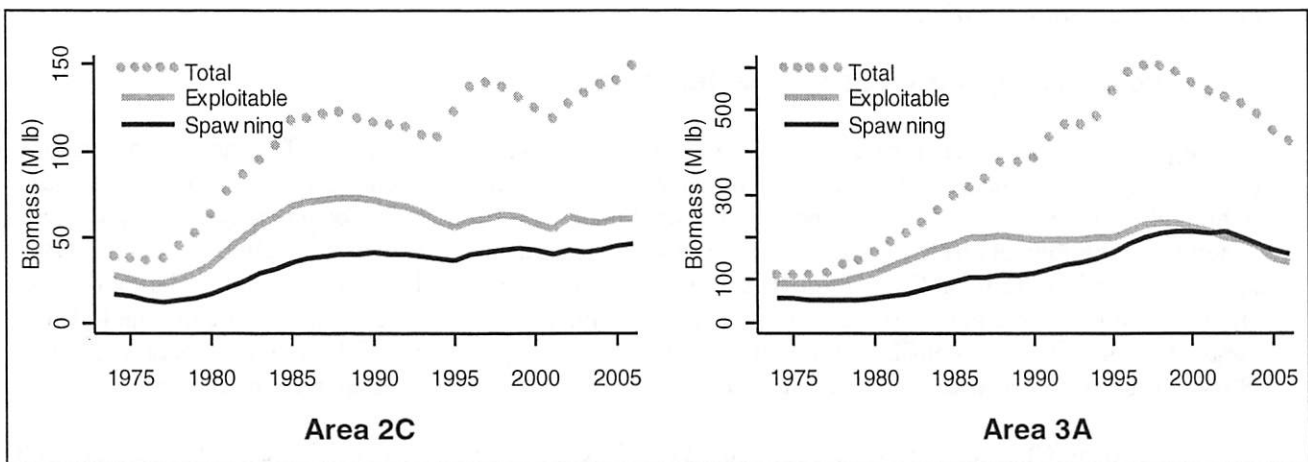


Figure 3 Estimated biomass in the 2005 assessment in Areas 2C and 3A (Source: IPHC 2005)

<sup>13</sup>The next draft of the EA will include the 2006 IPHC stock assessment information; these were not available in time for this draft.

Hare and Clark (2005) reported five-year projections of CEYs, exploitable biomass and spawning biomass (Table 1 and Figure 4). Yields are projected to increase in Area 2C and decrease in Area 3A over the next five years. The projections assume a constant harvest rate of 0.225 in Areas 2B, 2C, and 3A.

The IPHC adopted commercial quotas for 2006 totaling 55.26 M lb, compared with 59.24 M lb in 2005. The 2006 commercial quota in Area 2C was set at 10.63 M lb, compared with 10.93 M lb in 2005. The 2006 commercial quota for Area 3A was set at 25.2 M lb, compared with 25.47 M lb in 2005.

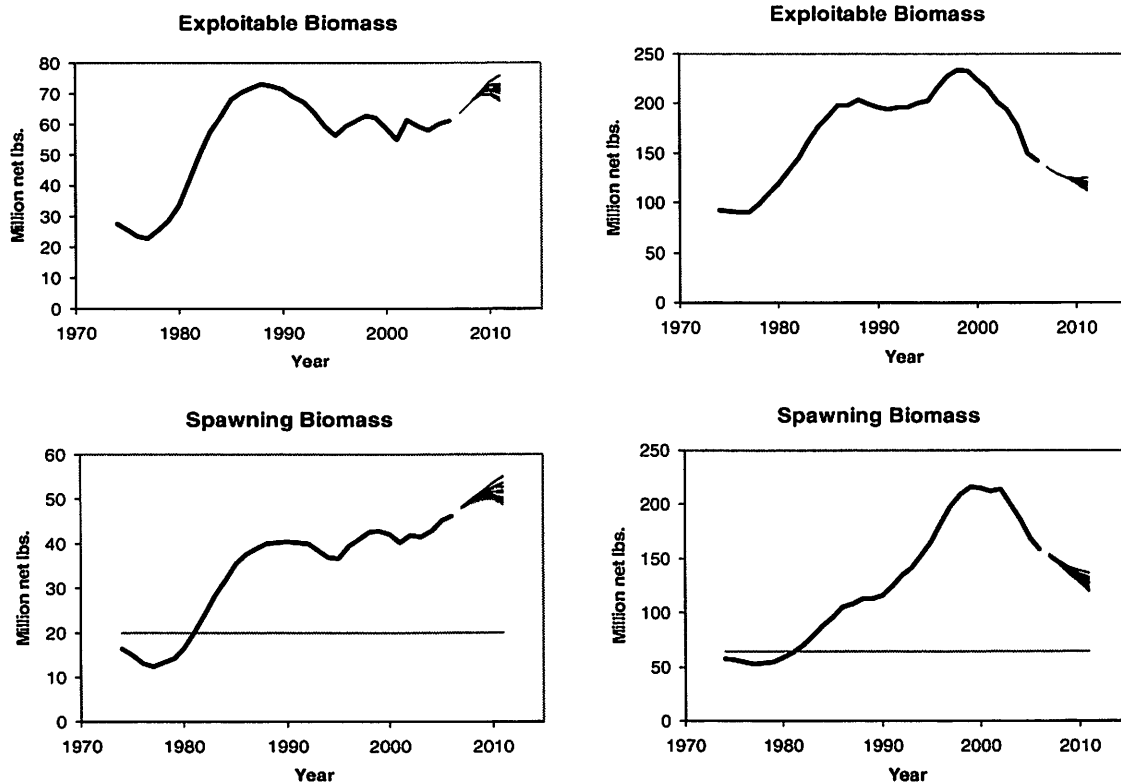
**Table 1 CEY projections for 2007-2011 for IPHC Pacific halibut regulatory areas**

Year	2B (0.225)	2C (0.225)	3A (0.225)	3B (0.200)	4A (0.200)	4B (0.150)
2005	13.1	14.9	32.9	11.2	4.0	2.0
2006	<b>13.7</b>	<b>13.7</b>	<b>32.2</b>	<b>9.0</b>	<b>3.8</b>	<b>1.7</b>
2007	14.4	14.3	30.4	10.7	3.8	1.2
2008	14.6	15.1	29.1	12.6	3.9	1.1
2009	14.7	15.7	28.2	14.3	3.9	1.0
2010	14.5	16.1	27.5	16.0	4.0	0.9
2011	14.2	16.2	26.7	17.2	4.1	0.9

Source: Hare and Clark 2005

Additional descriptive information on halibut surveys, stock assessments, and research that were considered by the Council during its deliberation can be found in detail in the 2005 Report of Assessment and Research Activities (IPHC 2005). Further details on halibut management, production history, and life history are described in Section 3.7.2 of the Groundfish Programmatic SEIS (NMFS 1998a) and in this analysis.

**Fisheries.** The Pacific halibut resource is fully utilized. Three major cultural use traditions occur in Alaska for halibut: commercial, sport (guided and non-guided), and subsistence. The 2005 removals of Pacific halibut in Areas 2C and 3A by sector are depicted in Figure 5. The distinctions between sport and subsistence are clouded by differing legal and cultural interpretations by both resource managers and users, although current gear restrictions may be used to post facto assign a user category to a landing. The IPHC did not have a formal regulatory definition of subsistence prior to 2002; however, it did attempt to track subsistence harvest taken under a personal use category, leaving only sport harvests under the sportfishing category. In 2002, the IPHC adopted regulatory language defining subsistence (“Customary and Traditional Fishing in Alaska”). Federal regulations now recognize and define a legal subsistence fishery for halibut in Alaska (70 FR 16742, April 1, 2005). Subsistence removals totaled 1.2 M lb (net weight) in 2005 (Fall et al. 2006). Methods included public outreach, mailed household surveys, and community visits. Survey response rates were 70 percent for non-Tribal members and 53 percent for Tribal members, for an overall rate of 62 percent. Subsistence fishery regulations are found at 50 CFR 300.60 – 300.66.



**Figure 4 Biomass projections for Areas 2C (left) and Area 3A (right) (Source: IPHC)**

As reported by Meyer (2005), participation in the marine sport fisheries of Southcentral Alaska has more than doubled in the last 15 years. More than half of all angler effort in marine waters statewide occurred in Southcentral Alaska. A major portion of the marine fishing effort is directed at halibut and state-managed groundfishes, including rockfishes, lingcod, and sharks. Sport harvest of halibut exceeds that of all other marine finfishes. Harvest in Southcentral Alaska increased from 40,000 fish in 1980 to 286,000 fish in 2000. The 2003 harvest of 278,000 halibut made up 69 percent (in number) of the statewide recreational harvest. The Cook Inlet fishery, based primarily in Homer, Ninilchik, Seldovia, and Anchor Point has accounted for 67-82 percent of the Southcentral Alaska halibut harvest since 1990. Sport fishing for halibut in Southeast Alaska is an important recreational activity for resident and non-resident anglers. Sport harvests rapidly increased in the late 1980s to mid-1990s due to continued increases in targeted effort (Tersteeg and Jaenicke 2005). Fishing effort is mostly concentrated around Juneau, Ketchikan, Sitka, Wrangell, and Petersburg. However, substantial effort is also expended near remote fishing lodges and smaller communities throughout the region, such as Craig, Gustavus, and Yakutat (Jaenicke 2005).

As reported in IPHC (2005), Alaska sport harvest estimates are derived from a statewide postal survey in conjunction with creel surveys at points of landing. Estimates usually lag by one year and are derived from a combination of linear projections of halibut harvested in the previous five years, current average weights, and current in-season data. Recent landings in the charter halibut fishery for Areas 2C and 3A are presented in (Table 2). In summary, charter halibut harvests between 1995 and 2004 increased by more than 75 percent in Area 2C (from 986,000 to 1,750,000 lb) and nearly 30 percent in Area 3A (from 2,845,000 to 3,668,000 lb). Charter halibut harvests amounted to approximately 11 and 10 percent of total halibut removals in Areas 2C and 3A in 2005, compared with 7 and 9 percent in 1999.

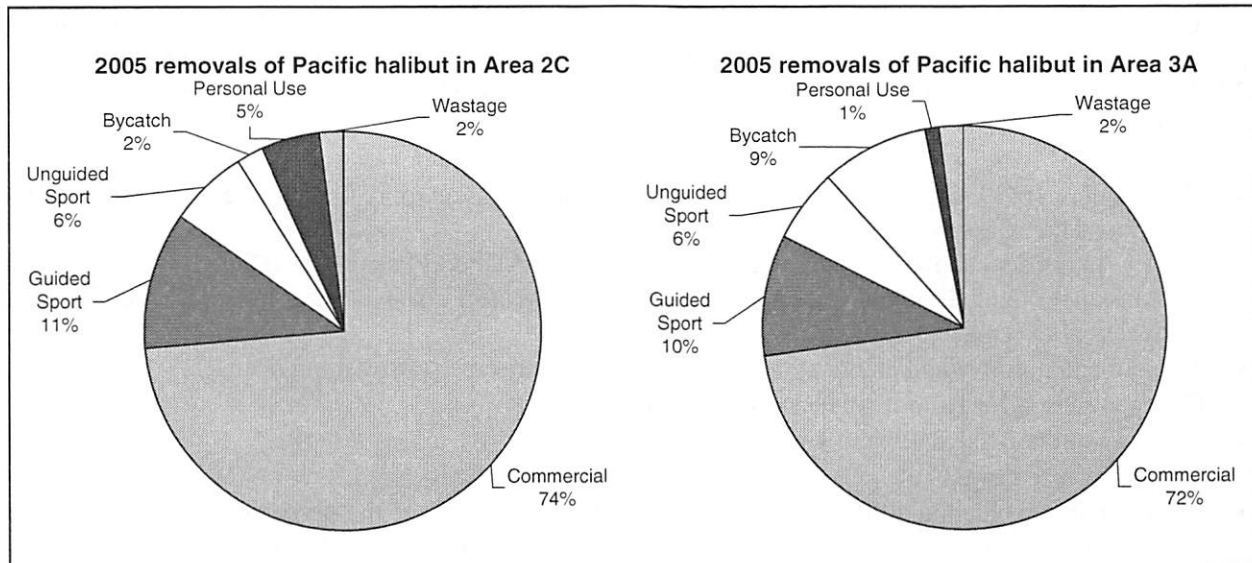


Figure 5 Removals of Pacific halibut by sector in 2005 (Source: IPHC)

Table 2 Charter halibut participation, effort, and harvest, 1995 - 2005

2C Year	Licensed businesses	Active vessels	Total trips	Charter				Anglers	
				Ave. trip/vessel	Number harvested	Million lb harvested	Million lb harvested	Sportfish licenses	Halibut Clients*
1995	na	na	na	na	49,615	0.986		90,940	na
1996	na	na	na	na	53,590	1.187	20%	94,677	na
1997	na	na	na	na	51,181	1.034	5%	98,265	na
1998	na	569	15,541	27	54,364	1.584	61%	97,079	55,922
1999	387	591	15,700	27	52,735	0.939	-5%	100,801	56,173
2000	412	634	20,241	32	57,208	1.132	15%	105,245	72,803
2001	386	627	18,965	30	66,435	1.202	22%	103,341	69,222
2002	351	567	15,085	27	64,614	1.275	29%	106,561	52,809
2003	353	590	16,948	29	73,784	1.412	43%	105,827	59,498
2004	365	624	19,111	31	84,327	1.75	77%	121,858	67,803
2005	381	654	na	na	102,206	1.95	98%	na	na

3A Year	Licensed businesses	Active vessels	Total trips	Charter				Anglers	
				Ave. trip/vessel	Number harvested	Million lb harvested	Million lb harvested	Sportfish licenses	Halibut Clients*
1995	na	na	na	na	137,843	2.85		103,274	na
1996	na	na	na	na	142,957	2.82	15%	106,291	na
1997	na	na	na	na	152,856	3.41	26%	106,385	na
1998	na	503	17,650	35	143,368	2.99	3%	106,809	94,611
1999	454	545	19,823	36	131,726	2.53	2%	112,215	89,449
2000	456	570	25,180	44	159,609	3.14	30%	114,131	132,604
2001	452	560	23,818	43	163,349	3.13	-7%	116,236	132,306
2002	405	491	18,573	38	149,608	2.72	-11%	118,317	91,092
2003	405	499	18,592	37	163,629	3.38	23%	116,111	90,178
2004	427	532	22,600	43	197,208	3.67	16%	126,260	116,670
2005	450	567	na	na	206,902	3.69	19%	na	na

\*An increasing number of sportfish licenses are sold over the internet.

Sources: Charter and client data, ADF&G; commercial data, NMFS RAM Division.

IPHC sportfishing regulations for Pacific halibut are found at 50 CFR 300.62. The 2006 annual measures for halibut fisheries were published at 71 FR 10850, Part 24. The GHL program was implemented in 2004, and regulations are published at 50 CFR 300.65. State of Alaska fishing seasons and reporting requirements are listed below.

- Most anglers 16-59 years old must have a current year's Alaska sport fishing license. There are two exceptions for Alaska residents:
  - Alaska resident anglers 60 and older must have a free ADF&G Permanent ID Card.
  - Alaska resident disabled veterans (50 percent or greater) must have a free ADF&G Disabled Veteran's Permanent ID Card.
- Resident and non-resident anglers younger than 16 do not need a sport fishing license.
- The open season for halibut is February 1-December 31.
- The bag limit is 2 fish daily and 4 in possession.
- There is no size limit.
- When a fish is landed and killed it becomes part of the bag limit of the person originally hooking it. Once you have attained your bag limit, you are not allowed to catch and keep halibut for anyone else on the vessel that same day.
- Possession of sport-caught halibut:
  - a) No person may possess sport-caught halibut aboard a vessel when other fish or shellfish aboard the vessel are destined for sale, trade, or barter; and
  - b) until brought back to shore and offloaded, no person may fillet, mutilate, or otherwise disfigure a halibut in any manner that prevents the determination of the number of fish caught or possessed.

Charter halibut harvests, along with other non-commercial harvests, are unrestricted because there is no specific allocation to the sectors. This results in a reallocation to the charter sector from the commercial sector. Therefore as the charter fishery expands, its harvests reduce the allocation to the commercial halibut fishery and, subsequently, the value of quota shares in the commercial halibut IFQ Program.

A September 2003 final rule established a GHL for charter halibut harvests and a process whereby the Council is notified if the GHL is exceeded. The GHL established a pre-season estimate of acceptable annual harvests for the halibut fishery in Areas 2C and 3A, beginning in 2004. To accommodate limited growth of the charter fleet while approximating historical harvest levels, the GHL for each area was based on 125 percent of the average of 1995-99 charter harvest estimates, as reported by the ADF&G Statewide Harvest Survey (SWHS). The GHLs were set at 1,432,000 lb net weight in Area 2C and 3,650,000 lb net weight in Area 3A. Upon notification that a GHL has been achieved, the Council may initiate analysis of possible harvest reduction measures and NMFS may initiate subsequent rulemaking to reduce charter harvests. While commercial quotas fluctuate directly with stock abundance, the fixed GHLs are established annually in pounds. The GHLs are responsive to reductions in stock abundance. If either area's total Constant Exploitation Yield (CEY) is reduced by at least 15 percent below the average 1999-2000 total CEY, as determined by the IPHC, then the GHL would be reduced. For example, if the total CEY in Area 2C were to fall between 15 and 24 percent below its 1999-2000 average, then that GHL would be reduced by 15 percent to 1,217,200 lb. If it fell between 25 and 34 percent, then it would be reduced by an additional 10 percent to 1,095,480 lb. If the total CEY continued to decline by at least 10 percent, then it would be reduced by an additional 10 percent.

These "stair step" reductions were implemented because at the time of final action in 2000: (1) the status of the halibut stock was predicted to have been at its peak and declining; (2) the GHL formula allowed for a 25 percent increase in past harvests; and (3) the charter sector requested a fixed allocation to provide better predictability for planning bookings for the next summer's fishing season. The overall intent was to maintain a stable charter fishery season of historic length, using area-specific measures to control harvests

to the GHGs. The relative abundance between 2000 and 2005 is not estimated to have exceeded 15 percent (B. Leaman, pers. comm.); therefore, the GHGs have not been reduced.

The original groundfish fishery management plans for the Bering Sea/Aleutian Islands and Gulf of Alaska designated Pacific halibut as a prohibited species to any new commercial development due to its historical usage by the longline (or setline) fishery. The commercial fishing fleet is diverse, using various types of longline gear and strategies. An individual fishing quota program was implemented in 1995 (50 CFR 300.60 through 300.65). The IFQ program enables an eligible vessel to fish any time between March 5 and November 15 in 2006. Total setline CEY (at a harvest rate of 22.5 percent for Areas 2C and 3A) for Alaska waters is estimated to be high, at just under 74 M lb, which indicates the halibut resource is very robust (IPHC 2005). The commercial fishery was the predominant sector for removals, taking approximately 74 and 72 percent of total halibut removals in Areas 2C and 3A, respectively, compared with 81 and 77 percent in 1999.

Halibut begin recruiting to longline gear at approximately 60 cm in length, but the commercial minimum size limit is 82 cm. The fishery ranges from shallow inshore waters to as deep as 275 meters along the continental shelf. The directed catch consists of individuals chiefly from 7 to 121 kg. The average size in the commercial catch in 1996 was between 9 and 20 kg depending on the area caught, and the average age was 12 years old (Forsberg, J., Unpub [1997]).

Interception of juvenile halibut (~30 cm and greater) often occurs in trawl fisheries targeting other groundfish species (such as rock sole, pollock, yellowfin sole, and Pacific cod). Incidental catch of halibut also occurs in groundfish hook and line and pot fisheries. Regulations in both Canada and U.S. currently dictate that all halibut caught incidentally must be discarded regardless of whether the fish is living or dead. These fisheries take place throughout the range of halibut and throughout most of the year. Wastage removals represent the mortality of legal-sized halibut due to lost or abandoned gear, and of sublegal-sized halibut discarded in the halibut fishery. Since the implementation of the quota share fisheries in the 1990s, the total mortality of legal-sized halibut from lost gear has remained under 0.5 M lb annually. Bycatch mortality accounts for the halibut that die from being caught in other fisheries. The 2005 bycatch mortality estimate of 12.1 M lb is the lowest since 1987 but similar to the estimates for the last several years (IPHC 2005).

Impacts on the Commercial Fishery. The halibut commercial fishery has been in existence for over 100 years. The 1990s have seen a dramatic change in the management regime in the U.S. In 1995, the U.S. implemented an IFQ program, in which each licensed fisherman was given a share of the annual catch limit based on the individual's past production. It has resulted in much longer seasons, currently March 5<sup>th</sup> through November 15<sup>th</sup>, replacing the 24-hour "derby" fisheries. It has also kept catches within the prescribed commercial limits. A suballocation to the Community Development Quota (CDQ) Program provides access to this fishery for Western Alaska communities. The Metlakatla Indian Community also has a small allocation under an agreement with the Department of Interior Bureau of Indian Affairs. There are no expected impacts on the commercial fisheries under the proposed action.

Impacts on the Sport Fishery. Sport fishing for halibut was nonexistent in the 1920s but has grown into a major industry in Canada and Alaska. The first IPHC regulations on sport fishing were instituted in 1973 and included an 8-month season with limitations on the individual's daily catch and the gear. Since that time, sport regulations have grown in complexity and have seen increased involvement by state, provincial and Federal agencies.

Sportfishing is done primarily for sport values (i.e., "sport," fun," "enjoyment," "fair competition"). Participation in a sport-quality activity is the primary cultural value. Sport regulations in general are consistent with these sport values, in that they provide for relatively inefficient gear (2-hooks, a "fair

chase ethic”), limited daily bags (2-fish per day; food is not the primary purpose of the activity), and sport license requirements (user’s pay for management, etc.). The sport cultural tradition in Alaska derives from Euroamerican historic traditions, and currently sport participants are primarily from Euroamerican cultural groups living in urbanized areas (but also some rural places) in Alaska and the continental U.S.

In addition to sport motives, a significant portion of Alaska residents and many nonresidents who fish for halibut under sport regulations may be motivated in large part to provide subsistence food with rod and reel. Anecdotal information suggests that many charter anglers evaluate the success of their trip by the poundage caught and whether it was cheaper to fish or buy the halibut. Halibut are not terribly exciting or difficult to catch. The bag limit of two fish may be perceived as adequate to satisfy food needs given the mean size of halibut. Whether or not there is a one to one correspondence in the cost consideration of choosing to sportfish versus purchasing commercially caught halibut remains to be tested; however, it is likely that some anglers derive additional value from stocking their freezers with fish they caught than they would have realized from purchasing commercially caught halibut.

The expected impacts of the proposed action on the charter sector will be positive for current participants who would be granted limited entry permits, as new entrants must purchase a limited entry permit before they are allowed to enter the fishery. The proposed action would have a negative effect on those entering the fishery because they will have to purchase a permit from a permit holder. The non-guided sector would not be affected by the proposed action, while sport anglers who fish on charter vessels may bear the cost of that expense through increased charter fees.

Impacts on other non-commercial uses. The removals of Pacific halibut from the population that are accounted for in the stock assessment include commercial and sport catch, bycatch, wastage and personal use. Under the IFQ program, take-home fish counts as part of commercial IFQ. Personal use fish includes the non-commercial and non-sport halibut, from a variety of sources for which little documented data are available. Sources include rod and reel catch not documented in the sport catch, illegally-set commercial gear, and illegally-retained bycatch in other fisheries.

Subsistence fishing is a traditional use in Alaska, primarily for food use by domestic family groups, including noncommercial sharing and distribution systems. A series of subsistence regulations implemented by NMFS are consistent with these values, in that they provide for established patterns of use, including customary efficient gear from the point of view of domestic family groups, relatively unrestricted seasons and bag limits except for conservation reasons (subsistence fisheries are for food and are generally self-limiting because the limited size of the subsistence sharing-consumption networks), and relatively simple reporting-permitting systems. The subsistence cultural traditions in Alaska have evolved over time, and the people who are most heavily involved in subsistence patterns are Alaska Native groups with local cultural traditions of use; in addition, non-Natives living in “rural” places (places with a mixed, subsistence-market economic system) participate in some subsistence activities. Subsistence production-distribution is commonly a major economic sector in rural communities. Mixed, subsistence-market economies are characteristic of rural villages and a few large towns in Alaska – these are local systems of production-consumption where wild food production contributes a substantial portion of the food supply of the community (that is, about 50% or more the community’s protein needs). Subsistence halibut fishing typically occurs in rural places with subsistence-market economies. A detailed description of the halibut subsistence fishery may be found in the EA/RIR adopted by the Council in 2000 and submitted to the Secretary for consideration in 2002 (<http://www.fakr.noaa.gov/analyses/subsistence/halibut0403.pdf>).

State regulations recognize subsistence, personal use, commercial, and sport uses of halibut. They classify all halibut harvested with a rod-and-reel as a sport harvest. Persons harvesting halibut with a rod-and-reel are required to obtain an Alaska sport fishing license. However, most halibut fishers in rural Alaska communities do not recognize their activities to be sport in nature, but as subsistence or personal use,



regardless of the gear type used to obtain it. The extent to which, 1) rural fishers actually obtain sport fishing licenses to harvest halibut with rod and reels, or 2) subsistence patterns are constrained by two fish per day sport bag limit, have not been assessed. The rural halibut harvest with rod and reel is supposed to be counted through a statewide annual mailed survey to holders of sport fishing licenses by the ADF&G Division of Sport Fish. Whether this survey adequately counts the rural take has been subject to debate in recent years, as discussed further below.

**Conclusions.** The proposed action addresses access to the Pacific halibut resource. There are no expected impacts on the halibut subsistence, personal use, guided or unguided sport fisheries because these takes are not limited and are not affected by any allocation decisions in other sectors. There are no expected impacts on the commercial fisheries because users are not subject to the proposed action. While the proposed action does not address direct removals of charter halibut, limiting the number of fishing platforms available to anglers would affect removals indirectly. It would not change fishing practices or the amount of halibut allowed to be retained by anglers. Some charter businesses will benefit, while others will lose under the proposed action. Charter anglers may pay higher fees as businesses who must purchase permits, pass on some of those costs. No adverse impacts to the halibut resource or the benthic environment would be expected. It would not result in changes in food availability to predators and scavengers, changes in the population structure of target fish stocks, and changes in the marine ecosystem community structure. The proposed action does not affect allowable fishing gear or locations of fishing effort. There are no significant impacts on the halibut stock expected from the proposed action.

#### 1.5.1.1 Potential Impacts on Groundfish Bycatch

Bycatch in the charter halibut fishery includes 12 species of rockfishes, Pacific cod, and ling cod. The primary groundfish bycatch taken in the halibut charter fishery include limited amounts of Pacific cod and rockfishes (primarily yelloweye and black), with lesser amounts of spiny dogfish, salmon shark, and sablefish. State-managed species such as king salmon and ling cod, along with rockfishes, are also taken. These species may be listed as having been caught on a halibut targeted trip, but they may become the target species during the trip because the halibut bag limits have been reached. Additionally, the target species may change because halibut fishing during the particular trip is poor and the operator wants to satisfy the client by landing any species (S. Meyer, pers. comm.). Therefore, ADF&G staff recommended that it is not possible to assign groundfish catches to the charter halibut fishery; however, Table 3 identifies rockfish and lingcod harvests associated with charter bottomfish effort for 1996 - 2004.

**Table 3** Estimated rockfish and lingcod harvest (number of fish) by charter anglers by area and year

Year	IPHC Area 2C		IPHC Area 3A	
	Number of charter-harvested rockfish	Number of charter-harvested lingcod	Number of charter-harvested rockfish	Number of charter-harvested lingcod
1996	14,591	10,588	17,640	5,137
1997	13,077	9,355	17,036	6,737
1998	15,516	11,690	16,884	5,070
1999	24,815	11,264	18,756	5,150
2000	26,292	11,805	25,690	7,609
2001	29,509	8,961	28,273	6,813
2002	25,346	5,749	30,946	5,830
2003	27,991	6,551	28,415	7,836
2004	45,908	9,549	41,400	9,576

Source: ADF&G, Statewide Harvest Survey data.

The issue of 'bycatch' is complex. Too often fish that are labeled bycatch are actually targeted, in both commercial and recreational fisheries. For example, in Southcentral Alaska, the sport fishery port samplers ask the anglers and charter skippers what species they were targeting. While they may answer 'halibut' (because that was their species of choice), they may have specifically targeted lingcod for a portion of their trip because halibut fishing was poor. Commercial fishermen often 'top off' with bycatch species for which the directed fishery is closed (A. Bingham, pers. commun.).

The IPHC has been observing declines in halibut recruitment and predicts a decrease in the exploitable biomass in the long term. The harvest of state-managed groundfish (and in some cases, salmon) observed in the ADF&G port sampling program is usually inversely related to halibut harvest, but it is unknown if anglers switch target species when halibut fishing is poor or expend more effort to catch salmon when the salmon returns are strong. No in-depth analysis of these data has been done, and it may be impossible given the lack of information. It is likely that harvest of state-managed species will increase if the halibut stock declines in abundance, with or without the proposed alternatives.

In summary, the interaction of halibut catch and harvest of other species is poorly documented and not well understood. Any discussion will be highly speculative. This information is insufficient to predict direct effects of charter halibut harvest. Other species taken incidentally in sport charter halibut fisheries include sculpins, arrowtooth flounder and several other flatfishes, pollock, spiny dogfish, sleeper shark, salmon shark, and greenling. No harvest estimates are available for these species.

#### **1.5.1.2 Potential Impacts on Habitat**

No information is available on the impacts of the halibut fisheries on habitat. The proposed action would not increase the amount of harvest, the intensity of harvest, or the location of harvest, therefore, this action is presumed not to increase the impacts of the fisheries to EFH. Therefore, in the context of the fishery as a whole, this action will not adversely affect EFH for managed species. As a result of this determination, an EFH consultation is not required. There are no known significant impacts of the halibut charter fishery on marine habitat since there are no known significant changes in fishing practices as a result of the preferred alternative.

#### **1.5.2 Impacts on Endangered or Threatened Species**

The Endangered Species Act of 1973 as amended [16 U.S.C. 1531 et seq; ESA], provides for the conservation of endangered and threatened species of fish, wildlife, and plants. It is administered jointly by the NMFS for most marine mammal species, marine and anadromous fish species, and marine plants species and by the USFWS for bird species, and terrestrial and freshwater wildlife and plant species.

The designation of an ESA listed species is based on the biological health of that species. The status determination is either threatened or endangered. Threatened species are those likely to become endangered in the foreseeable future [16 U.S.C. § 1532(20)]. Endangered species are those in danger of becoming extinct throughout all or a significant portion of their range [16 U.S.C. § 1532(20)]. Species can be listed as endangered without first being listed as threatened. The Secretary of Commerce, acting through NMFS, is authorized to list marine fish, plants, and mammals (except for walrus and sea otter) and anadromous fish species. The Secretary of the Interior, acting through the USFWS, is authorized to list walrus and sea otter, seabirds, terrestrial plants and wildlife, and freshwater fish and plant species.

In addition to listing species under the ESA, the critical habitat of a newly listed species must be designated concurrent with its listing to the "maximum extent prudent and determinable" [16 U.S.C. § 1533(b)(1)(A)]. The ESA defines critical habitat as those specific areas that are essential to the conservation of a listed species and that may be in need of special consideration. Federal agencies are

prohibited from undertaking actions that destroy or adversely modify designated critical habitat. Some species, primarily the cetaceans, which were listed in 1969 under the Endangered Species Conservation Act and carried forward as endangered under the ESA, have not received critical habitat designations.

After reviewing the current status of the listed species, designated critical habitat, and the potential effects of the halibut fisheries, NMFS Sustainable Fisheries concludes that this fishery off Alaska (which uses gear unlikely to generate bycatch of finfish, seabirds or marine mammals) will not affect ESA-listed species or designated critical habitat, pursuant to Section 7 of the Endangered Species Act. Therefore, the ESA does not require a consultation for this fishery. Halibut do not interact with any listed species and do not comprise a measurable portion of the diet of any listed species nor do any of the species comprise a measurable portion of their diet. No interactions between the charter halibut fisheries and any listed species have been reported. Table 4 provides the species listed as endangered and threatened under the ESA.

**Table 4 Species listed as endangered and threatened under the ESA that may be present in the Federal waters off Alaska**

Common Name	Scientific Name	ESA Status
Northern Right Whale	<i>Balaena glacialis</i>	Endangered
Bowhead Whale <sup>a/</sup>	<i>Balaena mysticetus</i>	Endangered
Sei Whale	<i>Balaenoptera borealis</i>	Endangered
Blue Whale	<i>Balaenoptera musculus</i>	Endangered
Fin Whale	<i>Balaenoptera physalus</i>	Endangered
Humpback Whale	<i>Megaptera novaeangliae</i>	Endangered
Sperm Whale	<i>Physeter macrocephalus</i>	Endangered
Snake River Sockeye Salmon	<i>Onchorynchus nerka</i>	Endangered
Short-tailed Albatross	<i>Phoebaotria albatrus</i>	Endangered
Steller Sea Lion	<i>Eumetopias jubatus</i>	Endangered and Threatened <sup>b/</sup>
Snake River Fall Chinook Salmon	<i>Onchorynchus tshawytscha</i>	Threatened
Snake River Spring/Summer Chinook Salmon	<i>Onchorynchus tshawytscha</i>	Threatened
Puget Sound Chinook Salmon	<i>Onchorynchus tshawytscha</i>	Threatened
Lower Columbia River Chinook Salmon	<i>Onchorynchus tshawytscha</i>	Threatened
Upper Willamette River Chinook Salmon	<i>Onchorynchus tshawytscha</i>	Threatened
Upper Columbia River Spring Chinook Salmon	<i>Onchorynchus tshawytscha</i>	Endangered
Upper Columbia River Steelhead	<i>Onchorynchus mykiss</i>	Endangered
Snake River Basin Steelhead	<i>Onchorynchus mykiss</i>	Threatened
Lower Columbia River Steelhead	<i>Onchorynchus mykiss</i>	Threatened
Upper Willamette River Steelhead	<i>Onchorynchus mykiss</i>	Threatened
Middle Columbia River Steelhead	<i>Onchorynchus mykiss</i>	Threatened
Spectacled Eider	<i>Somateria fishcheri</i>	Threatened
Steller Eider	<i>Polysticta stelleri</i>	Threatened

<sup>a/</sup> The bowhead whale is present in the Bering Sea area only.

<sup>b/</sup> Steller sea lion are listed as endangered west of Cape Suckling and threatened east of Cape Suckling.

**Short-tailed albatross.** In 1997, NMFS initiated a Section 7 consultation with USFWS on the effects of the halibut fishery off Alaska on the short-tailed albatross. USFWS issued a Biological Opinion in 1998 that concluded that the halibut fishery off Alaska was not likely to jeopardize the continued existence of the short-tailed albatross (USFWS, 1998). USFWS also issued an Incidental Take Statement of two short-tailed albatross in two years (1998 and 1999), reflecting what the agency anticipated the incidental take could be from the fishery action. No other seabirds interact with the halibut fisheries. Under the authority of ESA, USFWS identified non-discretionary reasonable and prudent measures that NMFS must implement to minimize the impacts of any incidental take.

### 1.5.3 Impacts on Seabirds

Because halibut fisheries are Federally-regulated activities, any negative effects of the fisheries on listed species or critical habitat and any takings<sup>14</sup> that may occur are subject to ESA Section 7 consultation. NMFS initiates the consultation and the resulting biological opinions are issued to NMFS. The Council may be invited to participate in the compilation, review, and analysis of data used in the consultations. The determination of whether the action “is likely to jeopardize the continued existence of” endangered or threatened species or to result in the destruction or modification of critical habitat is the responsibility of the appropriate agency (NMFS or USFWS). If the action is determined to result in jeopardy, the opinion includes reasonable and prudent measures that are necessary to alter the action so that jeopardy is avoided. If an incidental take of a listed species is expected to occur under normal promulgation of the action, an incidental take statement is appended to the biological opinion.

In addition to those listed under the ESA, other seabirds occur in Alaskan waters which may indicate a potential for interaction with halibut fisheries. The most numerous seabirds in Alaska are northern fulmars, storm petrels, kittiwakes, murrelets, and puffins. These groups, and others, represent 38 species of seabirds that breed in Alaska. Eight species of Alaska seabirds breed only in Alaska and in Siberia. Populations of five other species are concentrated in Alaska but range throughout the North Pacific region. Marine waters off Alaska provide critical feeding grounds for these species as well as others that do not breed in Alaska but migrate to Alaska during summer, and for other species that breed in Canada or Eurasia and overwinter in Alaska. Additional discussion about seabird life history, predator-prey relationships, and interactions with commercial fisheries can be found in the 2004 FPSEIS. Since charter halibut gear are typically rod-and-reel with a maximum of two hooks, interactions with seabirds are unlikely. There are no known reported takes of seabirds in charter fisheries off Alaska, based on best available information.

None of the alternatives under consideration would affect the prosecution of the halibut fisheries in a way not previously considered in consultations. The proposed alternatives to the status quo would limit charter halibut removals and any associated bycatch, although seabirds are not a known incidental harvest in this fishery. A likely result of the proposed alternatives is that commercial halibut harvests may increase; this fishery is subject to strict seabird avoidance requirements (<http://www.fakr.noaa.gov/protectedresources/seabirds/guide.htm>). None of the alternatives would affect takes of listed species and therefore, none of the alternatives are expected to have a significant impact on endangered or threatened species.

### 1.5.4 Impacts on Marine Mammals

The charter halibut fishery in the EEZ of Alaska is classified as a Category III fishery under the Marine Mammal Protection Act. A fishery that interacts only with non-strategic stocks and whose level of take has insignificant impact on the stocks is placed in Category III. No takes of marine mammals by the charter halibut fishery off Alaska have been reported. Marine mammals are not taken in halibut charter fisheries and therefore, none of the alternatives are expected to have a significant impact on marine mammals.

### 1.5.5 Impacts on Biodiversity and the Ecosystem

Halibut is one of four groundfish, in terms of biomass as measured by the trawl surveys, which dominate the Gulf of Alaska ecosystem (S. Gaichas, pers. comm.). The others include arrowtooth flounder, walleye pollock, and Pacific cod (in order of importance). Halibut is an apex predator in the GOA which seems

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<sup>14</sup> The term “take” under the ESA means “harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or attempt to engage in any such conduct” (16 U.S.C. 1538(a)(1)(B)).

rather dependent on pollock stocks, as pollock comprised over half of the adult halibut's diet composition measured in the early 1990s. Most mortality on halibut is from fishing because they have few natural predators, especially as adults.

Halibut harvests by the charter fishery as well as all other fishery harvests, removes predators, prey, or competitors and thus could conceivably alter predator-prey relationships *relative to an unfished system*. Studies from other ecosystems have been conducted to determine whether predators were controlling prey populations and whether fishing down predators produced a corresponding increase in prey. Similarly, the examination of fishing effects on prey populations has been conducted to evaluate impacts on predators. Finally, fishing down of competitors has the potential to produce species replacements in trophic guilds. Evidence from other ecosystems presents mixed results about the possible importance of fishing in causing population changes of the fished species' prey, predators, or competitors. Some studies showed a relationship, while others showed that the changes were more likely due to direct environmental influences on the prey, predator, or competitor species rather than a food web effect. Fishing does have the potential to impact food webs but each ecosystem must be examined to determine how important it is for that ecosystem.

Little research has been conducted on the specific trophic interactions of halibut. With trophic interactions and inter-specific competition so poorly understood, it is not possible to clearly specify the effects to the ecosystem of the charter halibut fishery. However, given the nature of the action, the presumed effects of the alternatives on the ecosystem are insignificant.

None of the alternatives would have a significant impact on the environment. The main consequence of the proposed alternatives is to control halibut charter fisheries in IPHC Areas 2C and 3A. The economic effects of the proposed alternatives are detailed in Chapter 2.

Based on current information, it is reasonable to assume that the effect on the halibut resource of implementing measures to reduce charter halibut harvests, while allowing all other fishery removals to increase while limited by the quota set by the IPHC, is negligible. The IPHC has determined that resource conservation is not a factor in such allocations.

### **1.5.6 Impacts on the Social and Economic Environment**

A description of the charter halibut fishery and detailed discussions of the socioeconomic impacts of the alternatives may be found in the RIR in Chapter 2. Chapter 3 contains an IRFA, conducted to evaluate the impacts of the suite of potential alternatives being considered, including the preferred alternative, on small entities, in accordance with the provisions of the RFA.

Before 1973, all halibut fishing, including sportfishing, was governed by commercial fishing regulations (IPHC 1998). Sport catches were usually incidental to saltwater sportfishing for salmon. As the sport catch increased, the IPHC clarified its authority to manage the sport halibut fishery and adopted regulations for the "sport" fishery in 1973, including an 8-month season with limitations on an individual's daily catch and gear (Williams 1999). Since then, the popularity of bottomfish has surged and halibut sport fishing has supported a charter industry. Sport regulations have grown in complexity, with increased involvement by the State of Alaska, the Council, and NMFS. Estimates of halibut sport biomass are obtained through ADF&G creel census, postal surveys (SWHS), and a mandatory charterboat logbook program (SCVL), which continued from 1998 through 2001. Halibut harvests will be required to be reported in weekly logbooks beginning again in 2006.

Marine recreational fisheries are popular in Southcentral Alaska, supporting approximately 486,000 angler-days of effort for all finfish species (2000 estimate) (<http://www.sf.adfg.state.ak.us/region2/>)

[groundfish/gfhome.cfm](#)). An angler day equals one angler fishing for any part of a day. Effort has more than doubled in the last 20 years. A large portion of this recreational fishing effort is directed at halibut.

### 1.5.6.1 Description of Fishery Participants

Charter halibut fishery participants for Areas 2C and 3A are presented in Table 5. In summary, the number of vessels active in the 2005 charter halibut fishery totaled 654 and 567 in Areas 2C and 3A, respectively. Each vessel carries a skipper and some carry a mate; therefore, an estimate of the number of crew assuming skipper and mate is 1,308 and 1,134, respectively. The number of businesses active in the 2004 charter halibut fishery totaled 381 and 450, respectively. Sportfishing licenses totaled more than 120,000 in each area (Table 5).

**Table 5 Total number of sport fishing licenses sold by vendors within each IPHC Area (2C and 3A), 1993 - 2004, by residency**

Year	Sport fishing licenses sold by vendors in IPHC 2C				Sport fishing licenses sold by vendors in IPHC 3A				Internet/Mail Sales (unknown location)
	Alaska Residents	Non-residents	Unknown Residency	Total	Alaska Residents	Non-residents	Unknown Residency	Total	
1993	27,478	50,932	2,101	80,511	38,075	51,561	2,838	92,474	984
1994	27,685	60,350	2,193	90,228	40,116	59,091	1,650	100,857	1,075
1995	26,982	63,881	77	90,940	39,382	63,834	58	103,274	1,151
1996	26,725	67,896	56	94,677	40,278	65,947	66	106,291	1,261
1997	26,724	71,515	26	98,265	38,799	67,552	34	106,385	1,518
1998	25,241	71,789	49	97,079	37,306	69,447	56	106,809	1,699
1999	24,517	76,228	56	100,801	37,025	75,159	31	112,215	2,092
2000	24,173	81,030	42	105,245	38,534	75,526	71	114,131	4,972
2001	23,743	79,503	95	103,341	39,192	76,996	48	116,236	7,712
2002	22,976	83,540	45	106,561	39,786	78,491	40	118,317	9,350
2003	23,169	82,533	125	105,827	39,828	76,220	63	116,111	11,233
2004	23,363	98,490	5	121,858	40,833	85,424	3	126,260	14,211

Note: Numbers of licenses sold by internet/mail are provided as well for reference purposes, as these license sales cannot be assigned to a geographic location. Sales by vendors in other locations throughout the state (outside of IPHC Areas 2C and 3A) are not included (except the internet/mail sales).

## 1.6 Cumulative Effects

Effects of an action can be direct or indirect. According to the definition in the Council on Environmental Quality (CEQ) regulations (40CFR1500.1) providing guidance on NEPA, direct effects are caused by the action and occur at the same time and place, while indirect effects are those caused by the action and occur later in time or farther removed in distance, but are still reasonably foreseeable. Although the CEQ regulations draw this distinction between direct and indirect effects, legally both must be considered equally in determining significance. In practice, according to "The NEPA Book" (Bass et al. 2001, p. 55), "the distinction between a reasonably foreseeable effect and a remote and speculative effect is more important than the question of whether an impact is considered direct or indirect."

The proposed action is designed to limit entry into the charter halibut sector in Areas 2C and 3A. Any direct effects or reasonably foreseeable indirect environmental effects from the action would be minor, as explained above. The action itself would not entail changes in harvest levels, and any environmental effects, such as the removal of halibut biomass from the ecosystem, are so minor as to make it difficult to reasonably predict further indirect effects of those changes.

Cumulative effects are linked to incremental policy changes that individually may have small outcomes, but that in the aggregate and in combination with other factors can result in major resource trends. This action would not interact synergistically with other actions or with natural trends to significantly affect the halibut resource of the Gulf of Alaska. Measures to further allocate the halibut resource to the charter sector or to individual charter businesses have been delayed to a future action. The proposed alternatives will have no effect on any halibut fishery sector or on the halibut resource. No reasonably foreseeable future actions would have impacts that would cause significant cumulative effects when combined with the effects from this action.

Possible future actions currently under consideration by the Council include (1) no action; (2) an allocation to the charter sector, including, but not limited to: (a) sub-allocations to smaller areas; (b) sub-allocations to underdeveloped coastal communities; and (c) individual shares based on effort; and (3) a quota share program. The State of Alaska is also exploring opportunities for delegation of authority to the State to manage halibut.

*This section will be updated to reflect proposed action by the International Pacific Halibut Commission to implement management measures to limit the charter sector to the respective GHGs, as a conservation measure.*

## 2.0 REGULATORY IMPACT REVIEW

The Regulatory Impact Review provides information on the economic and socioeconomic impacts of the proposed alternatives including identification of the individuals or groups that may be affected by the action, the nature of these impacts, quantification of the economic impacts if possible, and discussion of the tradeoffs between qualitative and quantitative benefits and costs.

The requirements for all regulatory actions, specified in E.O. 12866, are summarized in the following statement from the order:

In deciding whether and how to regulate, agencies should assess all costs and benefits of available regulatory alternatives, including the alternative of not regulating. Costs and benefits shall be understood to include both quantifiable measures (to the fullest extent that these can be usefully estimated) and qualitative measures of costs and benefits that are difficult to quantify, but nevertheless essential to consider. Further, in choosing among alternative regulatory approaches, agencies should select those approaches that maximize net benefits (including potential economic, environment, public health and safety, and other advantages; distributive impacts; and equity), unless a statute requires another regulatory approach.

This section addresses the requirements of E.O. 12866 to provide adequate information to determine whether an action is "significant," as defined under the Executive Order. E. O. 12866 requires that the Office of Management and Budget review proposed regulatory programs that are considered to be "significant." A "significant regulatory action" is one that is likely to:

- (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
- (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

### 2.1 Problem Statement

The Pacific halibut resource is fully utilized and harvest by the guided sport sector is demonstrating steady growth. To provide long term stability of the guided sport sector and lessen the need for regulatory adjustments, which destabilize the sector, the Council is embarking on development of a new management framework. In the interim, to address allocation issues between the guided sport and commercial sectors the guided sport sector is operating under a guideline harvest level (GHL). Harvest data indicate that the GHLs in Area 2C have been exceeded and are near levels established for Area 3A. This has resulted in a renewed effort to find a long-term solution. The Council has formed a stakeholder committee of affected user groups to consider management options and formulate recommendations for Council consideration in developing a management plan for the guided sector. Some of the past options under consideration include limiting entry or awarding quota share based on past involvement in the fishery. To address the potential against the rush of new entrants into the guided sport fishery, the Council is considering establishing a moratorium on the guided sport sector.



## 2.2 Management Objectives of the Action

The Council has proposed implementing a halibut charter vessel moratorium as one step in addressing unregulated growth in the charterboat industry, as it pertains to the distribution of Pacific halibut catches among commercial and charterboat fishing sectors. This action is designed to build on previous decisions made by the Council that are described in section 1.2 of this document by limiting growth in the sector and to define the charterboat sector that would be eligible for future charterboat rationalization programs.

The primary purpose of this amendment is to limit the number of halibut charterboats that may carry clients in IPHC areas 2C and 3A. Limiting the number of charterboats and the number of clients they carry is expected to control growth in halibut mortality that result from the charterboat sector.

Because of the method the IPHC uses to allocate halibut, not all sport and commercial fishing sectors that catch halibut are directly affected by the proposed moratorium. Estimates of legal-sized halibut bycatch, sport catch, wastage, and personal use are deducted from the Total CEY to generate the Fishery CEY. The amount of halibut allocated to the Fishery CEY can be further reduced for policy objectives. The amount of halibut the commercial fisheries that only use halibut PSC, unguided sport fishermen, and personal use fisheries use is deducted from the CEY<sup>15</sup> before the charter and commercial IFQ catches are set. The halibut allotment for the charter and commercial IFQ fisheries is the Commercial Catch Limit.

## 2.3 Alternatives Considered

This analysis assesses the potential economic and social impacts of implementing proposed management measures to either maintain the status quo (Alternative 1) or to implement a moratorium on entry into the halibut guided sport sector (Alternative 2). A direct allocation to the halibut charter sector is not considered as part of this program.

The alternatives under consideration were developed over an extended period, with input from a wide range of sources (see Appendix I for a detailed discussion of this process and development). Moratorium alternatives were discussed by the Council as far back as 1995; however, the lack of data on individual operators and political will stymied implementing moratorium. The State of Alaska initiated a charter vessel logbook program and collected halibut data from 1998 through 2001. That program was halted for a variety of reasons and replaced with a new logbook program in 2004. Data from the new logbook program are used to determine the persons that could qualify for a permit in this program.

The moratorium program is not expected to fully address the open-ended reallocation from the commercial IFQ fishery to the guided sport sector. It may provide a measure of stability to the current halibut charter operations and set the foundation for future management measures being considered by the Council. Council management measures that could be more effective in addressing allocation issues between the commercial IFQ and charter sectors are being addressed in a separate amendment package.

### Expected Effects of each Alternative on each Sector

The following analysis describes the effects of the status quo (Alternative 1 - No Action) and a moratorium (Alternative 2) on the charter, commercial IFQ, and [to a lesser extent] non-charter fishermen. Background information and options for the moratorium analysis (except for the options for qualification criteria) have been supplemented with information taken from the 2003 GHM analysis (Alternative 3).

<sup>15</sup> Total CEY is the Exploitable Biomass multiplied by the Harvest Rate.

Economic considerations associated with allocating a resource among competing sectors center around the notion of economic efficiency, which is analogous to the idea of maximum net benefits. An efficient allocation occurs when the combination of net benefits to consumers and producers in each sector is greatest. This combination is the sum of net benefits to the primary stakeholders in each user group: consumers of commercially caught halibut, commercial fishermen, sport anglers, charter operators, personal use, and subsistence. Economic theory suggests that social welfare maximizing distributions can be achieved by allocating each sector an amount of halibut that results in their marginal net benefits are equal. That would only be possible if net benefits for all sectors were expressed as a single tradable unit of value and market with perfect information for all sectors and there was an absence market power (Criddle, 2006). These conditions do not exist for halibut fisheries.

Consumers of seafood determine the value of commercial fish through their willingness to pay. The net benefit to consumers is the difference between what they are willing to pay, and what they actually pay (the market price) to consume seafood. Net benefits to consumers of seafood, and consumers in general, are referred to as consumer surplus.

Consumer surplus in the recreational sector exists, regardless of whether there is a market for the recreational activity, since it is the difference between what anglers are willing to pay to sportfish and the costs incurred to do so. In the case of charter fishing, there is a market for guided trips, and the difference between what a guided angler would be willing to pay and what she or he does pay (the charter price) is the net benefit. The net benefits, or producer surplus, to charter operators is the difference between their total revenues and their costs, including opportunity cost.

The net benefit to commercial fishermen (Halibut IFQ fishermen and charter operators) is the difference between what they receive for supplying fish or trip (ex-vessel revenues and trip prices) and all costs associated with harvesting the resource, inclusive of opportunity cost. Opportunity costs represent the value of the next best business alternative that a commercial operator could have engaged in with his or her investment. Net benefits to commercial harvesters, and producers in general, are referred to as producer surplus.

Some benefits are excluded in a cost-benefit analysis when assessing only net *national* benefits. For example, the consumer surpluses of foreigners who come to Alaska to sportfish for halibut, or the benefits enjoyed by the consumers of U.S. exported commercial halibut would not be a part of the net national benefit calculation. Neither would the benefits that accrue to foreign producers be counted, since this producer surplus does not accrue to the national economy.

It can be the case that the management measure that produces the greatest net national benefit is one that disproportionately favors one sector over another, or that is substantially different from the starting point. As explained by Edwards (1990), potential efficiency is gained even if it means a substantial loss of economic surplus to one of the sectors, so long as net national benefits increase. The Kaldor-Hicks “compensation test for judging whether efficiency is increased is whether ‘winners’ of economic value could compensate ‘losers’ and still come out ahead” (Edwards 1990). Whether or not winners actually compensate the losers is irrelevant within this context.

Potential improvements in “efficiency” (e.g., the Kaldor-Hicks test results) provide no insight into “equity”. However, equity among the sectors is an important, if separate issue that should be addressed. Properly construed, economic efficiency evaluations, at least implicitly, takes equity considerations into account (e.g. by differentially weighting values of competing individuals or groups). In practice this rarely, if ever, occurs because equity issues are often times difficult to render into dollar value terms, given the subjective ‘weighting’ preferences implied.

Distributional issues thus normally fall outside the bounds of conventional cost-benefit analyses. Both the commercial and sport fisheries contribute to regional economies. Producers in both sectors purchase inputs, such as labor, fuel, vessels, and vessel maintenance services, financial services, etc. They both pay taxes that contribute to the well-being of communities, and support associated industries, such as processors, seafood brokerages, and recreation booking agents. As consumers of sport fishing services, guided anglers also spend monies that contribute to the economic well being of communities that provide charters. National Standard 5 states that economic efficiency shall be considered, where practicable. However National Standard 5 also indicates that economic allocation should not be the sole purpose of the action. Identification of the downstream monetary impacts is helpful in revealing the distributional effects of a policy change among the various segments of an economy, and this is the scope of economic impact analysis.

Economic impact analysis (EIA) provides a snapshot of the economic interdependencies of various industries in a regional economy, and therefore allows analysts to model the downstream effects of demand changes for commodities or services. Since opportunity costs and willingness to pay do not enter into the impact assessment framework, the results of an EIA should not be confused with statements of value. It should be noted, however, that the results that yield the greatest value under a cost-benefit analysis may at times imply very disproportional allocations among stakeholders. Because notions of fairness and equity do not enter into the cost-benefit analysis framework, EIAs are useful tools for tracking “economic activity” and identifying the distribution revenue and employment *impacts* (as distinct from economic “benefits” or “costs” in the CBA sense of these terms), of alternative policies among the various players in an economy. For a more detailed discussion on the differences and appropriate uses of CBAs and EIAs, see Edwards (1990), Johnston and Sutinen (1999), or Steinback (1999).

Estimate net benefit and impact assessments of the halibut fisheries are not currently available because of problems associated with quantify benefits, difficulty in estimating benefits, and specifying consistent monetary terms for all sectors (Criddle, 2006). A number of past studies and ongoing projects have been referenced in this analysis to characterize the economics of these fisheries. Many of these studies were also presented in the 2003 GHF EA/RIR/IRFA. It was not possible to present more than a fragmented economic view of some aspects of present levels of economic benefits and impact

#### Description of Fleet, Fishery, and Industry

A description of the charter and commercial halibut fleets were presented in Appendix 2 of the 2003 GHF/RIR/IRFA (NPFMC 2003). That information is incorporated into this analysis by reference. Baseline information on the number of fishery participants and harvest levels for the 1995 - 2005 commercial and charter fisheries is presented in Table 2 of the EA for this amendment.

Additional information on the commercial halibut IFQ fishery can be found on the NMFS Alaska Region web site (<http://www.fakr.noaa.gov/ram/ifqreports.htm>). Information provided on that site includes allocations and catch by year, landings by port where the fish were delivered and area the fish were harvested. Information is also available there on fees collected under the IFQ program, transfers, permits issued, and vessel use caps. Those data provide background on the commercial halibut fishery and to some extent the communities that support the fleet. That information is included here by reference.

#### Coastal Community Considerations

Both charter and commercial fisheries are important to the economies and social structures of coastal communities in Areas 2C and 3A. Few data are available to describe the social impacts of charter fishing on coastal communities, however, a description of economic and social contributions from commercial

fishing to coastal communities is provided in a series of reports contracted by NMFS (Shirley et al. 1998, Dinneford 1999).

## 2.4 Alternative 1: Status Quo

The status quo in the halibut charter fishery is represented by the interactions of all the programs currently in regulation. The GHL for the charter halibut fishery sets a target charter harvest of 1.432 M lb net weight in Area 2C and 3.65 M lb net weight in Area 3A. These target harvest levels have been exceeded starting in 2004. During 2005, removal estimates for Area 2C were 1.95 M lbs and 3A 3.69 M lbs, those landing amounts were 36% and 1% over the 2C and 3A GHLs, respectively.

In addition to the GHL, all other charter management measures currently in place comprise the status quo. Management measures include a two fish bag limit, 2-hook gear limit, guide registration requirements, limits on captain and crew harvests (they were prohibited from retaining halibut during part of 2006 in area 2C), and other State and Federal management and safety requirements placed on the halibut charter fishery (NPFMC 2000).

Recent halibut landing amounts by fishermen on guided charters in 2C and, to a lesser extent, 3A have shown that the GHL will not constrain charter catches to their target level (see Table 6). If the status quo is continued, the amount of halibut landings from charter vessels could continue grow. The number of halibut retained is determined, to a large extent, by the number of clients taking trips, client bag limits, and the desire of clients to take fish home. Trip demand is driven by the price of the trip, incomes of potential clients, costs of substitute activities, and preferences for charter trips relative to other activities. Since the charter industry operates in a competitive market for paying clients, trip prices are established by the forces of supply and demand (Wilén, 2004).

**Table 6 Charter harvests in IPHC Areas 2C and 3A, 1995-2004**

Year	Pounds harvested in 2C	Pounds harvested in 3A
1995	986,000	2,845,000
1996	1,187,000	2,822,000
1997	1,034,000	3,413,000
1998	1,584,000	2,985,000
1999	939,000	2,533,000
2000	1,132,000	3,140,000
2001	1,202,000	3,132,000
2002	1,275,000	2,724,000
2003	1,412,000	3,382,000
2004	1,750,000	3,668,000

The number of visitors to Alaska from May 1 to September 30 has increased each year from 2001 to 2005. During that time the annual number of visitors increased from 1.20 million to 1.53 million (<http://www.gov.state.ak.us/omb/results/view.php?p=178>). That represents a 28% increase in the annual number of visitors. The population of Alaska also increased by 5.9 percent from April 1, 2000 to July 1, 2005 (<http://quickfacts.census.gov/qfd/states/02000.html>). During that period of time the population increased from 0.63 million to 0.66 million people. Given that both the number of visitors and residents has increased in recent years, demand for charter trips would be expected to continue to grow (all other things equal) in a competitive market for paying clients.

Estimates of halibut landings by the charter sector are currently unavailable for future years. Trends in historic harvest levels and the number of people that are potential clients seem to indicate that charter harvests will increase in the future, but the magnitude of the increase is unknown.

Under a steady or declining CEY the amount of halibut available to the 2C and 3A commercial IFQ fishery would be expected to decline. Changes in commercial IFQ halibut revenue will be driven by the amount of halibut they catch and the elasticities of supply and demand for IFQ halibut. Without information on future halibut prices and business costs it is not possible to predict the impacts that less halibut will have on profitability of those firms. However, public testimony on this issue indicates that commercial IFQ fishermen are concerned with the potential decline in harvests that result from increased charter harvests.

## **2.5 Alternative 2: Limited Entry (Moratorium) Program**

The Council is considering implementation of a moratorium on new entry into the halibut charter fishery to moderate future increases in fishing capacity while the Council determines what is necessary to stabilize charter landings of halibut in IPHC Areas 2C and 3A. A moratorium, if adopted, should provide a basis for the development of a more comprehensive effort limitation program for this segment of the fishery. The moratorium may be a prudent first step while the Council evaluates the need for a more comprehensive effort limitation program that could provide better long-term control of fishing capacity and effort.

A moratorium is a form of limited access management that is, in this case, intended to stabilize the number of charter vessels while the Council considers if a more comprehensive effort limitation program is necessary. In principle, its direct effect is to limit the number of vessels in the fishery to a number equal to those "active" during the qualifying period. Under open access, the number of vessels entering the fishery may continue to increase. This could diminish the overall economic performance of the fishery (Wilens, 2006) and may adversely affect commercial IFQ fishermen by reducing their IFQ amounts.

The proposed moratorium is essentially a limited entry system by license limitation that in itself will not fully control fishing effort because the existing fishing fleet may react by increasing overall fishing effort (number of trips or average number clients per trip). But a moratorium could better stabilize fishing effort than no moratorium, because only the permitted vessels would be allowed to increase effort.

In the course of public meetings and from public letters and testimony, it became clear that a large segment of the charter fleet owners and commercial IFQ fishermen support implementing some form of moratorium. Members of the commercial IFQ fishery, as a whole, appear to be stronger proponents of implementing stronger effort controls under future actions. Recreational fishermen and persons just entering (or wishing to enter) the charter fishery, often oppose or are less supportive of the moratorium.

Council will determine whether a more comprehensive limited entry system is needed through actions taken under the planing process for a follow-up amendment. If future actions are taken to rationalize the charter fishery the moratorium permit holders (or a subset of that group), will likely be the winners in future allocation decisions. Persons that do not hold moratorium permits are more likely to be excluded from future rationalization.

This moratorium action is designed to be as streamlined as possible so that the moratorium can be expeditiously implemented. Because of the desire for timely implementation, the program is limited to a few specific options. Future actions that are being considered could be more complicated, contentious, and time consuming to implement.

**The following sections will address each of the proposed features of the moratorium.**<sup>16</sup> A total of 12 issues will be addressed. Some of the issues are more statements of intent, rather than options to be considered. The discussion of those issues will be relatively short. Other issues have greater impacts on the industry. Those issues will be discussed in greater detail.

### 2.5.1 Issue 1

*Permits<sup>17</sup> may be held by U.S. citizens or U.S. businesses with 75 percent U.S. ownership of the business<sup>18</sup>. Businesses may receive multiple permits due to charter halibut activity by vessels reported by the businesses in ADF&G logbooks. Initial permit recipients may be "grandfathered" below the U.S. ownership level and above the proposed use caps until any change in ownership of the business occurs<sup>19</sup>.*

The permit conditions identified by the Council will add a U.S. ownership requirement a person must meet in order to operate a halibut charter business in IPHC Areas 2C and 3A. Currently, the only requirements to own and operate a guide business in the State of Alaska are found in Section 16.40.260 of the Alaska Statutes (AS). Those requirements do not include U.S. ownership provisions. Language from AS 16.40.260 is provided in the box below.

Many halibut charter business owners also operate the charter vessel. Those owners are required to comply with State and U.S. Coast Guard requirements for operating a for-hire vessel carrying clients. One requirement to operate the vessel is that the person must be a resident of the United States, Canada, Mexico or a resident alien. Owners that do not provide the actual guide services are not required to meet those additional requirements under current laws.

Implementing the permit requirements identified by the Council will ensure that any transfers of permits must be made to U.S. Citizens or U.S. businesses with 75 percent U.S. ownership of the business. This regulation will prohibit nonresident aliens and citizens of Canada and Mexico that were not initially issued a permit from owning halibut charter businesses that fish in Area 2C and 3A. These persons could continue to own and operate halibut charter businesses operating in other areas of the State. Since net national benefits only include consumer and producer surplus from U.S. residents. Excluding non-residents from purchasing permits may increase net benefits to the Nation.

<sup>16</sup> Military (Morale, Welfare, and Recreational) boats are exempted from limited entry, but harvests still count against the GHL.

<sup>17</sup> Through initial issuance and transfers

<sup>18</sup> A business means a business licensed by the State of Alaska as a sport fish guide operator.

<sup>19</sup> Transferred permits would not be grandfathered below the U.S. ownership cap, even upon sale of a business, but would be grandfathered above the use cap upon sale of the entire business (see Issue 11).

- (a) The department shall issue an annual sport fishing operator license to a person who:
- (1) holds a current business license under AS 43.70 to provide services to sport fishermen;
  - (2) presents proof satisfactory to the department of a general liability insurance policy or marine protection and indemnity insurance policy, covering the services provided by the person and person's employees to sport fishermen, that provides coverage of at least \$100,000 for each incident, and \$300,000 for all incidents in a year;
  - (3) pays the license fee prescribed by AS 16.05.340(a); and
  - (4) satisfies all additional requirements adopted in regulation by the Board of fisheries.
- (b) A person may not provide sport fishing services unless the person holds a current sport fishing operator license and has current insurance coverage as required in (a)(2) of this section.
- (c) A person who holds a current sport fishing operator license may contract to provide sport fishing guide services to a sport fisherman through an employee who holds a current sport fishing guide license under AS 16.40.270.
- (d) A person who holds a current sport fishing operator license may not directly provide sport fishing guide services to a sport fisherman unless the person also holds a current sport fishing guide license under AS 16.40.270(b).
- (e) A person who holds a sport fishing operator license may not aid in the commission of a violation of AS 16.05 - AS 16.40 or a regulation adopted under AS 16.05 - AS 16.40, including regulations relating to the proper method to release fish, by a sport fishing guide who is employed by the person or by a sport fisherman who is a client of the person.

The issue also states that persons may be issued multiple permits based on the bottomfish trip history of vessels as reported in Alaska Department of Fish and Game (ADF&G) Saltwater Logbooks<sup>20</sup> that were submitted by the charter business in a timely manner. This indicates that a business that submitted logbook data for two qualified vessels, for example, would be issued two distinct permits. Each of those permits would be transferable independent of the other. Allowing businesses to sell permits independently does not add additional vessels to the charter fleet, but it may allow increases in effort through more optimal distribution of permits among charter operators.

## 2.5.2 Issue 2

*Permit would be designated for either Area 2C or Area 3. If a business owner qualified for a permit in both areas, He would be issued a permit for only one area of his choosing.*

Permits would be issued for either IPHC Area 2C or 3A. Designating the IPHC area in which a permit may be used will restrict movement of permits from one IPHC area to another. Restricting movement will reduce the potential number of halibut charter vessels that could operate in that area. In the near term, limiting moratorium permits to a specific IPHC area is not expected to have a substantial impact on charter businesses or guided anglers. The permits issued for each area are expected to be about the same or greater than the number of vessels that operated in recent years. If conditions change in the fishery and clients want to take more trips in an area, the restrictions could impact the availability and price of trips.

The amount of protection<sup>21</sup> specific ports within that area receive will depend on the number of permits issued in that IPHC area and number of permits needed to operate guide operations in other ports. If several permits are issued that are not needed to provide charter clients trips in the port they were earned, they could be moved to other ports in that IPHC area and increase competition in that port. Increased

<sup>20</sup> Bottomfish trips reported in ADF&G logbooks will be referred to as logbooks in this document.

<sup>21</sup> "Protection" refers to limits placed on the number of new businesses and vessels that may operate out of a port, and the impacts those operations could have on competition for clients, fishing grounds, and port infrastructure.

competition for clients could benefit guided anglers through lower prices, but increased fishing effort could impact catch rates if localized depletion of halibut results from the effort increase.<sup>22</sup>

The ADF&G provided data that allows preliminary estimates of the number of permits that would be issued in each area to be generated. Based on that data, seven businesses submitted logbook entries for both Areas 2C and 3A. A brief summary of those operations is provided. Three businesses submitted logbook entries for three vessels that made trips in 2C and 3A during the 2004 and 2005 qualifying period. Two of those vessels would only qualify for a 3A endorsement if 5 or more trips were required in each area they fished. The history of those vessels would generate a permit for 3A at any trip requirement levels being considered by the Council. The third vessel would qualify for a 2C endorsement under any of the Council's alternatives and a 3A endorsement at any trip level being considered below the 20 or more trip threshold. If a vessel qualifies for more than one area the charter operator must select the one area they want endorsed on their permit. Permit operators that are forced to select one area will lose option to operate as they have in the past. In addition to those three vessels, four other businesses reported trips in both 2C and 3A but did not have a single vessel operate in both areas. These businesses would be issued one or more permits for 2C and other permits for 3A (if they meet the minimum trip requirements).

### 2.5.3 Issue 3

#### *Permit would be issued to registered guide business operator*

The initial allocation of transferable fishing privileges is typically one of the most scrutinized and contentious aspects of a limited entry program's design. Recipients of the initial allocation, in cases where the privilege is gifted or a small fee is charged, are considered the winners of the allocation process. Those that do not qualify for the initial allocation are considered the losers. The initial allocation is important because subsequent purchasers of the privilege would be required to pay the free market price (when freely transferable), that price represents a windfall to initial recipients because they were not required to pay for the fishing privilege.

The initial allocation of transferable fishing privileges is typically one of the most scrutinized aspects of a limited entry program's design. The persons that are recipients of the initial allocation, especially under programs that base the allocation on historic participation, are considered the winners of the allocation process. Those that do not qualify for an initial allocation are considered the losers.

There are at least four different methods that could be used to initially allocate moratorium permits. The first method would be to allocate permits based on historic participation in the fishery. Historic participation could be based on holding a license to fish or active participation in the fishery.

There are at least four methods that could be used to initially allocate moratorium permits.

- Historic Participation in the Fishery
- Lottery
- Auction
- Sale by Government at a Fixed Price

The first method would be to allocate permits based on historic participation in the fishery. Historic participation could be based on holding a fishing permit or active participation in the fishery. The time it

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<sup>22</sup> Localized depletion may be less of an issue as the size of charter vessels increases and the range that vessels operate in becomes larger. ADF&G Sport Fish Division staff has indicated that charter vessels are regularly ranging up to 60-80 nautical miles from the ports of Homer, Seward, Whittier, and Valdez.



takes to develop a limited entry program under the Council process creates opportunities for persons to enter the fishery or increase their historic participation to obtain permits during the initial allocation. This rent-seeking behavior results in economically wasteful activities (Criddle, 2006). Trends in the number of businesses and vessels participating in the 2C and 3A charter fishery seem to reflect that notion. Historic participation tables presented in the EA indicate that during 2000 and 2005 the numbers of vessels and businesses increased. Those are years when halibut charter limited entry programs were active topics in the Council process.

The Council has developed moratorium and license limitation programs for groundfish, crab, and scallop fisheries. Each time the allocation was based on historic participation in the fishery. The groundfish and crab moratoriums allocated permits to vessel owners if they had made one landing of groundfish/crab over a specific period of time. The groundfish license limitation built upon the moratorium by removing some latent permits and adding area and gear endorsements.

A lottery could also be used to initially issue permits. Lotteries for hunting permits are used for specific species and areas in Alaska and other areas of the Country. Lotteries typically issue to the persons whose name is drawn at no charge. If a lottery was used to allocate charter permits at no charge, the economic impacts for the winners and losers would be similar to those described under allocations based on historic participation.

Auctions have been discussed in recent years as a method to create an efficient initial allocation (Morgan, 1995) and as a mechanism for the government to better control the use of the public resource while providing financial return to public owners of the resource (Macinko, 2002). From an economic perspective, auctions would provide a very efficient method of allocating fishing privileges because they allocate permits to those persons who place the greatest value on them. It would also determine the market value of the permits. Auctions would also allow the Council and NMFS to determine the number of permits they want to issue and auction that amount. Auctions that sell to the highest bidder would generate the greatest revenue for the government, but other types of auctions could also be developed that allow the government to meet the needs of persons without the financial resources to successfully bid (Macinko, 2002). Currently, the MSA does not provide the option to auction or sell permits.

The final method would have the government sell permits for a fixed price. One problem with this method is NMFS would need to determine the appropriate price for the permits. Because NMFS does not have detailed cost and revenue data for the charter operators, it would be difficult for NMFS to set the price. Setting the price too high would prevent persons from buying all the permits. Too low of a price would create excess demand and persons would engage in behavior to collect rents from the fishery. Like with auctions, NMFS currently does not have the authority to sell permits.

Given the current regulatory restrictions, the Council's preference is to issue the permits to licensed sport fishing businesses based on historic participation in the fishery. Because the allocation is not market based, the initial distribution of permits will likely not be as economically optimal as a market based system. Permit transfers after the initial will help redistribute the permits to those persons who value them the most.

Licensed captains and crew hired to operate vessels would not be included in the initial allocation. Most license, permit, and IFQ programs developed by the Council issue the initial allocation to the owner of the business. IFQ systems, in some cases, recognized the contribution of captains with allocations of a percentage of the quota. The Council has elected not to include those individuals in the initial allocation of this program. The business owners (licensed sport fishing business in this program) have generally been issued permits under limited entry programs because they were deemed to have taken the greatest financial risk.

#### 2.5.4 Issue 4

*Permit applicant would be required to sign affidavit attesting that all legal requirements were met.*<sup>23</sup>

This requirement was developed as part of the procedure for gathering information and issuing a permit. The goal is to encourage permit applicants to provide true and accurate information on their permit application. It also provides a record of owners stating they are entitled to the permit based on having met the legal requirements for its issuance. It eliminates new, conflicting, or redundant requirements by simply referring to other legal requirements.

Additional requirements to qualify for a permit are discussed under the recordkeeping and enforcement section of this amendment. The reader is referred to that section for additional discussion.

Finally, any additional recordkeeping and reporting requirements will increase the cost of doing business for the charter operators. However, the additional costs associated with signing an affidavit should be minimal. NMFS will also incur costs associated with developing, distributing, and verifying information submitted on the affidavit. Those costs are also expected to be relatively small, and by requiring the applicant sign the affidavit, it could reduce costs associated with enforcement and monitoring the applicant's activities.

#### 2.5.5 Issue 5

*Transfers of permits (permanent) would be allowed up to use caps.*

Transferability facilitates the development of a market in which permits are traded. After the initial allocation of licenses, market forces would determine access to the fishery. Newcomers would buy permits to enter the fishery, and retirees would be paid to leave. Competition in the market for permits ensures that those most willing or able to buy permits, usually the most efficient and profitable fishermen, would eventually acquire them, whatever the initial distribution. For an industry such as the for-hire sector that is characterized by a high turnover rate, transferability of permits assumes particular importance. It would allow the more efficient operators to remain or enter the fishery while the less efficient ones would be compensated for leaving the fishery. Under this process, the price of permits would start to partly reflect the value of generated from its use. Public testimony at the Council meetings have indicated that participants in the fishery anticipate that permits will initially sell for about \$5,000 each. Until a competitive market for those permits is established, the actual price will be unknown. The value of permits that allow a person carry more clients is expected to sell for a higher price than a permit endorsed for fewer clients. For example, a permit that is endorsed for 4 clients would be expected to sell for less than a permit that allows 6 clients per trip. The difference in permit prices should reflect the change in profits that can be generated by the two permits. A more complete discussion of the number of clients that may be carried at one time are discussed in the "Permit Endorsement for Number of Clients on Board" section.

This issue states that persons holding a permit will be allowed to sell to another person meeting the requirements to hold the permit. In this program, the buyer must meet the U.S. ownership requirements and the permit use cap requirements. Both of these transfer limitations may reduce the market price of permits. However, the U.S. ownership provision will help to ensure that producer surplus from the program will flow to U.S. firms. The use cap restriction will help to ensure that one person does not acquire too large of an interest in the fishery by buying permits.

<sup>23</sup> The only tangible evidence is the ADF&G logbook, which requires meeting all State legal requirements.

## 2.5.6 Issue 6

*Leasing of permits (annual) would not be allowed.*

Leasing of permits (and IFQs) is generally discouraged in fisheries under NPFMC authority. Prohibitions on leasing stem from a desire to keep persons from holding permits for the sole purpose of generating income from the active participants. The Groundfish LLP program discourages leases by only allowing the permit to be transferred once per year. The NMFS transfer application ([http://www.fakr.noaa.gov/ram/LLP\\_trans\\_form.pdf](http://www.fakr.noaa.gov/ram/LLP_trans_form.pdf)) also asks if there is an agreement to return the license to the seller or to transfer it to any other person, or is there any condition requiring the resale or conveyance of the license? The IFQ program for halibut and sablefish has an owner-on-board requirement for most vessel classes to encourage only fishers to buy into the fleet. Persons subject to owner-on-board must carry government issued photo identification while onboard the vessel.

Tracking whether halibut charter moratorium permits are being leased may be difficult without a provision such as owner-on-board. However, that type of requirement may not be practical because of the structure of the halibut charter fishery. In some cases, a charter business may hire a captain(s) to take clients fishing. Contracts with captains are business arrangements that can be extended within a year, or over a number of years, and may be terminated at any time with proper notice. The hired captain may or may not own the vessel used to take clients fishing. If the captain owns the vessel and the permit holder hires him to take their clients fishing, distinguishing this operation from a lease arrangement may not be possible<sup>24</sup>. These business arrangements may make it difficult to determine with certainty whether permits are being leased to a captain for a year or if the captain is working as an employee of the owner. Given the structure of business arrangements within the halibut charter industry, enforcing a prohibition on permit leases may be difficult without additional requirements.

## 2.5.7 Issue 7

*Permit Endorsement for Number of Clients on Board equal to the highest number on any trip in 2004 or 2005 by not less than 4.*

The intent of this action would be to limit the number of clients a vessel may carry. Each permit would be endorsed with the maximum number of clients the vessel would be allowed to carry while charter fishing for halibut. The maximum number of clients carried by the vessel generating the permit determines the maximum number of clients that may be carried in the future. If the vessel carried 4 or fewer clients during 2004 or 2005, the resulting permit would be endorsed for up to 4 clients per trip.

Table 7 provides a summary of the number of clients that each permit allows to fish. The number of permits is reported for each Council option being considered. Option 1 corresponds to Option 10.1 in the Council's list of alternatives; Option 2 corresponds to Council Option 10.2. The number of permits issued under each of the four trip level requirements is listed under the primary options.

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<sup>24</sup> Note that the proposed moratorium program does not require that a permit holder own a vessel or be on board the vessel in order to use the permit

**Table 7** Number of clients endorsed to fish by permit

IPHC Area	Maximum Clients	Option 10.1				Option 10.2			
		1 Trip	5 Trips	10 Trips	20 Trips	1 Trip	5 Trips	10 Trips	20 Trips
2C	4	319	266	225	173	319	245	193	143
	5	187	176	163	140	187	172	158	137
	6	233	228	214	183	233	225	209	178
	7	7	5	5	4	7	5	5	4
	8	9	8	8	7	9	8	8	7
	9	3	3	2	1	3	3	3	1
	10	1	1	1	1	1	1	1	1
	12	1	1	0	0	1	1	0	0
	13	1	1	1	0	1	1	1	0
<b>2C Total</b>		<b>761</b>	<b>689</b>	<b>619</b>	<b>509</b>	<b>761</b>	<b>661</b>	<b>578</b>	<b>471</b>
3A	4	144	107	84	47	144	98	75	41
	5	68	64	56	43	68	60	51	37
	6	346	337	321	293	346	335	316	281
	7	19	19	18	17	19	19	18	17
	8	18	18	17	17	18	18	17	17
	9	4	4	4	4	4	4	4	4
	10	6	5	4	4	6	5	4	4
	11	5	5	5	5	5	5	5	5
	12	5	5	5	5	5	5	5	4
	13	3	3	3	3	3	3	3	3
	14	6	6	6	6	6	6	6	6
	15	3	3	3	3	3	3	3	3
	16	8	8	8	8	8	8	8	8
	17	6	6	6	6	6	6	5	5
	18	3	3	3	2	3	3	3	2
	19	2	2	2	2	2	2	2	2
	20	3	3	3	3	3	3	3	3
	21	3	3	3	3	3	3	3	3
	22	1	1	1	1	1	1	1	1
	23	2	2	2	2	2	2	2	2
25	3	3	3	3	3	3	3	3	
28	1	1	1	1	1	1	1	1	
30	1	1	1	1	1	1	1	1	
33	1	1	1	1	1	1	1	1	
38	1	1	1	1	1	1	1	1	
<b>3A Total</b>		<b>662</b>	<b>611</b>	<b>561</b>	<b>481</b>	<b>662</b>	<b>596</b>	<b>541</b>	<b>455</b>

Source: ADF&G Bottomfish logbook data from 2004 and 2005.

Note: A total of 6 vessels in 2004 and 3 vessels in 2005 did not report information on the number of clients that were carried in IPHC area 2C; in 3A a total of 19 vessels did not report the number of clients in 2004 and 6 did not report the information in 2005. Those vessels when qualified were assigned a 4-client permit. During the application, they would be given the opportunity to provide information to obtain the proper endorsement.

A small number of businesses did not report the number of clients carried on the vessel in their logbook entry. In those cases, the maximum number of clients on any trip was assumed to be four. During the application process for the permits, persons will be given the opportunity to correct errors in the data. At that time they can provide information that would be considered to update their client endorsement. NMFS will have the final decision on the number of clients endorsed on those permits.

In Area 2C, only 6 rods are allowed to be fished at any given time on halibut charter vessels, but more than 6 clients may be on the vessels if the vessel is permitted to carry them. ADF&G staff have knowledge of vessels that carry more than 6 clients when only six lines are fished at one time. Area 2C vessels could be allowed to continue carrying more than six clients, but only allowed 6 to fish at one time, or they could be limited to only carrying 6 clients at one time. Limiting the number of clients that a vessel is allowed to carry could reduce revenues for owners that base their business plan on carrying more than 6 clients but allowing only 6 to fish at one time.

Wilén (2006) has indicated that in sport charters there are likely too many boats, taking trips at less than full capacity. This practice could result in too much effort being expended finding and catching fish. The result is that trip prices are higher than they would need to be if trips were taken at full capacity. Client anglers must then pay higher trip prices to cover those costs.

Those vessels using an endorsement for less than six clients (depending on the alternative selected between about 300-500 permits in Area 2C and 80 - 210 permits in Area 3A) would be forced to always operate at less than the capacity of other "six-pack" vessels in the fleet. These vessel operators would realize similar costs for fuel and other vessel expenses as vessels carrying more clients by their revenue would be reduced by the fewer number of clients on the vessel.

The costs of imposing limits on the number of clients that may be carried are borne by the holders of permits with fewer endorsed clients or the clients that must pay higher prices for trips on those vessels. Those that benefit are other charter operators that can carry more clients and the commercial IFQ fishery if that measure limits charter catches in the future.

### **2.5.8 Issue 8**

#### *Permits may be stacked up to the use caps*

More than one permit may be assigned to a vessel. The advantage of assigning more than one permit to a vessel is that it would allow the vessel to carry the number of passengers equal to the aggregate number of clients that the permits are endorsed to carry. For example, a vessel that had three permits that are each permitted to carry 6 clients would be allowed to carry up to 18 clients, if the U.S. Coast Guard and the State of Alaska licensed the vessel and captain for that activity.

Licenses may be stacked or unstacked at any time. The ability to stack licenses provide operators the freedom to increase the number of clients carried on one vessel or increase the number of vessels carrying fewer clients.

As discussed in the section that defines the number of clients that may be carried on a vessel, there may be efficiency reasons to increase the number of clients a vessel may carry. If guide operators find they are operating at an economic disadvantage by only being allowed to carry four clients, it may be a prudent business decision to stack an additional license on the vessel to spread the trip costs over more clients. Depending on the overall demand and supply of trips, this action could benefit guided anglers and charter operators.

## 2.5.9 Issue 9

*Evidence of Participation – ADF&G logbook entry with bottomfish statistical area, rods, or boat hours.*

Because the Council selected historic participation as the method used to allocate permits, they needed a data set that contains the participation history of the vessels and businesses in the charter fleet. After considering all data sources available, the Council concluded the best source of participation data for the halibut charter fishery is ADF&G Saltwater Logbooks with bottomfish activity. All Alaskan fishing guide businesses operating in saltwater are required to obtain, complete, and submit logbooks. ADF&G Saltwater Logbooks require that entries covering bottomfish trips include the primary 6-digit statistical area fished, maximum number of rods fished, boat hours fished, number of fish kept, and number of fish released. An example of the logbook and the instructions for completing the logbook may be viewed at the ADF&G web site.<sup>25</sup>

ADF&G Saltwater Logbooks are not designed to allow halibut data to be separated from other bottomfish data. The information presented in this analysis will over estimate the participation in the halibut charter fishery by the extent that non-halibut bottomfish trips are reported in the logbooks. However, because the predominant bottomfish species targeted in saltwater is halibut, it is assumed that bottomfish data will provide a reasonable proxy for halibut activity.

ADF&G Saltwater Logbook entries with bottomfish statistical area, rods, or boat hours were used to generate the data provided in this document. Those data are the closest proxies for participation in the halibut charter fishery that is currently available.

## 2.5.10 Issue 10

### *Qualification Period*

The Council has narrowed their list of alternatives for determining which persons will be issued permits to two (Option 10.1 and Option 10.2). Both options are based on the catch history of vessels operating in the saltwater bottomfish fishery in 2004 or 2005. They both also have an additional requirement that the vessel meet a minimum trip requirement in the year prior to implementation of the program. The minimum trip requirements are 1, 5, 10 or 20 trips. The two options differ in how the number of trips is calculated for businesses with multiple vessels that individually do not meet the minimum trip requirement. Option 10.1 allows all the trips by vessels the business submitted logbooks for to be included in the number of trips calculation, while Option 10.2 separates the trips of vessels that qualify based on their own activity and those that do not.

*Option 10.1: Each licensed guide business owner(s) who reported a minimum of 1, 5, 10, or 20 bottomfish logbook trips during 2004 or 2005 and year prior to implementation would be issued a permit(s) based on the number of trips summed for all vessels in his best year of the qualification period, unless an unavoidable circumstances occurred. A business would be limited to the number of permits equal to the highest number of vessels used in any one year during the qualifying period<sup>26</sup>.*

<sup>25</sup> [docushare.sf.adfg.state.ak.us/docushare/dsweb/Get/Version-25308/Sample\\_SWLogbook05.pdf](http://docushare.sf.adfg.state.ak.us/docushare/dsweb/Get/Version-25308/Sample_SWLogbook05.pdf).

<sup>26</sup> Example: A business owner operated 3 vessels with 6, 10, and 8 trips, respectively (summed trips = 24) in his best year. He would be issued 1 permit under a 20 trip minimum ( $24/20 = 1$ ); 2 permits under a 10 trip minimum ( $24/10 = 2$ ); or 3 permits under a 5 trip minimum ( $24/5 = 4$ , but the maximum number of vessels in that year is 3).

*Option 10.2: Each licensed guide business owner(s) who reported a minimum of 1, 5, 10, or 20 bottomfish logbook trips during 2004 or 2005 and year prior to implementation<sup>7</sup> would be issued a permit(s) for each vessel based on the number of trips in his best year during the qualification period, unless an unavoidable circumstances occurred. Trips by vessels operated by a licensed guide business owner that do not individually meet qualification criteria may be combined to meet the criteria. A business would be limited to the number of permits equal to the highest number of vessels used in any one year during the qualifying period<sup>27</sup>.*

Table 8 provides an estimate of the number of permits that would be issued to qualified businesses. The table contains information on each of the minimum number of trip options. Information was also presented for the number of unique logbooks that were submitted in 2005 and the number of businesses that submitted those logbooks. The total number of permits that a business may be issued is constrained to the maximum number of logbooks that were submitted in a year (2004 or 2005). That requirement eliminates permits that would have been issued when a business changed vessels between 2004 and 2005. For example, if a business submitted 50 logbook entries for vessel "A" in 2004 and vessel "B" in 2005, without that provision the business would be issued two permits. Issuing the business two permits would contradict the Council's goal of limiting growth in the number of vessels in the fishery. Therefore, businesses are restricted to a maximum number of permits equal to or less than the maximum number of vessels the submitted logbooks for in 2004 or 2005.

In IPHC Area 2C during 2005, a total of 381 businesses submitted entries from 654 different logbooks. In Area 3A, 450 businesses submitted reports from 567 logbooks. Based on the qualification criterion being considered by the Council, between 471 and 761 permits could be issued in Area 2C. Between 455 and 662 permits could be issued in Area 3A. These estimates do not take into account the minimum trip requirement in the year prior to implementation of the program, because those data are unavailable.

Under Options 10.1 and 10.2, in Areas 2C and 3A, more permits would be issued under the 1 or 5 trip alternatives than there were logbook entries in 2005. Fewer permits would be issued under the 10 and 20 trip requirements. Because the table does not take into account participation in the year prior to implementation, it is possible that a requirement of 5 or more trips could reduce the number of permits below 2005 participation levels. However, it is unlikely that the 1-trip requirement would reduce the number of permits to that level.

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<sup>27</sup> Example: Under a 5-trip threshold, a vessel with 10 trips generates 1 permit; second and third vessels with 3 trips each earn 1 permit by combining their trips.

**Table 8 Estimated number of permits that would be issued and the number of businesses receiving the permits**

Minimum Number of Trips Required to Qualify	Option 10.1		Option 10.2	
	Permits	Businesses	Permits	Businesses
	AREA 2C			
2005 Participation	654	381		
1 or More Trips	761	446	761	446
5 or More Trips	689	380	661	380
10 or More Trips	619	327	578	327
20 or More Trips	509	255	471	255
	AREA 3A			
2005 Participation	567	450		
1 or More Trips	662	520	662	520
5 or More Trips	611	471	596	471
10 or More Trips	561	426	541	426
20 or More Trips	481	360	455	360

Source: ADF&G Bottomfish Logbook data, 2004 and 2005.

Note: The numbers reported in this table represent the maximum number that could qualify if everyone represented in this table meets the additional qualification requirement of fishing in the year prior to Council action.

Table 9 shows the number of additional permits that would be issued if Option 10.1 was selected instead of Option 10.2. The number of businesses does not change under the two options at comparable trip level requirements. The reason that more permits are issued under Option 10.1 is that all the trips for the business are summed to determine which vessels qualify. Under Option 10.2, only the vessels that do not qualify with their own history may combine their trips to meet the minimum trip requirements. For example, if a business reported logbook entries for 2 vessels in 2005, one vessel had 19 landings and the other vessel had 1 landing. Under Option 10.1 the business would be issued 2 permits at the 1-trip, 5-trip, and 10-trip level. They would also be issued 1 permit at the 20-trip level. Under Option 10.2 the business would be issued 2 permits at the 1-trip level, 1 permit at the 5-trip and 10-trip level, and 1 permit at the 20-trip<sup>28</sup> level.

The additional number of permits issued in Area 2C under Option 10.1 is 28, 41, and 38 at the 5, 10, and 20-trip level, respectively. In Area 3A, the change is smaller. It ranges from 15 at the 5-trip level up to 26 at the 20-trip level.

**Table 9 Number of additional permits issued using Option 10.1**

Minimum Trip Requirement	Permits	Businesses
		Area 2C
1 or More Trips	0	0
5 or More Trips	28	0
10 or More Trips	41	0
20 or More Trips	38	0
	Area 3A	
1 or More Trips	0	0
5 or More Trips	15	0
10 or More Trips	20	0
20 or More Trips	26	0

Source: ADF&G logbook data, 2004 and 2005.

<sup>28</sup> The trips from both vessels could be combined at the 20-trip level because neither vessel qualified at that level.



Table 10 shows the difference in the number of permits allocated to charter sector, when compared to the number of vessels and businesses operating in 2005. Recall that more vessels operated in 2005 than any other year. If permits were issued for a vessel that took one or more trips, about 100 more permits would be issued for each area than vessels that carried clients during 2005. A one-trip requirement for a permit would allow capacity (in terms of vessels and client trips) to expand over historic levels.

A five-trip requirement would allow up to 35 more vessels to operate in 2C and 44 more vessels in 3A than operated in 2005. The number of businesses initially holding those permits would decrease by one in 2C and increase by 21 in 3A.

A 10-trip requirement would decrease the number of vessels that could operate in 2C and 3A below 2005 levels. The decrease is 35 to 76 vessels in 2C, compared to 2005, and 6 to 26 vessels in 3A. The 20-trip requirement in area 2C, decrease the number of vessels by 145 to 183, depending on the option selected. In 3A, the decrease is 86 to 112 vessels, depending on the option selected.

**Table 10 Difference in permit estimates compared to 2005 participation**

	Option 10.1		Option 10.2	
	Permits	Businesses	Permits	Businesses
	<b>Area 2C</b>			
1 or More Trips	107	65	107	65
5 or More Trips	35	-1	7	-1
10 or More Trips	-35	-54	-76	-54
20 or More Trips	-145	-126	-183	-126
	<b>Area 3A</b>			
1 or More Trips	95	70	95	70
5 or More Trips	44	21	29	21
10 or More Trips	-6	-24	-26	-24
20 or More Trips	-86	-90	-112	-90

Source: ADF&G logbook data, 2004 and 2005

It is important to note that a decrease in the number of vessels does not mean that the total number of clients that could be carried would decline. It is assumed that vessels were not operating at full capacity every trip, so more clients could be carried the same number of vessels. For example, in 2004, the average 2C charter carried 3.5 paying clients. In 3A, the average charter carried 5.16 clients. Given the number of clients endorsed for permits in those areas, it appears that the more clients could be carried at the 10-trip requirement than fished in 2005.

To further illustrate the point that sufficient capacity will likely remain in the charter fleet to carry the clients that fished in 2005, Table 11 was developed. That table shows the average number of client trips that each permit (vessel) would need to carry to reach historic participation levels. Depending on the option selected, the number of clients that each vessel would need to carry to meet 2005 levels range from 27 to 57. If a vessel carries an average of 4 clients per trip (a conservative estimate), that means each qualified vessel would need to take 7 to 15 trips a year to carry the number of clients that took charters in 2005. Since the charter season lasts approximately 100 days, it is obvious that the moratorium would allow a sufficient number of vessels to qualify to meet current client demand. However, there may be specific times of the year when client demand for trips exceed supply at the prevailing trip price. For example, it is not possible to predict if the supply of trips under Option 10.2 and the 20-trip requirement would issue enough permits to cover client demand during the July 4<sup>th</sup> holiday.

**Table 11 Participation in the 2004 and 2005 fisheries compared to moratorium alternatives**

Year/Option	Total Trips		# of Vessels		Avg. # of client trips taken per vessel		Avg. # of client trip reach 2005 level	
	2C	3A	2C	3A	2C	3A	2C	3A
Historic Participation in 2004 and 2005								
2004	20,215	23,278	654	567	31	41		
2005	20,920	23,306	624	532	34	44		
Qualified Participation Level in Best Year (2004 or 2005)								
1 trip (option 10.1)	24,743	27,749	761	662	33	42	27	32
5 trips (option 10.1)	24,580	27,628	689	611	36	45	30	34
10 trips (option 10.1)	24,136	27,274	619	561	39	49	34	37
20 trips (option 10.1)	22,912	26,268	509	481	45	55	41	43
1 trip (option 10.2)	24,743	27,749	761	662	33	42	27	32
5 trips (option 10.2)	24,521	27,586	661	596	37	46	32	35
10 trips (option 10.2)	23,981	27,197	579	541	41	50	36	39
20 trips (option 10.2)	22,638	26,021	471	455	48	57	44	46

Source: ADF&G logbook data, 2004 and 2005

### Community impacts

Table 12 shows the number of qualified vessels and businesses by the community where the trips used for qualification terminated. Some vessels terminated trips in more than one community, so the totals for vessels and businesses do not equal the numbers that qualify in Table 8. The information in Table 12 is presented to supplement a qualitative analysis of the impacts the proposed moratorium would have on communities. The table also indicates which communities are eligible under Amendment 66. Those communities will be discussed in greater detail under Issue 12. A subset of those communities may be eligible to request a limited number of halibut charter permits under the provisions in Issue 12.

Information that is currently available does not allow a formal study of the economic impacts that the charter sector has on regions or communities to be conducted. Information on charter operator's expenditures in the various communities and the products purchased, expenditures by clients as a result of taking the charter trip, and the dollars that flow to the community in terms wages and profits would be required. Those data could then feed into an EIA model. Collecting that information is outside the scope of this analysis. In place of an EIA, a qualitative assessment of the community impacts will be presented.

Charter fisheries impact the economies of communities by providing jobs and increasing sales. The sales generate income for charter operations and secondary businesses and tax revenue for local, State, and Federal governments. The number of jobs and expenditures cannot be estimated in this analysis. However, the communities that have the most active charter industry would be expected to realize the most benefits. Communities that have less charter activity would realize fewer benefits from the industry.

Given that the halibut resource in 2C and 3A is fully utilized and the method the IPHC uses to allocate halibut to various sectors, increases in charter harvests decrease the amount of halibut available to the commercial IFQ fishery. Communities which are relatively more dependent on the commercial IFQ fishery could be worse off if the charter fishery increased harvests. However, the actual impacts cannot be quantified.

The change in numbers of qualified vessels that ended at trip in a specified community seems to indicate that selecting a 20-trip requirement would impact Area 2C more than Area 3A. Auke Bay, Petersburg, Sitka, and Ketchikan would realize substantial reductions in the number of permits landing in their community when compared to the 1-trip option. Many of these same communities are also active in the commercial IFQ fishery. However, because the overall amount of halibut taken by the charter fleet in

Area 2C is not expected to decline, these communities could lose jobs and revenues from both the commercial and charter sectors as a result of implementing a more restrictive moratorium.

**Table 12 Communities where charter trips used for qualification terminated**

Community	Am. 66 community	Option 10.1 1 Trip Required		Option 10.1 20 Trips Required		Difference	
		permits	businesses	permits	businesses	Permits	Businesses
Afognak		1	1	0	0	-1	-1
Amook Island		2	2	2	2	0	0
Amook Pass		1	1	1	1	0	0
Anchor Point		59	55	47	43	-12	-12
Anchor River		1	1	1	1	0	0
Angoon	Yes	13	9	10	6	-3	-3
Anton Larsen Bay		6	5	4	3	-2	-2
Auke Bay		45	38	13	9	-32	-29
Bar Harbor		4	4	1	1	-3	-3
Bartlett Cove		6	5	5	4	-1	-1
Bay Of Pillars		3	2	3	2	0	0
Boardwalk		3	2	1	1	-2	-1
Camp Island		1	1	1	1	0	0
Cannery Cove		6	3	5	2	-1	-1
Cape Chacon		3	2	0	0	-3	-2
Cape Ninilchik		2	1	0	0	-2	-1
Cedars Lodge		10	9	4	4	-6	-5
Chenega	Yes	1	1	0	0	-1	-1
Clover Bay		2	1	2	1	0	0
Clover Pass		14	12	9	7	-5	-5
Coffman Cove	Yes	7	5	7	5	0	0
Cordova		9	8	3	3	-6	-5
Craig	Yes	74	33	61	23	-13	-10
Cranberry Creek		1	1	1	1	0	0
Crescent Harbor		4	4	1	1	-3	-3
Dall Island		1	1	0	0	-1	-1
Deep Creek		110	91	78	60	-32	-31
Dog Bay Harbor		1	1	0	0	-1	-1
Eagle Creek Lodge		1	1	1	1	0	0
Eagle Harbor		1	1	0	0	-1	-1
Eep Creek		4	1	4	1	0	0
El Capitan Lodge		7	2	7	2	0	0
Elfin Cove	Yes	31	16	27	12	-4	-4
Ellamar		1	1	1	1	0	0
Excursion Inlet		2	2	0	0	-2	-2
False Island		5	2	5	2	0	0
Fishermans Bend		4	4	2	2	-2	-2
Funter Bay		2	2	1	1	-1	-1
Glacier Bay		1	1	1	1	0	0
Gold Coast Lodge		1	1	1	1	0	0
Gull Cove		2	1	2	1	0	0
Gustavus	Yes	25	18	20	14	-5	-4
Haines		4	4	2	2	-2	-2
Halibut Cove	Yes	1	1	0	0	-1	-1
Hallo Bay		1	1	0	0	-1	-1
Hanus Bay		1	1	0	0	-1	-1

Community	Am. 66 community	Option 10.1 1 Trip Required		Option 10.1 20 Trips Required		Difference	
		permits	businesses	permits	businesses	Permits	Businesses
Happy Valley		8	2	8	2	0	0
Hawk Inlet		1	1	1	1	0	0
Hidden Basin		1	1	1	1	0	0
Hollis	Yes	1	1	0	0	-1	-1
Homer		203	172	154	128	-49	-44
Hood Bay		2	2	0	0	-2	-2
Hoonah	Yes	14	12	5	5	-9	-7
Iliamna Bay		1	1	0	0	-1	-1
Iron Creek		2	1	2	1	0	0
Juneau		35	25	19	10	-16	-15
Kake	Yes	1	1	0	0	-1	-1
Kalinin Bay		2	2	0	0	-2	-2
Kasitsna Bay		1	1	1	1	0	0
Kelp Bay		3	1	3	1	0	0
Ketchikan		69	55	32	20	-37	-35
Killisnoo		5	2	5	2	0	0
Kiluda Bay		1	1	1	1	0	0
Klawock	Yes	19	11	16	8	-3	-3
Knudson Cove		21	17	6	5	-15	-12
Kodiak		42	41	25	24	-17	-17
Kukak Bay		3	2	2	1	-1	-1
Kupreanof Island		1	1	0	0	-1	-1
Larsen Bay	Yes	15	6	14	5	-1	-1
Little Tutka Bay		1	1	1	1	0	0
Log Cabin Resort		1	1	1	1	0	0
Millers Landing		2	1	2	1	0	0
Morne Island		3	2	3	2	0	0
Narrows Inn		3	3	3	3	0	0
Naukati		3	3	1	1	-2	-2
Nchor Point		1	1	1	1	0	0
Ninilchik		16	15	12	11	-4	-4
Old Harbor	Yes	10	6	9	5	-1	-1
Orr Island		1	1	1	1	0	0
Ouzinkie	Yes	1	1	0	0	-1	-1
Pasagshak Bay		1	1	0	0	-1	-1
Pelican	Yes	9	8	5	4	-4	-4
Petersburg		40	37	18	16	-22	-21
Point Baker	Yes	3	2	2	1	-1	-1
Poohs Landing		1	1	1	1	0	0
Port Alexander	Yes	6	5	6	5	0	0
Port Lions	Yes	14	13	7	6	-7	-7
Port Protection	Yes	3	2	2	1	-1	-1
Port St Nicholas		2	1	2	1	0	0
Port Wakefield		4	2	2	1	-2	-1
Port William		1	1	0	0	-1	-1
Prince Rupert		1	1	0	0	-1	-1
Pybus Point		4	2	4	2	0	0
Raspberry Island		3	2	3	2	0	0
Rocky Pass Resort		2	2	1	1	-1	-1
Rocky Point		1	1	1	1	0	0

Community	Am. 66 community	Option 10.1 1 Trip Required		Option 10.1 20 Trips Required		Difference	
		permits	businesses	permits	businesses	Permits	Businesses
S Kaigani Bay		5	1	0	0	-5	-1
Sadie Cove		1	1	1	1	0	0
Saginaw Bay		1	1	1	1	0	0
Salmon Falls		18	3	15	1	-3	-2
Salmon Landing		7	2	6	1	-1	-1
Saltery Cove		1	1	1	1	0	0
Sarkar Cove		1	1	1	1	0	0
Sea Otter Sound		1	1	0	0	-1	-1
Seal Bay (Sc)		3	1	0	0	-3	-1
Sealing Cove		6	4	5	3	-1	-1
Seldovia	Yes	12	12	9	9	-3	-3
Seward		151	111	105	67	-46	-44
Shelter Island		7	3	1	1	-6	-2
Shuyak Island		1	1	0	0	-1	-1
Silver King Lodge		6	6	5	5	-1	-1
Silver Salmon		2	1	2	1	0	0
Sitka		197	128	132	75	-65	-53
Skagway		3	2	2	1	-1	-1
Sportsman Cove		12	2	12	2	0	0
Spruce Mill New Flt		4	1	4	1	0	0
Ssbh		5	2	5	2	0	0
Swanson Harbor		1	1	1	1	0	0
Tenakee	Yes	4	3	2	2	-2	-1
Thomas Basin		4	4	2	2	-2	-2
Thorne Bay	Yes	11	6	3	3	-8	-3
Token		1	1	0	0	-1	-1
Tutka Bay		1	1	1	1	0	0
Ugak Bay		6	3	6	3	0	0
Uganik Bay		4	2	4	2	0	0
Uyak Bay		3	3	2	2	-1	-1
Valdez		55	50	29	24	-26	-26
Wakefield		1	1	0	0	-1	-1
Warm Springs Bay		10	2	9	1	-1	-1
Waterfall		25	1	25	1	0	0
Whale Pass (Pow - Se)	Yes	6	4	5	3	-1	-1
Whale Pass (SC)		2	2	0	0	-2	-2
Whalers Cove		3	1	3	1	0	0
Whiskey Gulch		4	2	3	1	-1	-1
Whitstone Harbor		1	1	1	1	0	0
Whittier		27	27	15	15	-12	-12
Williamsport		1	1	0	0	-1	-1
Wrangell		14	13	3	2	-11	-11
Yakutat	Yes	16	11	13	8	-3	-3
Yes Bay		13	1	13	1	0	0
Zachar Bay		7	3	4	1	-3	-2

Source: ADF&G Saltwater Logbook data for bottomfish trips, 2004-2005.

## 2.5.11 Issue 11

*Use caps, with grandfather provision.<sup>29</sup> The AFA 10% ownership rule for affiliation<sup>30</sup> will be applied to determine the number of permits associated with an entity under the use cap.*

*Option 1. 1 permit*

*Option 2. 5 permits*

*Option 3. 10 permit*

The Council is considering limiting the number of permits that may be used by a halibut charter business at one time. If the Council takes no action on use caps, halibut charter businesses would not be limited to using a specific number of moratorium permits. Three other options are being considered as the appropriate level for the use cap. The caps being considered are 1 permit, 5 permits, or 10 permits. Charter businesses that are allocated more permits than the cap would be grandfathered at their initial allocation level. These businesses would not be allowed to use any new permits until they are below the cap. The AFA 10% ownership rule for affiliation will be used to determine which permits an entity is using.

Ownership caps vs Use caps: Use caps limit the number of moratorium permits that may be held or used by an eligible halibut charter operator. Use caps may not be exceeded unless the entity subject to the use cap is specifically allowed to exceed a cap according to the criteria established by the grandfather provision. Because the use caps apply to both the number of permits that a person may hold (own, lease, or control through a business arrangement) or use, it is not necessary to have both ownership and use caps for moratorium permits.

Grandfather Provision: An eligible charter moratorium permit holder may receive an initial allocation of permits that exceeds the use cap. However, that person will not receive any permits by transfer unless that person's permit holdings are reduced to an amount below the use cap. That person would also not be allowed to submit logbook entries using an additional permit until their holdings were reduced below the use cap.

Table 13 shows the number of businesses that would be grandfathered under each of the alternatives being considered. Option 10.1 usually results in more entities being grandfathered. A use cap set at one permit would require everyone with two or more permits to be grandfathered. Under Option 10.1 and 10.2 at the 1-trip level, 116 entities would be grandfathered above the cap in Area 2C and 85 in Area 3A. Setting the use cap at 10 permits would reduce the number of grandfathered entities to 5 in Area 2C. No entities would be grandfathered in Area 3A. As the number of trips required to qualify increases, the number of entities that would be grandfathered tends to decrease.

<sup>29</sup>A business whose permit is endorsed in excess of the use cap maintains that exemption for those permits that remain in its control after other permits are sold, but those sold permits lose that grandfather status in perpetuity. Grandfathered permits that are sold in total when a business owner sells his entire business/fleet maintain that grandfathered status. Grandfather status refers to permits, not vessels.

<sup>30</sup>Any entity in which 10% or more of the interest is owned or controlled by another individual or entity shall be considered to be the same entity as the other individual or entity.

**Table 13** Number of businesses grandfathered at various use caps

Number of Businesses Grandfathered	Option 10.1		Option 10.2	
	2C	3A	2C	3A
	1 Trip			
Option 1 (2+ Permits)	116	85	116	85
Option 2 (6+ Permits)	16	2	16	2
Option 3 (11+ Permits)	5	0	5	0
	5 Trips			
Option 1 (2+ Permits)	112	84	101	78
Option 2 (6+ Permits)	16	2	15	2
Option 3 (11+ Permits)	5	0	5	0
	10 Trips			
Option 1 (2+ Permits)	100	80	84	73
Option 2 (6+ Permits)	16	2	13	2
Option 3 (11+ Permits)	4	0	5	0
	20 Trips			
Option 1 (2+ Permits)	81	73	69	63
Option 2 (6+ Permits)	14	2	11	1
Option 3 (11+ Permits)	2	0	1	0

Source: ADF&G Bottomfish Logbooks, 2004 and 2005.

Note: This table represents the maximum number of businesses that could be grandfathered. It assumes all vessels that qualified for a permit based on 2004 or 2005 activity would also have sufficient activity in the year prior to implementation to qualify.

**AFA 10 % ownership rule for affiliation:** The 10% ownership rule was used in the American Fisheries Act (AFA) to define what an entity is in term of pollock ownership caps. The AFA defined the 10% affiliation rule using the following language:

“For the purposes of this subsection [210(c)3], any entity in which 10 percent or more of the interest is owned or controlled by another individual or entity shall be considered to be the same entity as the other individual or entity.”

Therefore, if a company owns or controls 10% of another company they are considered to be the same entity for terms of calculating the use cap. The companies would then need to add the moratorium permits they hold or control to determine whether they are over the use cap.

To determine which entities the 10% rule for affiliation joins together, each entity will need to submit to NMFS their ownership structure at the time of application for permits. They will also be required to notify NMFS any time their ownership structure changes. This information will be held by NMFS as confidential information and not released to the general public. Tracking these structures will increase the reporting requirements for industry and NMFS.

It is not possible to determine the impact of this requirement, in terms of the use cap, until members of the industry submit ownership data. However, this measure was included to help ensure that members of industry do not circumvent the use cap by using other entities to hold permits for them.

**Use cap impacts:** The implementation of use caps will impose constraints on the number of permits that may be held or used. It is assumed that the persons that would exceed the cap through transfer or gaining control of a permit's use after the initial allocation are the most efficient charter operators. A concern that

is often expressed by members of the charter is that a large tour company could enter the market for permits. The tour company could direct their clients to their charter businesses and control a relatively large portion of the industry. It may also be possible for a large tour company to reduce (marketing) costs by integrating the charter trips into existing packages.

Constraining the most efficient operators' use of permits is expected to reduce permit prices (the most efficient operations could pay the most for permits) and reduce producer surplus of charter businesses. Consumer surplus could also be reduced if these operators could provide clients a trip that generates greater utility than other businesses. However, the MSA directs Councils to ensure that entities do not control an excessive share of a fishery. A cost of ensuring that no one entity controls an excessive share of the fishery is the possibility of reduced net benefits.

## 2.5.12 Issue 12

### **Community provisions for Area 2C and 3A communities previously identified under GOA FMP Amendment 66**

A Community Quota Entity (CQE), representing a community in which [5 or fewer or 10 or fewer] active<sup>1</sup> charter businesses terminated trips in the community in each of the years 2004, 2005, and the year prior to implementation, may request limited entry permits.

Area 2C – use cap of 3, 5, or 7 requested permits per eligible community.

Area 3A – use cap of 5, 10, or 15 requested permits per eligible community.

Overall use caps for CQEs are 1, 3, or 5 times those selected for permit holders under Issue 11. Different use caps may be selected for CQEs representing communities in Area 2C and 3A.

Provisions applicable to requested permits:

- Must be used within the first full season after receiving the permit or it will not be renewed. CQEs can re-apply for permits in the future
- Designated for the area in which the community represented by the CQE is located
- Endorsed for 6 clients
- Not allowed to be sold (i.e., transferred)

<sup>1</sup>Active is defined as it is defined in the general moratorium program under Issue 10 (e.g., at least 1, 5, 10, or 20 bottomfish trips). The Council will make this determination at final action.

### Goal of the provisions under Issue 12

As part of Alternative 2, several provisions are included in Issue 12 to specifically provide for community participation in the halibut charter limited entry program. Communities that meet the criteria selected will be eligible to request a specified number of halibut charter limited entry permits from NMFS at no cost, similar to businesses that initially qualify to receive a permit under the general program.

National Standard 8 of the Magnuson-Stevens Act directs that “conservation and management measures shall, consistent with the conservation requirements of this Act (including the prevention of overfishing and rebuilding of overfished stocks), take into account the importance of fishery resources to fishing communities in order to: (a) provide for the sustained participation of such communities, and (b) to the extent practicable, minimize adverse economic impacts in such communities.” Although the halibut IFQ program was developed under the Halibut Act, which does not require consistency with all of the



Magnuson-Stevens Act's national standards, the Council believes Congress clearly intended that the Council consider the impacts of all of its management measures, including halibut management regulations, on fisheries-dependent communities.

At its December 2006 meeting, the Council revised the options and provided clarification of several issues, including the overall goal and the intended beneficiary of the proposed options. The problem statement notes that the purpose of the moratorium program is to limit entry into the growing halibut charter industry in Areas 2C and 3A. In June and December, the Council discussion on the community options focused on the fact that while Area 2C and 3A harvest has been steadily increasing, there are several small, rural communities not located on the road system in both areas that do not have a fully developed halibut charter industry. The charter industry continues to be relatively concentrated in and around a small number of larger coastal communities. In Area 2C, the vast majority of charter businesses reported Sitka (112), Juneau/Auke Bay (53), Ketchikan (43), Petersburg (37), or Craig (30), as the port of landing in 2005. These businesses made up about 57% of all of the active businesses in Area 2C in 2005.<sup>31</sup> In Area 3A, in 2005, most charter businesses reported the port of landing as communities on the Kenai Peninsula, primarily Homer (149), Deep Creek/Ninilchik (95), Seward (89), and Anchor Point (49), or Valdez (38). These businesses made up nearly 73% of all of the active businesses in Area 3A in 2005. Businesses reporting the port of landing in these communities comprise over 63% of the total number of businesses reporting bottomfish trips in 2005 in Areas 2C and 3A combined.

The same communities are reported as the most common ports of landing in 2004 and comprised 61% of the total number of businesses reporting bottomfish trips in 2004 in these areas combined. In 2004, the primary Area 2C communities made up a little over 52% of all of the active businesses in Area 2C; and the primary Area 3A communities made up nearly 72% of all of the active businesses in Area 3A.

Recognizing that substantial growth in the industry has been limited to relatively few communities, businesses in these communities would likely receive the great majority of limited entry permits allocated under the proposed moratorium program (see Table 12 in Section 2.5.10.) **The community provisions are intended to 'keep the door open' for those rural, small communities that have few alternative economic opportunities, to develop or further develop charter operations in those areas. Similar to an individual who is initially issued a permit, allowing communities to receive halibut charter permits removes an economic barrier for communities with undeveloped or under-developed charter industries to participate in the halibut charter industry.**

While some of the Council's previous programs have tied community benefits to residency in an eligible community, this is not the primary objective of the moratorium program. In December, the Council clarified that the intent of the community options is to benefit communities by encouraging or allowing new businesses to operate out of small rural communities in Area 2C and 3A that have under-developed halibut charter industries. This is different from limiting benefits to *residents* of small, under-developed charter communities by allowing them to receive a charter permit through a nonprofit community entity. The Council determined that this interpretation was too narrow to meet the broader objectives of community fisheries development and mitigation, in part, of the effects of a moratorium on small, rural communities with underdeveloped charter ports.

Given the objective above, the Council clarified that the intended beneficiary of the community provisions (i.e., holder of the charter halibut permit) is the non-profit entity chosen by the community to represent it. In this program, that entity is the Community Quota Entity (CQE) originally established under GOA Amendment 66. Thus, the CQE is the holder of the permit under the option in Issue 12. In effect, the CQE would be issued the permit and would designate a skipper with a USCG license to take

<sup>31</sup>ADF&G logbook data, 2005. Active business in this reference means a business reporting at least one charter bottomfish trip.

clients halibut charter fishing, similar to any other business. Additional information on the CQE structure is provided in the following section.

### Community Quota Entity structure

Community Quota Entity (CQE) is a term of art created under GOA Amendment 66, for purposes of the commercial halibut and sablefish IFQ Program. Under that amendment, specified Gulf communities in IPHC Areas 2C, 3A, and 3B can form CQEs for the purpose of purchasing, holding, and using commercial halibut and/or sablefish catcher vessel quota share. This program was effective June 1, 2004. CQEs are defined in Federal regulations (50 CFR 679.2) as follows:

Community quota entity (CQE) (for purposes of the IFQ Program)<sup>32</sup> means a non-profit organization that:

- (1) Did not exist prior to April 10, 2002;
- (2) Represents at least one eligible community that is listed in Table 21 of this part; and,
- (3) Has been approved by the Regional Administrator to obtain by transfer and hold QS, and to lease IFQ resulting from the QS on behalf of an eligible community.

While GOA Amendment 66 included Gulf communities in Areas 2C, 3A, and 3B, the proposed moratorium program is limited to Areas 2C and 3A. Under Amendment 66, there are 21 eligible communities in Area 2C and 14 in Area 3A (see text box below). An additional 7 communities are eligible under Amendment 66 in Area 3B. The community provision under Issue 12 is first limited to those 35 communities in Areas 2C and 3A that have been deemed eligible under Amendment 66 to form a CQE and participate in the commercial halibut and sablefish IFQ Program through the approved CQE.

While the CQE concept is currently applicable only to the commercial IFQ Program, use of the CQE system in the community options for the halibut charter moratorium is intended to streamline analysis and implementation. The primary advantage is that the CQE structure and the communities that may be represented by CQEs are already defined in Federal regulation, thus, some of the fundamental hurdles associated with developing such a program would already be met. In order to be determined eligible, the communities must have met a number of broad criteria, including proximity to the resource and historic participation. Thus, by starting from the Amendment 66 communities, one encompasses a broad range of eligibility criteria by definition (see below). In addition, it may not be feasible for some small communities to financially support a separate administrative entity to manage halibut charter permits; some efficiencies will likely be gained by allowing the existing CQE, originally formed for the management and purchase of halibut and sablefish IFQ, to also function as the halibut charter permit recipient.

To be approved as a CQE representing an eligible community or communities, a non-profit entity seeking to become a CQE must

**GOA Am. 66 eligible communities in Areas 2C and 3A\***

<u>Area 2C</u>	<u>Area 3A</u>
Angoon	Akhiok
Coffman Cove	Chenega Bay
Craig	Halibut Cove
Edna Bay	Karluk
Elfin Cove	Larsen Bay
Gustavus	Nanwalek
Hollis	Old Harbor
Hoonah	Ouzinkie
Hydaburg	Port Graham
Kake	Port Lions
Kassan	Seldovia
Klawock	Tatitlek
Metlakatla	Tyonek
Meyers Chuck	Yakutat
Pelican	
Point Baker	
Port Alexander	
Port Protection	
Tenakee Springs	
Thorne Bay	
Whale Pass	

\*As listed in Table 21 to Part 679.

<sup>32</sup>From 50 CFR 679.2: "IFQ program means the individual fishing quota program for the fixed gear fisheries for Pacific halibut and sablefish in waters in and off Alaska and governed by regulations under this part."

submit a completed application to NMFS. As provided for in 50 CFR 679.41(l)(3), a complete application consists of:

- the articles of incorporation under the State of Alaska;<sup>33</sup>
- a list of the communities represented by the CQE;
- management organization information (bylaws; personnel; description of and demonstration that the CQE is qualified to manage QS on behalf of the community; contact and tax identification information);
- a statement describing the procedures that will be used to determine the distribution of IFQ to community residents; and
- a statement of support from the governing body of the eligible community (the governing body for each community is identified in Table 21 to Part 679).

However, while there are advantages to using an already established system, there may exist concerns that the communities eligible to form a CQE were evaluated against criteria formulated specifically for the commercial halibut and sablefish sector, and that these same communities would not represent underdeveloped charter ports. While the commercial participation and landings threshold developed under Amendment 66 is rather broad, it does not account for historic or current charter activity.

Eligible communities under Amendment 66 must have met the following criteria:

- recognized by the U.S. Census;<sup>34</sup>
- population of greater than 20 but less than 1,500 according to the 2000 U.S. Census;
- not be connected to a larger community on the road system;
- located on the coast of the Gulf of Alaska;
- have a commercial landing of either halibut or sablefish by a resident between 1980–2000 according to Commercial Fisheries Entry Commission data for permit and fishing activity; and
- designated on Table 21 to Part 679 of Federal regulations.

**The intent under the proposed action is that the Amendment 66 eligible communities in Areas 2C and 3A represent the starting universe of potentially eligible communities under the charter moratorium.** In addition, each Amendment 66 eligible community must: 1) meet additional criteria intended to narrow the universe of eligible communities to those that do not have a developed charter industry; and 2) form a CQE and have it approved by NMFS.

First, under the community charter moratorium option, an Amendment 66 community must meet additional criteria intended to narrow the universe of eligible communities to those that do not have a developed charter industry. Thus, while the Amendment 66 criteria may not represent an exact fit for the charter sector, the additional criteria included under the options is intended to better define an ‘underdeveloped charter port’ relative to small, rural communities. Two of the primary policy decisions under the community provisions are thus related to the definition of an ‘active’ charter business and the criteria for determining what constitutes an ‘underdeveloped charter port.’ This issue is discussed in more detail in the community eligibility section.

Second, as stated previously, in addition to being listed as an eligible community in Table 21 to Part 679, a community must have formed a CQE under the laws of the State of Alaska and had its application to represent the community approved by NMFS. Of the 35 eligible communities in Area 2C and 3A, four

<sup>33</sup>The exception is a non-profit entity formed to represent the Metlakatla Indian Village. Due to its status as an Indian Reservation, this entity may provide articles of incorporation under Federal law.

<sup>34</sup>This means that the U.S. Census would identify the community as a city or census designated place (CDP).

communities in Area 2C (Craig, Hydaburg, Pelican, Hoonah) and three communities in Area 3A (Ouzinkie, Larsen Bay, Old Harbor) have approved CQEs as of November 2006.<sup>35</sup> Of the approved CQEs, only one has purchased halibut or sablefish commercial quota share to date.

Several reasons have been cited as contributing to the relatively limited community participation in the commercial CQE program thus far; one of the most significant being that communities were not included until ten years after the IFQ Program was established. While a substantial number of transfers and consolidation took place in the first several years of the IFQ Program, they have declined since implementation. For example, in 1996, there were 473 permanent transfers of Area 2C halibut QS, while in 2006,<sup>36</sup> there were only 137. There were 591 permanent transfers of Area 3A halibut QS in 1996, compared to 187 transfers in 2006. Similarly, the number of halibut QS holders initially issued quota share in Area 2C was 2,388; by mid-2006, there were 1,358 holders. The number of halibut QS holders initially issued quota share in Area 3A was 3,072; compared to 1,804 holders by mid-2006.<sup>37</sup> The IFQ sablefish fishery in the Gulf of Alaska exhibited the same trend, although not to the same extent. At the same time, quota share prices have trended upward as the market for fresh fish has expanded, from an average 1995 price of less than a dollar per pound for some types of halibut quota to upwards of \$20 per pound in recent years for some types of halibut quota. Both the price and availability of quota have been cited as factors contributing to limited community participation.

Research was conducted by the Institute of Social and Economic Research (ISER) to determine the status of the commercial CQE program in various communities during 2006, with the preliminary findings presented at a conference in September 2006.<sup>38</sup> All but one of the communities expressed awareness of the program, and over 75% of the eligible communities reported having considered participating in the program. While a few communities reported lack of interest for various reasons, several communities and community organizations reported making substantial efforts to find a way to make the program work. Some of the obstacles cited included: lack of funds available for direct purchase of quota share; prohibitively high quota share prices; unfavorable State and private loan terms; little quota share available on the market; and restrictions on the type of QS a community is allowed to purchase. The final report is expected in late January 2007.

Another analysis, conducted by the McDowell Group for the Southeast Alaska Inter-tribal Fish and Wildlife Commission, evaluated the financial viability of the CQE program. In part, the report concluded the following: "It does not appear possible to purchase and fish halibut shares profitably at today's prices, particularly with the added overhead needed to support a CQE organization, unless the cost of capital is very low...In general, only fishermen who received halibut QS initially at no cost, or who bought it prior to the price increases of recent years, are in a position to maintain an overall average cost-of-quota low enough to allow them to consider additional purchases at today's prices."<sup>39</sup> These are some of the reasons recently cited as contributing to the relatively limited community participation in the commercial CQE program thus far. However, in order to receive halibut moratorium permits, as proposed under Issue 12, an eligible community must form a CQE under the laws of the State of Alaska and had its application to represent the community approved by NMFS.

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<sup>35</sup>While not applicable to the charter halibut moratorium program, three communities in Area 3B (Perryville, Sand Point, and King Cove) have also formed CQEs for the purposes of the halibut and sablefish IFQ program.

<sup>36</sup>Number of permanent QS transfers as of November 22, 2006.

<sup>37</sup>Initial issuance was accomplished primarily at the beginning of the IFQ Program (1994 – 1995), but also occurred later as a result of adjudicated appeals. Source: <http://www.fakr.noaa.gov/ram/ifqreports.htm#qstransfer>.

<sup>38</sup>Dr. Steve J. Langdon and Emilie Springer, Institute of Social and Economic Research, University of Alaska Anchorage, presented at *Alaska's Fishing Communities – Harvesting the Future* conference, September 21, 2006, in Anchorage, Alaska.

<sup>39</sup>*Community Quota Entity Financial Analysis*, McDowell Group. Prepared for the Southeast Alaska Inter-tribal Fish and Wildlife Commission. October 28, 2005.

Finally, the stated intent is that the moratorium will be an interim program, replaced by a long-term solution in the future. Thus, there was an effort to develop a simple and streamlined management approach to the design of the limited entry program in this phase. **Note, however, that a moratorium serves as a means of pre-selecting the set of beneficiaries in subsequent revisions to a limited entry program or quota share program.** Thus, the stakeholders that are recognized in the distribution of benefits (i.e., permits) in the moratorium program, whether communities or licensed sportfishing businesses, will most likely be the same set of stakeholders that will benefit from the longer-term proposals.<sup>40</sup>

### 2.5.12.1 Baseline Information on Amendment 66 Communities

#### Population and location

The following sections provide some baseline geographic, demographic, and economic information for the potentially eligible communities under Issue 12. Because the starting universe for eligibility is any Area 2C or Area 3A community previously identified under GOA FMP Amendment 66, data on all 35 eligible communities under Amendment 66 are provided, recognizing that the Council could select criteria that would make only a subset of these communities eligible to receive a charter permit(s).

Table 14 provides the population of each community, according to the most recent (2000) U.S. Census. This table also provides a brief description of the location of each community. Note that Akhiok is located on the southern end of Kodiak Island, and was originally reported in the analysis and final Council motion for GOA Amendment 66 as located in Area 3A. However, IPHC staff has confirmed that Akhiok (and Alitak Bay) is actually located in Area 3B.<sup>41</sup> Akhiok is on the border of Area 3A and 3B, and the vast majority of Kodiak Island is located in Area 3A. This is of no practical importance under GOA Amendment 66, as all communities located in either Area 3A or Area 3B are allowed to purchase commercial quota share in both areas. The community provisions in the halibut charter program, however, are explicitly limited to "*Area 2C and 3A communities previously identified under GOA FMP Amendment 66.*" Because Akhiok was identified under GOA FMP Amendment 66 as an eligible community in Area 3A, staff assumes that Akhiok is included under the halibut charter provisions considered in this amendment. This issue is discussed further in a subsequent section of this analysis, relative to restrictions proposed to require that the halibut charter permit held by a community's CQE is designated only for the IPHC area in which the community is located.

Figure 6 and Figure 7 below, are maps of the eligible communities in Areas 2C and 3A, respectively.

<sup>40</sup>Keith Criddle, personal communication, December 12, 2006.

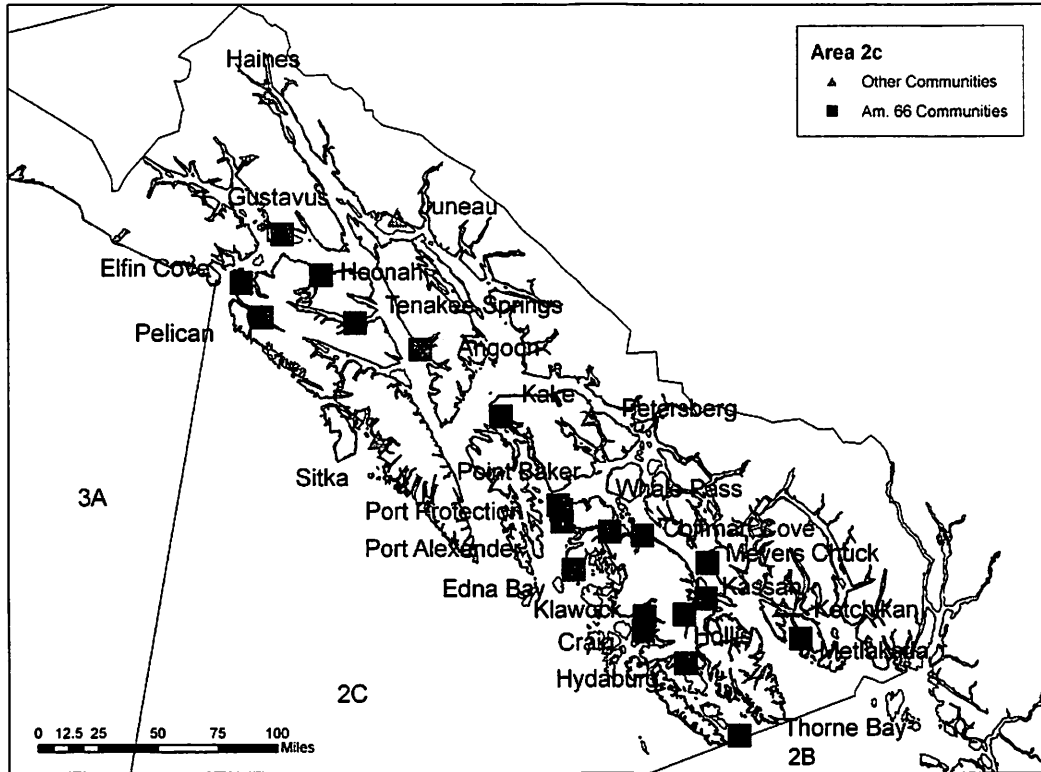
<sup>41</sup>Tom Kong, personal communication, November 15, 2006. According to the regulations, the 3A/3B border is defined as: "...a line extending from the most northerly point on Cape Aklek (57°41'15" N. latitude, 155°35'00" W. longitude) to Cape Ikolik (57°17'17" N. latitude, 154°47'18" W. longitude), then along the Kodiak Island coastline to Cape Trinity (56°44'50" N. latitude, 154°08'44" W. longitude), then 140° true."

**Table 14 Population and location of potentially eligible communities under Issue 12**

Community	Population <sup>1</sup>	Description of Location <sup>2</sup>
<b>Area 2C</b>		
Angoon	572	SW coast of Admiralty Island, 55 miles southwest of Juneau and 41 miles northeast of Sitka
Coffman Cove	199	northeast coast of Prince of Wales Island, 73 air miles northeast of Ketchikan
Craig	1,397	on a small island off the west coast of Prince of Wales Island, 31 road miles west of Hollis
Edna Bay	49	on Kosciusko Island, NW of Prince of Wales Island
Elfin Cove	32	Chichagof Island, 33 miles west of Hoonah
Gustavus	429	at mouth of Salmon River, 48 air miles from Juneau
Hollis	139	east side of Prince of Wales Island, 19 miles east of Craig by road, 35 miles west of Ketchikan by water
Hoonah	860	northeast shore of Chichagof Island, 40 air miles west of Juneau
Hydaburg	382	SW coast of Prince of Wales Island, 45 air miles NW of Ketchikan, 36 road miles west of Hollis
Kake	710	northwest coast of Kupreanof Island along Keku Strait, 38 air miles NW of Petersburg
Kassan	39	on the east side of Prince of Wales Island on Kasaan Bay, 30 miles NW of Ketchikan
Klawock	854	on west coast of Prince of Wales Island, 7 road miles N of Craig, 24 road miles from Hollis
Metlakatla	1,375	on the west coast of Annette Island, 15 air miles south of Ketchikan
Meyers Chuck	21	along Clarence Strait on the northwest tip of Cleveland Peninsula, 40 air miles northwest of Ketchikan
Pelican	163	NW coast of Chichagof Island on Lisianski Inlet, 80 miles north of Sitka and 70 miles west of Juneau
Point Baker	35	on the northern tip of Prince of Wales Island, 50 miles west of Wrangell
Port Alexander	81	on the south end of Baranof Island, 65 miles south of Sitka
Port Protection	63	on the northern tip of Prince of Wales Island, 50 miles west of Wrangell, in the Tongass National Forest
Tenakee	104	on the east side of Chichagof Island, on the north shore of Tenakee Inlet, 45 miles SW of Juneau
Thorne Bay	557	on the east coast of Prince of Wales Island, 47 air miles NW of Ketchikan, 60 road miles from Hollis
Whale Pass	58	on NE coast of Prince of Wales Island, north of Coffman Cove, about 64 road miles north of Klawock
<b>Area 3A</b>		
Akhiok	80	at the southern end of Kodiak Island at Alitak Bay, 80 miles southwest of Kodiak, actually located in Area 3B.
Chenega	86	on Evans Island at Crab Bay, 42 miles southeast of Whittier, 104 air miles SE of Anchorage
Halibut Cove	35	on and around Ismailof Is., adjacent to Kachemak Bay State Park, 6 miles across the inlet from Homer Spit
Karluk	27	west coast of Kodiak Island, on the Karluk River, 88 air miles southwest of Kodiak
Larsen Bay	115	on Larsen Bay, on the northwest coast of Kodiak Island, 60 miles southwest of the City of Kodiak
Nanwalek	177	southern tip of the Kenai Peninsula, 10 miles southwest of Seldovia and west of Port Graham
Old Harbor	237	southeast coast of Kodiak Island, 70 miles southwest of the City of Kodiak
Ouzinkie	225	on the west coast of Spruce Island, adjacent to Kodiak Island. It lies northwest of the City of Kodiak
Port Graham	171	south end of the Kenai Peninsula on shore of Port Graham, adjacent to Nanwalek, 28 air miles from Homer
Port Lions	256	located in Settler Cove, 247 air miles southwest of Anchorage
Seldovia	286	on the Kenai Peninsula across from Homer on the south shore of Kachemak Bay
Tatitlek	107	lies 30 miles east of Valdez by sea near Bligh Island
Tyonek	193	on a bluff on the northwest shore of Cook Inlet, 43 miles southwest of Anchorage
Yakutat	680	at the mouth of Yakutat Bay, 225 miles NW of Juneau and 220 miles SE of Cordova

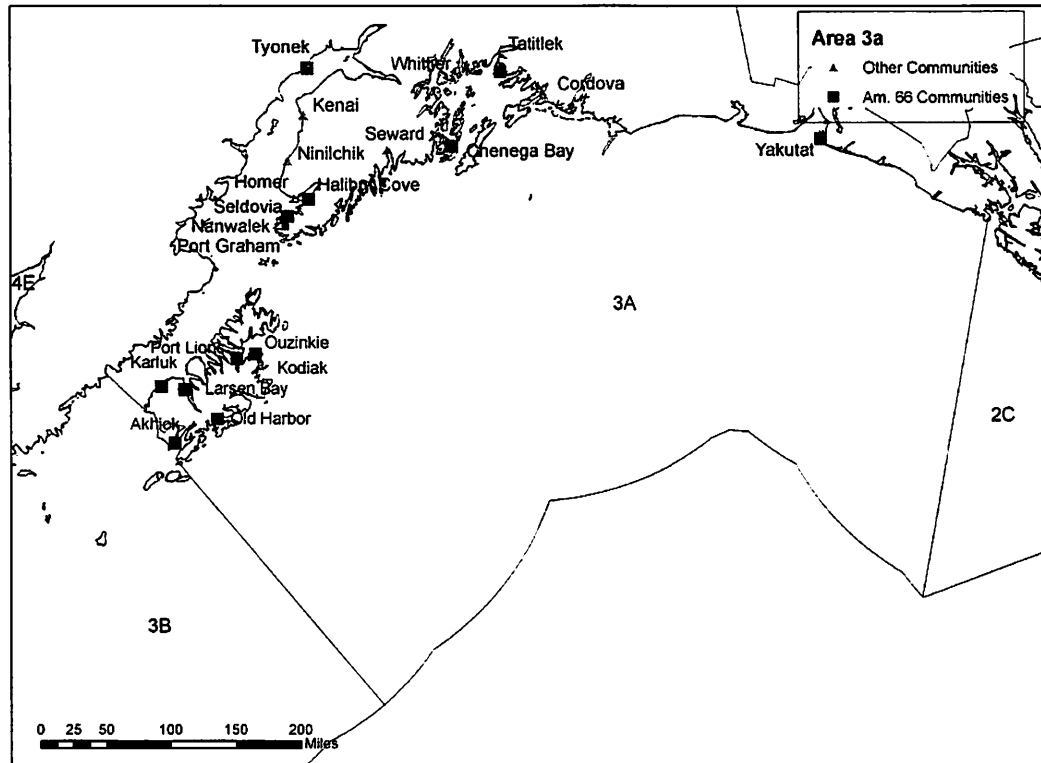
<sup>1</sup>2000 U.S. Census.<sup>2</sup>State of Alaska, DCCED, Community Database Community Information Summaries.

**Figure 6 Map of the 21 eligible GOA Amendment 66 communities in Area 2C**



Source: NPFMC

**Figure 7 Map of the 14 eligible GOA Amendment 66 communities in Area 3A**



Source: NPFMC.

## Number of bottomfish charter businesses reporting community as port of landing

The data provided in this section are from the ADF&G bottomfish logbook data. Note that ADF&G does not record the community in which a charter business is physically located or the residency of the operator; rather, it reports the port of landing. This information is relevant to the criteria used in Issue 12 to determine which Amendment 66 communities do not have fully developed halibut charter ports. The intent of the criterion selected is thus to prohibit communities that already have a specified level of charter activity from being eligible to receive a permit, regardless of whether the charter activity is generated by a business physically located in the community or by a business that is physically located elsewhere but operates in and out of the community's port. ADF&G reports nearly 200 ports of landing, many of which are not associated with a geographic community (e.g., remote lodges) and others whose community association is not well defined (e.g., named bays). ADF&G staff evaluated the data summaries provided for this analysis to determine the correct number of charter trips associated with each of the 35 CQE communities potentially eligible under Issue 12.

Table 15 shows the number of charter businesses that reported the community as the port of landing during 2001 – 2005, under various trip thresholds of at least one, five, ten, or twenty charter bottomfish trips. While the criteria to qualify communities mirrors the qualifying years for the rest of the moratorium program (2004 and 2005), charter data across a five-year period are provided for reference. Note that the data in Table 15 are based on counting trips at the 'business level.' For example, if a business operated two vessels that each had 8 trips in the year at issue, and the minimum trip requirement is designated as 10 or more trips, the business would qualify and be counted in Table 15 in the appropriate column. In effect, a business qualifies by the sum of its trips; each individual vessel does not have to meet the threshold. The Council confirmed that this is the preferred approach at its December 2006 meeting for qualification of a permit under the general moratorium program – both options for determining the number of permits issued to a licensed guide business owner under Issue 10 are based on qualifying at the business level.

The following are a few summary points from Table 15, based on defining an 'active' charter business as having conducted **20 or more bottomfish trips per year**:

- All but 4 of the 35 communities typically had four or fewer active charter businesses operating out of the community in any given year during 2001 – 2005.
- The 4 communities with the highest number of active bottomfish charter businesses were Craig, Elfin Cove, Gustavus, and Yakutat.
- In the vast majority of communities (~77%), the number of charter businesses did not fluctuate by more than one business from 2001 to 2005.<sup>42</sup>
- Seven of the Area 2C communities and 8 of the Area 3A communities were not reported as the port of landing for any bottomfish charter business with 20 or more bottomfish trips during 2001 - 2005.

In addition, in general:

- Most communities had differing numbers of businesses depending on the trip threshold applied; thus, very few communities only had businesses that operated at 20 or more bottomfish trips per year.
- Three of the Area 2C communities and 6 of the Area 3A communities were not reported as the port of landing for any bottomfish charter business under any bottomfish trip threshold during 2001 - 2005.

<sup>42</sup>This is the case comparing the number of active businesses listed for 2001 to those listed for 2005, not by comparing between each year within the range.



Table 16 is provided to show the number of vessels operated by the businesses that qualify at the various bottomfish trip thresholds during 2001 – 2005. In other words, Table 16 shows the number of vessels operated by the businesses shown in Table 15. An example of how to read Table 15 and Table 16 together is as follows:

- Table 15 shows that, in 2005, Angoon is listed as the port of landing for a total of 6 businesses that had at least one bottomfish trip. Five of those businesses had at least 10 trips, and 4 of those businesses had at least 20 trips.
- Table 16 shows that, in 2005, those 6 businesses whose port of landing was Angoon operated 10 vessels. The five businesses with at least 10 trips operated 9 of those vessels, and the four businesses that had at least 20 trips operated 8 of those vessels.

Note again that the vessel counts in Table 16 are not equivalent to the number of *vessels* that meet the various trip threshold levels. They are also not equivalent to the number of *permits* that the example business would receive, which depends on the Council's decision under Issue 10.

Table 15 shows the number of businesses operating in the communities at issue, to understand the number of communities that meet various definitions of 'under-developed' charter ports. Table 16 shows whether these businesses are associated with relatively large fleets, or whether it is more common for a business to operate one or two vessels in a given year on average. The data show that businesses making 1 to 9 trips per year are usually operating only one vessel on average, while many businesses making 20 or more trips per year operate multiple vessels. **Across all 35 communities, each active charter business operated an average of two vessels in both 2004 and 2005, if active is defined as a business conducting 20 or more bottomfish trips per year.** The median number of vessels operated per active business in 2004 was 1.6; in 2005 it was 1.5, again using the threshold of at least 20 trips to define an active business. (Recall that 15 of the communities were not reported as the port of landing for any bottomfish charter business that made at least 20 bottomfish trips per year in 2004 – 2005.) **In sum, no community/port of landing averaged more than 3 vessels per active business, and for the most part, communities averaged 1 – 2 vessels per active business.**

Note, however, that because two vessels are associated with one business does not mean that the business operated both vessels simultaneously. Data is not available at this point to show whether a business typically operated multiple vessels on the same day, or whether one vessel acted as a replacement vessel in the same season.

**As stated previously, neither Table 15 nor Table 16 provide the estimated number of *permits* that the businesses associated with these ports would receive under the general moratorium program, absent the community provisions under Issue 12.** Whether an existing business receives a permit is related to the Council's decision under Issue 10. Recall from the discussion under Issue 10 (see Table 8), that Option 10.1 for qualification under the general program results in a range of 509 to 761 permits being issued to 255 to 446 businesses in Area 2C, depending on the number of trips selected to define an 'active' business. Option 10.2 results in a range of 471 to 761 permits being issued to 255 to 446 businesses in Area 2C, depending on the number of trips selected to define an 'active' business. In Area 3A, Option 10.1 results in a range of 481 to 662 permits being issued to 360 to 520 businesses; Option 2 results in 455 to 662 permits being issued to 360 to 520 businesses. See Section 2.5.10 for details.

**Table 15** Number of businesses meeting the categorized vessel trip thresholds (1+, 5+, 10+, or 20+ bottomfish trips) by port of landing, 2001 - 2005

IPHC Area	Port of Landing Site	2001				2002				2003			
		At least 1 Bottomfish Trip per Year	5 or more Bottomfish Trips per Year	10 or more Bottomfish Trips per Year	20 or more Bottomfish Trips per Year	At least 1 Bottomfish Trip per Year	5 or more Bottomfish Trips per Year	10 or more Bottomfish Trips per Year	20 or more Bottomfish Trips per Year	At least 1 Bottomfish Trip per Year	5 or more Bottomfish Trips per Year	10 or more Bottomfish Trips per Year	20 or more Bottomfish Trips per Year
2C	ANGOON	4	4	3	3	7	6	5	3	5	4	4	3
2C	COFFMAN COVE	3	2	2	2	4	4	4	4	4	4	4	4
2C	CRAIG	26	20	18	14	26	20	16	13	23	19	17	13
2C	EDNA BAY	0	0	0	0	0	0	0	0	0	0	0	0
2C	ELFIN COVE	22	17	14	12	17	11	9	8	17	13	12	10
2C	GUSTAVUS	15	14	13	12	14	12	10	9	14	11	11	8
2C	HOLLIS	0	0	0	0	0	0	0	0	0	0	0	0
2C	HOONAH	12	9	8	4	6	4	3	2	10	5	4	2
2C	HYDABURG	1	1	0	0	0	0	0	0	0	0	0	0
2C	KAKE	5	1	0	0	2	0	0	0	1	0	0	0
2C	KASSAN	0	0	0	0	0	0	0	0	0	0	0	0
2C	KLAWOCK	10	10	7	5	11	9	8	6	10	8	7	4
2C	METLAKATLA	1	0	0	0	0	0	0	0	0	0	0	0
2C	MEYERS CHUCK	0	0	0	0	0	0	0	0	0	0	0	0
2C	PELICAN	6	4	4	3	6	4	4	2	7	5	4	4
2C	POINT BAKER	1	1	1	0	1	1	1	0	0	0	0	0
2C	PORT ALEXANDER	4	4	4	4	4	4	4	4	4	4	4	4
2C	PORT PROTECTION	4	4	4	2	2	2	1	1	3	3	3	1
2C	TENAKEE	3	2	1	1	2	1	1	0	3	1	0	0
2C	THORNE BAY	2	2	2	1	4	3	1	1	3	2	2	1
2C	WHALE PASS	1	1	1	0	1	1	1	0	2	1	1	1
3A	AKHIOK	0	0	0	0	0	0	0	0	0	0	0	0
3A	CHENEGA	1	1	1	1	1	1	1	1	1	1	1	1
3A	HALIBUT COVE	0	0	0	0	0	0	0	0	0	0	0	0
3A	KARLUK	0	0	0	0	0	0	0	0	0	0	0	0
3A	LARSEN BAY	7	6	6	6	6	5	3	3	6	5	5	4
3A	NANWALEK	0	0	0	0	0	0	0	0	0	0	0	0
3A	OLD HARBOR	5	4	4	3	3	3	2	2	5	5	4	2
3A	OUZINKIE	1	0	0	0	0	0	0	0	1	1	0	0
3A	PORT GRAHAM	0	0	0	0	0	0	0	0	0	0	0	0
3A	PORT LIONS	7	6	4	3	9	7	5	3	10	6	3	2
3A	SELDOVIA	10	5	4	4	7	4	4	3	6	6	4	4
3A	TATITLEK	0	0	0	0	0	0	0	0	0	0	0	0
3A	TYONEK	0	0	0	0	0	0	0	0	0	0	0	0
3A	YAKUTAT	7	6	5	4	7	7	6	5	9	9	8	7

Source: Alaska Department of Fish & Game, logbook data, 2001 – 2005. Note that Akhiok is located in Area 3B.

Note: The rows are not additive within each year. The total number of active businesses associated with the port of landing for a specified year is shown in the “At least 1 bottomfish trip per year” column.

Note: For the purposes of business qualification, these counts assume that the trips are counted at the ‘business level’ (as opposed to the individual vessel level). For example, if a business operated two vessels that each had 8 trips in the qualifying years, and the minimum trip requirement was 10 trips, the business would qualify. The number of permits that the example business would receive would depend on the Council’s clarification under Issue 10.

Table 15 continued.

IPHC Area	Port of Landing Site	2004				2005			
		At least 1 Bottomfish Trip per Year	5 or more Bottomfish Trips per Year	10 or more Bottomfish Trips per Year	20 or more Bottomfish Trips per Year	At least 1 Bottomfish Trip per Year	5 or more Bottomfish Trips per Year	10 or more Bottomfish Trips per Year	20 or more Bottomfish Trips per Year
2C	ANGOON	8	5	4	3	6	5	5	4
2C	COFFMAN COVE	4	4	4	4	5	5	5	5
2C	CRAIG	29	26	20	16	30	25	20	17
2C	EDNA BAY	0	0	0	0	0	0	0	0
2C	ELFIN COVE	14	12	11	9	13	12	11	9
2C	GUSTAVUS	15	13	12	12	18	14	12	12
2C	HOLLIS	0	0	0	0	1	0	0	0
2C	HOONAH	9	8	8	2	12	7	6	2
2C	HYDABURG	0	0	0	0	0	0	0	0
2C	KAKE	1	0	0	0	0	0	0	0
2C	KASSAN	0	0	0	0	0	0	0	0
2C	KLAWOCK	10	9	6	4	8	7	6	5
2C	METLAKATLA	0	0	0	0	0	0	0	0
2C	MEYERS CHUCK	0	0	0	0	0	0	0	0
2C	PELICAN	7	6	3	1	7	5	5	4
2C	POINT BAKER	1	1	1	0	2	2	1	1
2C	PORT ALEXANDER	4	4	4	3	4	4	4	4
2C	PORT PROTECTION	2	1	1	1	2	2	1	1
2C	TENAKEE	3	2	0	0	3	2	1	0
2C	THORNE BAY	4	4	3	2	6	6	4	3
2C	WHALE PASS	4	2	2	2	2	2	2	2
3A	AKHIOK	0	0	0	0	0	0	0	0
3A	CHENEGA	2	1	1	0	1	1	0	0
3A	HALIBUT COVE	0	0	0	0	1	1	0	0
3A	KARLUK	0	0	0	0	0	0	0	0
3A	LARSEN BAY	5	5	5	4	6	5	4	4
3A	NANWALEK	0	0	0	0	0	0	0	0
3A	OLD HARBOR	5	3	3	1	4	3	3	2
3A	OUZINKIE	1	0	0	0	1	1	1	0
3A	PORT GRAHAM	0	0	0	0	0	0	0	0
3A	PORT LIONS	10	9	7	4	10	7	4	3
3A	SELDOVIA	10	5	5	4	10	7	6	4
3A	TATITLEK	0	0	0	0	0	0	0	0
3A	TYONEK	0	0	0	0	0	0	0	0
3A	YAKUTAT	9	8	8	8	10	9	8	7

Source: Alaska Department of Fish & Game, logbook data, 2001 – 2005. Note that Akhiok is located in Area 3B.

Note: The rows are not additive within each year. The total number of active businesses associated with the port of landing for a specified year is shown in the "At least 1 bottomfish trip per year" column.

For the purposes of business qualification, these counts assume that the trips are counted at the 'business level' (as opposed to the individual vessel level). For example, if a business operated two vessels that each had 8 trips in the qualifying years, and the minimum trip requirement was 10 trips, the business would qualify. The number of permits that the example business would receive would depend on the Council's clarification under Issue 10.

**Table 16** Number of vessels operated by businesses that 'qualify' at the various trip thresholds (1+, 5+, 10+, or 20+ bottomfish trips) by port of landing, 2001 – 2005

IPHC Area	Am. 66	Port of Landing Site	2001				2002				2003			
			At least 1 Bottomfish Trip per Year	5 or more Bottomfish Trips per Year	10 or more Bottomfish Trips per Year	20 or more Bottomfish Trips per Year	At least 1 Bottomfish Trip per Year	5 or more Bottomfish Trips per Year	10 or more Bottomfish Trips per Year	20 or more Bottomfish Trips per Year	At least 1 Bottomfish Trip per Year	5 or more Bottomfish Trips per Year	10 or more Bottomfish Trips per Year	20 or more Bottomfish Trips per Year
2C	Y	ANGOON	10	10	9	9	8	7	6	4	5	4	4	3
2C	Y	COFFMAN COVE	5	4	4	4	6	6	6	6	6	6	6	6
2C	Y	CRAIG	51	45	43	39	50	44	40	36	51	47	45	41
2C	Y	EDNA BAY	0	0	0	0	0	0	0	0	0	0	0	0
2C	Y	ELFIN COVE	32	27	24	21	29	23	21	20	32	28	27	24
2C	Y	GUSTAVUS	19	18	17	16	19	17	15	14	19	16	16	13
2C	Y	HOLLIS	0	0	0	0	0	0	0	0	0	0	0	0
2C	Y	HOONAH	13	10	9	5	6	4	3	2	10	5	4	2
2C	Y	HYDABURG	1	1	0	0	0	0	0	0	0	0	0	0
2C	Y	KAKE	5	1	0	0	2	0	0	0	1	0	0	0
2C	Y	KASSAN	0	0	0	0	0	0	0	0	0	0	0	0
2C	Y	KLAWOCK	15	15	12	10	17	15	14	12	15	13	12	9
2C	Y	METLAKATLA	1	0	0	0	0	0	0	0	0	0	0	0
2C	Y	MEYERS CHUCK	0	0	0	0	0	0	0	0	0	0	0	0
2C	Y	PELICAN	7	5	5	4	6	4	4	2	8	6	4	4
2C	Y	POINT BAKER	1	1	1	0	1	1	1	0	0	0	0	0
2C	Y	PORT ALEXANDER	6	6	6	6	6	6	6	6	7	7	7	7
2C	Y	PORT PROTECTION	5	5	5	3	3	3	2	2	3	3	3	1
2C	Y	TENAKEE	4	3	2	2	3	2	2	0	3	1	0	0
2C	Y	THORNE BAY	6	6	6	4	6	5	3	3	7	6	6	5
2C	Y	WHALE PASS (POW - SE)	1	1	1	0	2	2	2	0	3	2	2	2
3A	Y	AKHIOK	0	0	0	0	0	0	0	0	0	0	0	0
3A	Y	CHENEGA	1	1	1	1	1	1	1	1	1	1	1	1
3A	Y	HALIBUT COVE	0	0	0	0	0	0	0	0	0	0	0	0
3A	Y	KARLUK	0	0	0	0	0	0	0	0	0	0	0	0
3A	Y	LARSEN BAY	12	11	11	11	10	9	6	6	10	9	9	8
3A	Y	NANWALEK	0	0	0	0	0	0	0	0	0	0	0	0
3A	Y	OLD HARBOR	6	5	5	4	5	5	4	4	8	8	7	4
3A	Y	OUZINKIE	1	0	0	0	0	0	0	0	1	1	0	0
3A	Y	PORT GRAHAM	0	0	0	0	0	0	0	0	0	0	0	0
3A	Y	PORT LIONS	8	7	5	4	10	8	6	4	11	7	4	3
3A	Y	SELDOVIA	10	5	4	4	7	4	4	3	6	6	4	4
3A	Y	TATITLEK	0	0	0	0	0	0	0	0	0	0	0	0
3A	Y	TYONEK	0	0	0	0	0	0	0	0	0	0	0	0
3A	Y	YAKUTAT	13	12	11	9	11	11	10	9	14	14	13	12

Source: Alaska Department of Fish & Game, logbook data, 2001 – 2005. Note that Akhiok is located in Area 3B.

Note: The rows are not additive within each year. The total number of vessels operated by businesses associated with the port of landing for a specified year is shown in the "At least 1 bottomfish trip per year" column.

Note: These counts are not equivalent to the number of vessels that would "qualify" at the various threshold levels; these counts represent the total number of vessels operated by a business that 'qualifies' under the various thresholds in Table 15. For the purposes of business qualification, these counts assume that the trips are counted at the 'business level' (as opposed to the individual vessel level). For example, if a business operated two vessels that each had 8 trips in the qualifying years, and the minimum trip requirement was 10 trips, the business would qualify. The number of permits that the example business would receive would depend on the Council's clarification under Issue 10.

Table 16 continued.

IPHC Area	Am. 66	Port of Landing Site	2004				2005			
			At least 1 Bottomfish Trip per Year	5 or more Bottomfish Trips per Year	10 or more Bottomfish Trips per Year	20 or more Bottomfish Trips per Year	At least 1 Bottomfish Trip per Year	5 or more Bottomfish Trips per Year	10 or more Bottomfish Trips per Year	20 or more Bottomfish Trips per Year
2C	Y	ANGOON	8	5	4	3	10	9	9	8
2C	Y	COFFMAN COVE	6	6	6	6	5	5	5	5
2C	Y	CRAIG	62	59	53	48	69	64	59	55
2C	Y	EDNA BAY	0	0	0	0	0	0	0	0
2C	Y	ELFIN COVE	28	26	25	23	27	26	25	22
2C	Y	GUSTAVUS	22	20	18	18	23	19	17	17
2C	Y	HOLLIS	0	0	0	0	1	0	0	0
2C	Y	HOONAH	11	10	10	2	12	7	6	2
2C	Y	HYDABURG	0	0	0	0	0	0	0	0
2C	Y	KAKE	1	0	0	0	0	0	0	0
2C	Y	KASSAN	0	0	0	0	0	0	0	0
2C	Y	KLAWOCK	17	16	13	11	15	14	13	12
2C	Y	METLAKATLA	0	0	0	0	0	0	0	0
2C	Y	MEYERS CHUCK	0	0	0	0	0	0	0	0
2C	Y	PELICAN	7	6	3	1	7	5	5	4
2C	Y	POINT BAKER	1	1	1	0	3	3	2	2
2C	Y	PORT ALEXANDER	5	5	5	3	5	5	5	5
2C	Y	PORT PROTECTION	3	2	2	2	2	2	1	1
2C	Y	TENAKEE	3	2	0	0	4	3	2	0
2C	Y	THORNE BAY	8	8	7	6	11	11	9	8
2C	Y	WHALE PASS (POW - SE)	6	4	4	4	3	3	3	3
3A	Y	AKHIOK	0	0	0	0	0	0	0	0
3A	Y	CHENEGA	2	1	1	0	1	1	0	0
3A	Y	HALIBUT COVE	0	0	0	0	1	1	0	0
3A	Y	KARLUK	0	0	0	0	0	0	0	0
3A	Y	LARSEN BAY	13	13	13	11	13	12	11	11
3A	Y	NANWALEK	0	0	0	0	0	0	0	0
3A	Y	OLD HARBOR	7	5	5	3	6	5	5	4
3A	Y	OUZINKIE	1	0	0	0	1	1	1	0
3A	Y	PORT GRAHAM	0	0	0	0	0	0	0	0
3A	Y	PORT LIONS	11	10	8	5	10	7	4	3
3A	Y	SELDOVIA	10	5	5	4	10	7	6	4
3A	Y	TATITLEK	0	0	0	0	0	0	0	0
3A	Y	TYONEK	0	0	0	0	0	0	0	0
3A	Y	YAKUTAT	14	13	13	13	14	13	12	11

Source: Alaska Department of Fish & Game, logbook data, 2001 – 2005. Note that Akhiok is located in Area 3B.

Note: The rows are not additive within each year. The total number of vessels operated by businesses associated with the port of landing for a specified year is shown in the "At least 1 bottomfish trip per year" column.

Note: These counts are not equivalent to the number of vessels that would "qualify" at the various threshold levels; these counts represent the total number of vessels operated by a business that 'qualifies' under the various thresholds in Table 15. For the purposes of business qualification, these counts assume that the trips are counted at the 'business level' (as opposed to the individual vessel level). For example, if a business operated two vessels that each had 8 trips in the qualifying years, and the minimum trip requirement was 10 trips, the business would qualify. The number of permits that the example business would receive would depend on the Council's clarification under Issue 10.

## Social and economic characteristics & involvement in North Pacific fisheries

Profiles for 136 fishing communities in Alaska were recently completed by NOAA Fisheries and documented in *Community Profiles for North Pacific Fisheries – Alaska* (December 2005). This document provides social and economic baseline data for Alaskan communities involved in commercial fisheries in the North Pacific, including 28 of the 35 potentially eligible communities under Issue 13.<sup>43</sup>

Note that while NOAA defines fishing community under the MSA to mean a place-based community that is “substantially dependent on or substantially engaged in the harvest or processing of fishery resources to meet social and economic needs, and includes fishing vessel owners, operators, and crew and U.S. fish processors...”, data on recreational and subsistence fishing were not available early enough in the profiling selection process to be incorporated in the determination of the communities to be profiled. Thus, the profiled communities were selected on the basis of their involvement in commercial fishing, using eight different types of quantitative indicators. (Communities which met or exceeded a designated threshold in any one of the indicators were selected for profiling, with a few exceptions.) Information on recreational and subsistence fisheries was added to the profiles as possible. Updated versions of this document will account for recreational and subsistence fishing in the selection of communities for profiling.

Each community profile contains three sections: people and place, infrastructure, and involvement in North Pacific fisheries. The section on people and place describes the location, history, and basic demographic structure of the community; and the infrastructure section outlines the current economic situation, the existing government structure, and the facilities available in the community. Finally, the fishing involvement section details the nature and level of community involvement in commercial, recreational, and subsistence fishing. Data on recreational fishing generally includes the number of registered saltwater and/or freshwater sport fishing businesses (2002) and the number of sport fishing licenses sold in the community (2000) for a specified year, as provided in Table 18 below. Note that registration of a business does not denote that the business was active that year. Please reference *Community Profiles for North Pacific Fisheries – Alaska* for detailed information on 28 of the 35 communities.

Profiles for each of the 35 potentially eligible communities are also provided in the State of Alaska’s Community Information Summaries.<sup>44</sup> The Alaska Department of Commerce, Community, and Economic Development (DCCED) compiles summaries including community location, population, taxes, climate, history, culture, demographics, utilities, schools, health care, economy, transportation, and major contacts. Table 17 provides some demographic and economic statistics for the 35 potentially eligible communities from this database, the primary source of which is the U.S. Census. Please reference the State’s database directly for comprehensive information on each community of interest.

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<sup>43</sup>Amendment 66 communities in Area 2C or Area 3A not profiled in *Community Profiles for North Pacific Fisheries – Alaska* (December 2005) are: Coffman Cove, Hollis, Kassan, Chenega Bay, Nanwalek, Tatitlek, and Tyonek.

<sup>44</sup>Source: [www.commerce.state.ak.us/dca/commdb/CF\\_CIS.htm](http://www.commerce.state.ak.us/dca/commdb/CF_CIS.htm)

**Table 17 Demographic and economic statistics of potentially eligible communities**

Community	Population (2000 U.S. Census)	DCCED 2005 cert pop. <sup>1</sup>	Incorporation type	ANCSA Native village corporation	Percent Native population	Housing units total	Housing units occupied	Average # persons per household	Median household income (\$)	Percent unemployment
<b>Area 2C</b>										
Angoon	572	497	2	Kootznoowoo, Inc	86.4%	221	184	3.11	29,861	13.0%
Coffman Cove	199	156	2	n/a	6.0%	99	63	2.56	43,750	10.5%
Craig	1,397	1,102	1	Shaan-Seet, Inc	30.9%	580	523	2.63	45,298	9.0%
Edna Bay	49	41	U	n/a	4.1%	40	19	2.58	44,583	0.0%
Elfin Cove	32	29	U	n/a	0.0%	35	15	2.13	33,750	23.1%
Gustavus	429	459	2	n/a	8.2%	345	199	2.16	34,766	14.0%
Hollis	139	137	U	n/a	9.4%	95	55	2.53	43,750	3.1%
Hoonah	860	861	1	Huna Totem Corp	69.4%	348	300	2.83	39,028	20.5%
Hydaburg	382	369	1	Haida Corp	89.5%	154	133	2.87	31,625	31.3%
Kake	710	598	1	Kake Tribal Corp	74.6%	288	246	2.88	39,643	24.9%
Kassan	39	61	2	Kavilco, Inc	48.7%	39	17	2.29	43,500	20.0%
Klawock	854	780	1	Klawock Heenya Corp	58.1%	368	313	2.73	35,000	15.7%
Metlakatla	1,375	1,397	U	n/a*	89.7%	531	469	2.93	43,516	20.8%
Meyers Chuck	21	15	U	n/a	9.5%	48	9	2.33	64,375	0.0%
Pelican	163	115	1	n/a	25.8%	94	70	2.3	48,750	8.0%
Point Baker	35	22	U	n/a	8.6%	23	13	2.69	28,000	0.0%
Port Alexander	81	75	2	n/a	13.6%	79	34	2.38	31,563	9.4%
Port Protection	63	54	U	n/a	11.1%	52	31	2.03	10,938	0.0%
Tenakee	104	98	2	n/a	4.8%	144	59	1.76	33,125	13.7%
Thorne Bay	557	486	2	n/a	4.8%	327	219	2.54	45,625	14.6%
Whale Pass	58	76	U	n/a	3.4%	51	22	2.64	62,083	0.0%
<b>Area 3A</b>										
Akhiok	80	41	2	Akhiok-Kaguyak, Inc.	93.8%	34	25	3.2	33,438	14.3%
Chenega	86	82	U	Chenega Corp	77.9%	27	22	3.55	53,750	14.8%
Halibut Cove	35	23	U	n/a	2.9%	123	18	1.94	127,010	0.0%
Karluk	27	27	U	Koniag, Inc; Ayakulik, Inc	96.3%	24	9	3	19,167	0.0%
Larsen Bay	115	97	2	Koniag, Inc	79.1%	70	40	2.88	40,833	10.3%
Nanwalek	177	222	U	English Bay Corp	93.2%	54	45	3.93	42,500	5.1%
Old Harbor	237	200	2	Old Harbor Native Corp	85.7%	111	79	3	32,500	23.0%
Ouzinkie	225	191	2	Ouzinkie Native Corp	87.6%	86	74	3.04	52,500	11.6%
Port Graham	171	134	U	Port Graham Corp	88.3%	82	70	2.44	40,250	22.4%
Port Lions	256	220	2	Afognak Native Corp	63.7%	106	89	2.88	39,107	4.2%
Seldovia	286	287	1	Seldovia Native Assn, Inc	23.1%	232	134	2.13	45,313	10.4%
Tatitlek	107	102	U	Tatitlek Corp	85.0%	57	38	2.82	36,875	7.9%
Tyonek	193	199	U	Tyonek Native Corp	95.3%	134	66	2.92	26,667	27.3%
Yakutat	680	619	H	Yak-Tat Kwaan, Inc	46.8%	499	265	2.59	46,786	7.8%

Source: 2000 U.S. Census data, from State of Alaska, DCCED community database.

<sup>1</sup>2005 certified population by the Alaska Dept. of Commerce, Community and Economic Development.

n/a = not applicable.

\*Metlakatla (Annette Island) is a Federally-recognized Indian reservation (tribe is the Metlakatla Indian Community), and not part of the Alaska Native Claims Settlement Act (ANCSA).

**Table 18**      **Number of registered sport fishing guide businesses (2002)**  
**and sport fish licenses sold (2000), by community**

Community	Number of registered saltwater sport fishing guide businesses (2002)	Number of registered freshwater sport fishing guide businesses (2002)	Number of sport fishing licenses sold (2000)
<b>Area 2C</b>			
Angoon	7	4	976
Coffman Cove	n/a	n/a	n/a
Craig	36	15	3,405
Edna Bay	0	0	11
Elfin Cove	15	13	1,025
Gustavus	14	12	1,877
Hollis	n/a	n/a	n/a
Hoonah	8	6	877
Hydaburg	2	0	11
Kake	5	2	299
Kassan	n/a	n/a	n/a
Klawock	11	2	1,742
Metlakatla	3	1	101
Meyers Chuck	0	0	27
Pelican	9	7	249
Point Baker	3	3	107
Port Alexander	3	2	64
Port Protection	1	1	0
Tenakee	4	2	206
Thorne Bay	6	6	1,163
Whale Pass	n/a	n/a	n/a
<b>Area 3A</b>			
Akhiok	0	0	0
Chenega	n/a	n/a	n/a
Halibut Cove	n/a	n/a	n/a
Karluk	2	4	87
Larsen Bay	10	10	75
Nanwalek	n/a	n/a	n/a
Old Harbor	7	5	17
Ouzinkie	2	2	101
Port Graham	0	0	43
Port Lions	11	8	166
Seldovia	7	0	597
Tatitlek	n/a	n/a	n/a
Tyonek	n/a	n/a	n/a
Yakutat	12	19	3,897

Source: *Community Profiles for North Pacific Fisheries – Alaska*, NOAA Fisheries, December 2005.

n/a = not available. This means the community was not profiled in this data source or the community was profiled but the sport fishing data were not available.



### 2.5.12.2 Eligible communities under Issue 12

As currently structured, NMFS would issue the charter halibut permit to the CQE, which would designate a skipper with a USCG license to take clients halibut charter fishing, similar to any other business. The provisions allow the CQE to determine who it may retain to conduct the charter operation, regardless of the residency of the vessel owner or skipper. In effect, the CQE would be the holder of the permit, and it would decide how the permit is to be used, with the intent that it would use the permit in such a way that maximizes the benefit to the community it represents. There are a variety of ways the CQE could use the permit, for example, the CQE could contract with a business owned by a resident of the community it represents, or the CQE could purchase a vessel and hire a resident skipper or crew to conduct charter operations. The CQE could also contract with a skipper that is a resident of a different community, but require that the charter business operate out of the represented community. It also means that the CQE would not be prohibited by regulation from contracting with a skipper that is not a resident of the community, or that owns and operates a business located in another port.

In December 2006, the Council determined that it is beneficial to allow a broader scope of potential businesses to operate within the community beyond those operated by residents. In addition, the Council was explicit in stating that the CQE, not an individual resident, is the beneficiary of the permit, to use on behalf of the eligible community. While it is likely that most CQEs would contract with a community resident and/or business to use the permit, the flexibility to designate someone other than a full-time resident may be necessary for some of the smallest communities to use the permit provided, either in the initial year after implementation or to mitigate unforeseen circumstances.

#### The three components for community eligibility under Issue 12 are as follows:

- Must be a GOA Amendment 66 community in Area 2C or 3A as listed in Federal regulations
- Must meet the criteria selected for bottomfish charter activity (number of businesses/trip level)
- Must have formed and approved a CQE through NMFS

Two of the primary policy decisions under the community provisions are thus related to the definition of an 'active' charter business and the criteria for determining what constitutes an 'underdeveloped charter port.' Under the current options, in order to be determined eligible under Issue 12, a CQE must represent a community in which either 5 or fewer, or 10 or fewer, active charter businesses terminated trips in the community in 2004 and 2005 and the year prior to implementation. 'Active' is currently defined in the Council motion the same way it will be defined in the general moratorium program under Issue 10: at least 1, 5, 10, or 20 bottomfish trips reported in an ADF&G logbook during each qualifying year. **Combined, there are thus eight different options for defining the participation criteria by which a community is evaluated for eligibility:**

5 or fewer active charter businesses with:		10 or fewer active charter businesses with:	
Option 1	≥1 bottomfish trip	Option 5	≥1 bottomfish trip
Option 2	≥5 bottomfish trips	Option 6	≥5 bottomfish trips
Option 3	≥10 bottomfish trips	Option 7	≥10 bottomfish trips
Option 4	≥20 bottomfish trips	Option 8	≥20 bottomfish trips

\*The community must meet the criteria in 2004, 2005, and the year prior to implementation (likely 2007).

In other words, if a community has *more* than 5 (or *more* than 10) active businesses operating out of its port, depending on the trip threshold selected, in any *one* of the years 2004, 2005 or the year prior to implementation, its CQE would not qualify to receive halibut charter permits. Note that in the general moratorium program, a business owner receives a permit at initial issuance if he/she had the requisite number of bottomfish trips documented in an ADF&G logbook in 2004 or 2005 and the year prior to

implementation of the program (see Issue 10). In effect, a CQE wants to demonstrate little to no charter activity in order to benefit from the program (i.e., receive a permit), while a registered guide business owner wants to demonstrate a higher level of charter activity in order to benefit from the program. The qualification criteria for CQEs are based on an identified economic development need for small, rural communities with few alternative economic opportunities; the qualification criteria in the general moratorium program are based on historical participation.

Note that at the December 2006 Council meeting, it was noted that it is likely that the criteria will be applied by NMFS in 2004, 2005, and two years prior to implementation, as NMFS will likely need a year from the time applications are submitted by potential permit recipients to administer the permits. Thus, as implementation of the moratorium program, if approved by the Secretary, is expected in 2009, it is likely that logbook activity will be required from 2004 or 2005, and 2007 for initial permit recipients. Likewise, CQEs would be required to meet the selected threshold (5 or fewer; or 10 or fewer businesses) in 2004, 2005, and 2007. **This means that the number of communities eligible under this action will not be known at Council final action; only the maximum number of eligible communities can be estimated at the time of final action. The final number of eligible communities will depend on the logbook information submitted for 2007.**

The intent of the eligibility criteria in Issue 12 is to narrow eligibility to communities that do not already have fully developed charter ports; in effect, targeting communities that have less than a selected number of businesses operating out of the port in recent years. The general assumption appears to be that charter business owners already operating in these communities will receive a permit under the general program (see the qualification criteria under Issue 10) and continue to be able to operate out of these communities without the added cost of purchasing a permit – thus, giving the CQE halibut charter permits is not necessary to sustain the *current* level of charter activity in this community. Thus, while the provision is currently structured such that benefits are limited to communities that have fewer than an identified number of businesses operating out of the community in a given set of years, one should also consider whether that is consistent with the number of ‘active’ businesses that had been using the community as its port of landing during the qualifying period that would receive permits at initial issuance. This information was provided in Section 2.5.10 and is summarized further in this section.

**Note, however, that receipt of a halibut charter permit under the general program means that a business can use the permit anywhere within the IPHC area in which the permit is designated (Area 2C or Area 3A). Thus, even in a community that appears to have a ‘developed’ charter port based on activity in 2004 or 2005, there is no guarantee that the halibut charter permit issued to an individual business owner in the general program will continue to be used in that community’s port in the future.** (Note that part of the intent of the community provision under Issue 12 is to mitigate this possibility, as the charter permit would be permanently tied to the CQE, which represents the community.) This may raise concerns with the design of the eligibility criteria, as it would likely disadvantage Amendment 66 communities (relative to other Amendment 66 communities) that are not long established charter ports but whose CQE would not qualify to receive permits because the community exceeded the number of businesses in one of the three years at issue. This issue is exacerbated by the relatively narrow window of participation history used to determine the beneficiaries of the charter halibut permit program. This may be less of an issue for communities that are well above the selected criteria, but more of an issue for communities that only slightly exceed the designated maximum. This issue, and its potential affect on eligible communities, should be considered during the selection of the eligibility criteria at final action.

**Note also that the structure of the eligibility criteria is such that it provides significant disincentive for a community to encourage new halibut charter businesses, whether operated by residents or others, to operate out of its port until after implementation of the moratorium program. Stated**

another way, if a community had fewer than the requisite number of businesses (e.g., 5 or 10) operating out of its port in 2004 and 2005, it would have significant incentive also not to exceed this threshold in 2007 (the year prior to implementation). This is because if a community exceeds the threshold in 2007, it would not be eligible to receive permits from NMFS at no cost, similar to every other initial permit recipient. Added to this incentive is the fact that a business that starts operating for the first time in 2007 would not receive a permit under the general moratorium program because it must also have generated the required logbook activity in 2004 or 2005 (qualifying years are 2004 or 2005 and the year prior to implementation, which is likely 2007). Thus, there may also be a disincentive at the individual/business level, as a new operator in a potentially eligible community may prefer to use a CQE permit rather than purchase a permit on the open market. This may influence behavior such that new operators may delay operating out of the community at issue, if the delay would affect a community's eligibility.

Thus, the provision provides a perverse policy context: there is an identified need to remove the economic barrier for small, rural communities with undeveloped or under-developed charter industries to participate in the halibut charter industry in the future, yet distribution of such a benefit is dependent upon the community's lack of growth in the industry in the interim period prior to implementation. Thus, whereupon a new, start-up charter business might otherwise initiate efforts to operate and establish a client base in the next year, it may be in the businesses' and the community's best interest to delay any new charter business activity until after implementation of the moratorium, if there is any likelihood that a new business would result in exceeding the criteria necessary to receive a charter permit at no cost in the future. While the intent is to provide an economic opportunity for these communities that might not otherwise exist if the initial cost of a charter permit proves a sufficient barrier to entry, one must recognize that the criteria also penalizes a community if it has taken strides to develop a charter industry to date. Whether this disincentive will actually influence individual and/or community behavior cannot be determined with any certainty; however, it will likely depend upon the level of information available to parties on the proposed charter moratorium program.

These issues may provide rationale to use the higher of the two threshold options: a community must have 10 or fewer businesses, as opposed to 5 or fewer, in order to receive (gifted) charter permits. Another approach might be to require that the community meet the criteria only in 2004 and 2005, as opposed to 2004, 2005, *and* the year prior to implementation (2007). This criterion works better in conjunction with the qualification thresholds to receive a permit under the general moratorium program, if the intent is to benefit communities that have under-developed charter ports and will not be receiving more than a specified number of permits, regardless of how many businesses were active in the community in the year prior to implementation. In addition, it may mitigate the disincentive to develop new charter businesses in these rural communities in the interim period prior to implementation. Finally, removing the requirement to meet the criteria in 2007 would allow the public and the Council to know the exact number of eligible communities, and thus, the number of permits that could be issued to CQEs representing those communities, at final action. It would be preferable to list the eligible communities in Federal regulations, as opposed to only listing the criteria.

There are also advantages to the approach to determining eligibility. The criteria are relatively clear and objective, and can be determined with certainty at implementation. In addition, the use of the Amendment 66 communities as a starting point for eligibility encompasses a broad range of factors by definition, and is not limited to historical participation in the charter fishery.

Given the above discussion, this section provides an evaluation of the communities that would potentially qualify under the identified criteria, recognizing that it is difficult to speculate as to how many businesses would be active in the communities in the year or two prior to implementation (2007). **Thus, this section is limited to analyzing the number of communities that would qualify based only on 2004 and 2005 ADF&G charter bottomfish logbook activity, and thus provides the *maximum* number of qualifying**

**communities under each of the options for eligibility. Application of the criteria to 2007 participation could not be completed until implementation of the program.**

Note that in both of the following tables, the data are based upon counting charter trips at the 'business level.' For example, if a business operated 2 vessels that each had 8 trips in a qualifying year, and the minimum trip requirement was 10 trips, the business would be counted in Table 19 and Table 20. In effect, a business is counted as such by the sum of its trips; each individual vessel does not have to meet the threshold. This is consistent with the approach in Issue 10.

Table 19 indicates the Amendment 66 communities that have **5 or fewer** active charter businesses meeting the various trip thresholds to define an 'active' charter business, by port of landing, in 2004 and 2005. This table is based upon data provided in Table 15. **The shaded cells denote communities that do not qualify under the identified criteria. Recall that the community must meet the criteria (5 or fewer active businesses under the identified trip threshold) in both 2004 and 2005 in order to qualify.** For example, if a community was reported as the port of landing for 4 businesses in 2004 and 6 businesses in 2005, it would not qualify (see Thorne Bay as an example). Depending upon the trip threshold selected at final action, between **23 to 31** of the 35 Amendment 66 communities, would qualify to receive charter permits under this option.

**Table 19 Comparison of qualifying Am. 66 communities using criteria of 5 or fewer businesses under various trip thresholds to define an active charter business, 2004 - 2005**

IPHC Area	Port of Landing Site	shaded communities do NOT qualify: they have >5 businesses meeting threshold for 'active' trips in 2004 or 2005							
		2004				2005			
		At least 1 Bottomfish Trip per Year	5 or more Bottomfish Trips per Year	10 or more Bottomfish Trips per Year	20 or more Bottomfish Trips per Year	At least 1 Bottomfish Trip per Year	5 or more Bottomfish Trips per Year	10 or more Bottomfish Trips per Year	20 or more Bottomfish Trips per Year
2C	ANGOON	8	5	4	3	6	5	5	4
2C	COFFMAN COVE	4	4	4	4	5	5	5	5
2C	CRAIG	29	26	20	16	30	25	20	17
2C	EDNA BAY	0	0	0	0	0	0	0	0
2C	ELFIN COVE	14	12	11	9	13	12	11	9
2C	GUSTAVUS	15	13	12	12	18	14	12	12
2C	HOLLIS	0	0	0	0	1	0	0	0
2C	HOONAH	9	8	8	2	12	7	6	2
2C	HYDABURG	0	0	0	0	0	0	0	0
2C	KAKE	1	0	0	0	0	0	0	0
2C	KASSAN	0	0	0	0	0	0	0	0
2C	KLAWOCK	10	9	6	4	8	7	6	5
2C	METLAKATLA	0	0	0	0	0	0	0	0
2C	MEYERS CHUCK	0	0	0	0	0	0	0	0
2C	PELICAN	7	6	3	1	7	5	5	4
2C	POINT BAKER	1	1	1	0	2	2	1	1
2C	PORT ALEXANDER	4	4	4	3	4	4	4	4
2C	PORT PROTECTION	2	1	1	1	2	2	1	1
2C	TENAKEE	3	2	0	0	3	2	1	0
2C	THORNE BAY	4	4	3	2	6	6	4	3
2C	WHALE PASS	4	2	2	2	2	2	2	2
3A	AKHIOK	0	0	0	0	0	0	0	0
3A	CHENEGA	2	1	1	0	1	1	0	0
3A	HALIBUT COVE	0	0	0	0	1	1	0	0
3A	KARLUK	0	0	0	0	0	0	0	0
3A	LARSEN BAY	5	5	5	4	6	5	4	4
3A	NANWALEK	0	0	0	0	0	0	0	0
3A	OLD HARBOR	5	3	3	1	4	3	3	2
3A	OUZINKIE	1	0	0	0	1	1	1	0
3A	PORT GRAHAM	0	0	0	0	0	0	0	0
3A	PORT LIONS	10	9	7	4	10	7	4	3
3A	SELDOVIA	10	5	5	4	10	7	6	4
3A	TATITLEK	0	0	0	0	0	0	0	0
3A	TYONEK	0	0	0	0	0	0	0	0
3A	YAKUTAT	9	8	8	8	10	9	8	7
Total # of qualifying communities		At least 1 bottomfish trip per year = 23		At least 5 bottomfish trips per year = 25		At least 10 bottomfish trips per year = 27		At least 20 bottomfish trips per year = 31	

Source: Alaska Department of Fish & Game, logbook data, 2004 - 2005. Note that Akhiok is located in Area 3B.

**NOTE: Shaded cells denote communities that do not qualify under the selected criteria. The number of businesses is provided in each cell.** Note that Issue 12 requires that communities must also meet the trip threshold selected *in the year prior to implementation*; thus, this list denotes the *maximum* number of potentially eligible communities and is not definitive. Eligible communities would also need to form and qualify a CQE with NMFS in order to receive a charter permit under Issue 12.

Table 20 shows the same information as Table 19, except the qualification option is **10 or fewer** active charter businesses reported the Amendment 66 community as the port of landing in 2004 and 2005, if 'active' is defined as minimum activity of at least 1, 5, 10, or 20 bottomfish charter trips in a given year. This table is also based upon data provided in Table 15. **The shaded cells denote communities that do not qualify under the identified criteria. Recall that the community must meet the criteria (10 or fewer active businesses under the identified trip threshold) in both 2004 and 2005 in order to qualify.** Depending upon the trip threshold selected at final action, between **31 to 33** of the 35 Amendment 66 communities, would qualify to receive charter permits under this option.

**Table 20 Comparison of qualifying Am. 66 communities using criteria of 10 or fewer businesses under various trip thresholds to define an active charter business, 2004 - 2005**

IPHC Area	Port of Landing Site	shaded communities do NOT qualify: they have >10 businesses meeting threshold for 'active' trips in 2004 or 2005							
		2004				2005			
		At least 1 Bottomfish Trip per Year	5 or more Bottomfish Trips per Year	10 or more Bottomfish Trips per Year	20 or more Bottomfish Trips per Year	At least 1 Bottomfish Trip per Year	5 or more Bottomfish Trips per Year	10 or more Bottomfish Trips per Year	20 or more Bottomfish Trips per Year
2C	ANGOON	8	5	4	3	6	5	5	4
2C	COFFMAN COVE	4	4	4	4	5	5	5	5
2C	CRAIG	29	26	20	16	30	25	20	17
2C	EDNA BAY	0	0	0	0	0	0	0	0
2C	ELFIN COVE	14	12	11	9	13	12	11	9
2C	GUSTAVUS	15	13	12	12	18	14	12	12
2C	HOLLIS	0	0	0	0	1	0	0	0
2C	HOONAH	9	8	8	2	12	7	6	2
2C	HYDABURG	0	0	0	0	0	0	0	0
2C	KAKE	1	0	0	0	0	0	0	0
2C	KASSAN	0	0	0	0	0	0	0	0
2C	KLAWOCK	10	9	6	4	8	7	6	5
2C	METLAKATLA	0	0	0	0	0	0	0	0
2C	MEYERS CHUCK	0	0	0	0	0	0	0	0
2C	PELICAN	7	6	3	1	7	5	5	4
2C	POINT BAKER	1	1	1	0	2	2	1	1
2C	PORT ALEXANDER	4	4	4	3	4	4	4	4
2C	PORT PROTECTION	2	1	1	1	2	2	1	1
2C	TENAKEE	3	2	0	0	3	2	1	0
2C	THORNE BAY	4	4	3	2	6	6	4	3
2C	WHALE PASS	4	2	2	2	2	2	2	2
3A	AKHIOK	0	0	0	0	0	0	0	0
3A	CHENEGA	2	1	1	0	1	1	0	0
3A	HALIBUT COVE	0	0	0	0	1	1	0	0
3A	KARLUK	0	0	0	0	0	0	0	0
3A	LARSEN BAY	5	5	5	4	6	5	4	4
3A	NANWALEK	0	0	0	0	0	0	0	0
3A	OLD HARBOR	5	3	3	1	4	3	3	2
3A	OUZINKIE	1	0	0	0	1	1	1	0
3A	PORT GRAHAM	0	0	0	0	0	0	0	0
3A	PORT LIONS	10	9	7	4	10	7	4	3
3A	SELDOVIA	10	5	5	4	10	7	6	4
3A	TATITLEK	0	0	0	0	0	0	0	0
3A	TYONEK	0	0	0	0	0	0	0	0
3A	YAKUTAT	9	8	8	8	10	9	8	7
Total # of qualifying communities		At least 1 bottomfish trip per year = 31		At least 5 bottomfish trips per year = 32		At least 10 bottomfish trips per year = 32		At least 20 bottomfish trips per year = 33	

Source: Alaska Department of Fish & Game, logbook data, 2004 – 2005. Note that Akhiok is located in Area 3B.

**NOTE: Shaded cells denote communities that do not qualify under the selected criteria. The number of businesses is provided in each cell.** Note that Issue 12 requires that communities must also meet the trip threshold selected *in the year prior to implementation*; thus, this list denotes the *maximum* number of potentially eligible communities and is not definitive. Eligible communities would also need to form and qualify a CQE with NMFS in order to receive a charter permit under Issue 12.

**Table 21** Number of estimated eligible communities in Area 2C and 3A under Issue 12

Community qualifying criteria under Issue 12	Area 2C	Area 3A	TOTAL
≤5 businesses; ≥1 trip	13	10	23
≤5 businesses; ≥5 trips	14	11	25
≤5 businesses; ≥10 trips	16	11	27
≤5 businesses; ≥20 trips	18	13	31
≤10 businesses; ≥1 trip	17	14	31
≤10 businesses; ≥5 trips	18	14	32
≤10 businesses; ≥10 trips	18	14	32
≤10 businesses; ≥20 trips	19	14	33

Clearly, one primary factor affecting the number of eligible communities is the maximum number of businesses a community could already have to qualify (e.g., 5 or 10). For example, if an active business is defined as having at least 1 bottomfish trip per year during the qualifying period, 31 communities qualify under a threshold of 10 or fewer active businesses, but only 23 communities qualify under the threshold of 5 or fewer active businesses. The difference is reduced under the upper end of the range of options to define an active business (≥20 bottomfish trips): 33 communities qualify under a threshold of 10 or fewer active businesses, and 31 communities qualify under a threshold of 5 or fewer active businesses.

The other primary factor is the minimum number of trips used to define an 'active' business. The number of qualifying communities resulting from the minimum number of trips used to define an 'active' business varies more so under a threshold of 5 or fewer active businesses (23 to 31 communities qualify) than it does under a threshold of 10 or fewer active businesses (31 to 33 communities qualify).

**In effect, the great majority (31 - 33) of Amendment 66 communities qualifies under the threshold of 10 or fewer active businesses, regardless of how many trips denote an 'active' business.** All but four of the communities have fewer than 11 businesses at any trip threshold greater than or equal to one landing. In addition, two of the communities (Craig and Gustavus) have more than 10 businesses at any trip threshold considered. Elfin Cove has more than 10 businesses at any trip threshold considered except for 20 or more trips, and Hoonah has more than 10 businesses only if the trip threshold is 1 or more trips. Note that only Craig substantially exceeds the minimum number of businesses allowed (at least two to three times under most options) in order to qualify to receive halibut charter permits.

**There is a much broader range (23 – 31) of potentially qualifying communities under the threshold of 5 or fewer active businesses.** All but four communities have fewer than 6 businesses if the trip threshold is 20 or more trips. Four additional communities do not qualify if the trip threshold is reduced to 10 or more trips, and another two communities do not qualify if the trip threshold is reduced to 5 or more trips. Another two communities do not qualify, for a total of 12 unqualified communities, if the trip threshold to denote an active business is reduced to one or more trips. Note that only Craig, Elfin Cove, and Gustavus substantially exceed the minimum number of businesses allowed (at least two times under most options) in order to qualify to receive halibut charter permits.

While these are clearly the most significant factors, the requirement to meet the criteria in both 2004 and 2005 versus 2004 or 2005 also has an effect on the number of eligible communities. The current Council motion requires that communities meet the criteria in both 2004 and 2005 (and the year prior to implementation of the program).

Alternatively, if the requirement was relaxed to 2004 or 2005, one community (Hoonah) would become eligible under the criteria of 10 or fewer businesses when active is defined as 1 or more bottomfish trips that would otherwise not be eligible. It does not affect the number of eligible communities when 'active' business is defined as at least 5, 10, or 20 charter bottomfish trips. There is a larger difference under the criteria of 5 or fewer businesses. If the requirement was relaxed to 2004 or 2005, 2, 3, and 2 additional communities would become eligible under these criteria when active is defined as  $\geq 1$ ,  $\geq 5$ , and  $\geq 10$  bottomfish trips, respectively.<sup>45</sup> It does not affect the number of eligible communities when 'active' business is defined as at least 20 charter bottomfish trips under a threshold of 5 or fewer businesses.

As stated previously, each community is also required to meet the criteria selected in the year prior to implementation. As it is not possible to know how many communities would do so, Table 19 and Table 20 show only the maximum potential number of eligible communities under the options for consideration.

The following table indicates the number of permits that could potentially be issued to individual business owners (not CQEs) that reported a potentially eligible community as the port of landing *for at least one trip* during the 2004 – 2005 qualification period in the *general program*, under Option 10.1 in Issue 10 (using a 1-trip threshold and 20-trip threshold as bounds). These data are of limited value, however, as there is no guarantee in the general program that the charter permit issued to an individual business owner that operated at one time in a specific port, will continue to be used in that community's port in the future. It also does not mean that the business is located in the community, that the business owner is a resident of the community, or that the business only operated charter trips out of that community. Several businesses operated out of more than one port during the qualification period (2004 – 2005). Finally, it is uncertain how many of these businesses would actually qualify upon implementation of the general program, as participation is also necessary the year prior to implementation (2007) to qualify for a permit.

**Table 22** Number of estimated permits issued to individual businesses reporting the port of landing as a potentially eligible community under the qualifying options

Community qualifying criteria under Issue 12	Estimated number of potentially eligible communities under Issue 12		# of estimated permits issued to businesses that reported an eligible Am. 66 community as the port of landing for at least one trip, under Issue 10, Op. 10.1, using 1 trip threshold		# of estimated permits issued to businesses that reported an eligible Am. 66 community as the port of landing for at least one trip, under Issue 10, Op. 10.1, using 20 trip threshold	
	Area 2C	Area 3A	Area 2C	Area 3A	Area 2C	Area 3A
$\leq 5$ businesses; $\geq 1$ trip	13	10	31	13	n/a	n/a
$\leq 5$ businesses; $\geq 20$ trips	18	13	n/a	n/a	63	39
$\leq 10$ businesses; $\geq 1$ trip	17	14	83	70	n/a	n/a
$\leq 10$ businesses; $\geq 20$ trips	19	14	n/a	n/a	90	52

Source: ADF&G charter bottomfish logbook data, 2004 – 2005.

In sum, of the potential permits to be issued, Table 22 shows that an estimated 31 – 83 permits could be issued to businesses which have reported an *eligible* Area 2C Amendment 66 community as the port of landing for at least one trip during the 2004 – 2005 qualifying period under Issue 10, Option 10.1 under a

<sup>45</sup>Thorne Bay and Larsen Bay have more than 5 active businesses ( $\geq 1$  trip) in only one of the years 2004 - 2005. Thorne Bay, Pelican, and Seldovia have more than 5 active businesses ( $\geq 5$  trips) in only one of the years 2004 - 2005. Port Lions and Seldovia have more than 5 active businesses ( $\geq 10$  trips) in only one of the years 2004 - 2005.



1-trip minimum; an estimated 63 – 90 permits would be issued under a 20-trip minimum.<sup>46</sup> In sum, 4% - 11% of the total estimated number of permits to be issued for Area 2C would be issued to businesses that reported an eligible Amendment 66 community as the port of landing for at least one trip during the qualification period, if the business qualified under Option 10.1 using the 1-trip threshold. If the 20-trip minimum threshold was used, the range of permits increases to 12% - 18%.

Likewise in eligible Area 3A communities, an estimated 13 – 70 permits would be issued to businesses which have reported an eligible Area 3A Amendment 66 community as the port of landing for at least one trip during the 2004 – 2005 qualifying period under Option 10.1 using a 1-trip minimum; an estimated 39 – 52 permits would be issued using a 20-trip minimum.<sup>47</sup> In sum, 2% - 11% of the total estimated number of permits to be issued for Area 3A would be issued to businesses that reported an eligible Amendment 66 community as the port of landing for at least one trip during the qualification period, if the business qualified under Option 10.1 using the 1-trip threshold. If the 20-trip minimum threshold was used, the range of permits increases to 8% - 11%. The increase occurs under the higher trip threshold because the trip threshold selected for the regular program would also be applied to the eligibility criteria for communities. A greater number of communities qualify under the 20-trip minimum because very few communities had more than 5, or more than 10, businesses operating out of the community that had at least 20 trips.

### 2.5.12.3 Limits on the number of permits held by CQEs

There are two sets of limits proposed to restrict the number of halibut charter permits that can be held by CQEs: **1) overall (or cumulative) use caps, and 2) use caps on the number of requested permits.** The cumulative use cap limits the number of halibut charter permits that an individual CQE could hold at any one time, whether those permits were purchased by the CQE from the existing pool of limited entry permits or newly created and issued to the CQE by NMFS. The second use cap only limits the number of newly created permits that a CQE can apply for and receive from NMFS at no cost. Both use caps are applied per eligible community represented by the CQE.

#### Overall use cap

The intent of an overall use cap is primarily to limit the amount of consolidation that can occur in the number of permit holders over time. Under Issue 12, there are three options proposed for the overall use caps applicable to CQEs in Area 2C and 3A, which are equal to 1, 3, or 5 times those selected for every other permit holder (with the exception of grandfathered permit holders) under Issue 11. Under Issue 11, the use cap options are: 1, 5, or 10 permits per entity. **Therefore, 8 different options result for the overall use caps proposed for eligible CQEs in Area 2C and Area 3A:**

1x the general use cap = **1, 5, or 10** permits per community represented by a CQE  
 3x the general use cap = **3, 15, or 30** permits per community represented by a CQE  
 5x the general use cap = **5, 25, or 50** permits per community represented by a CQE

Note also that the Council motion states that different overall use caps can be selected for CQEs representing communities in Area 2C versus Area 3A. This provision was included to recognize that the

<sup>46</sup>A minimum of 13 and a maximum of 17 Area 2C communities could be eligible under a one-trip minimum, depending on the business threshold selected (either 5 or fewer; or 10 or fewer). A range of 18 to 19 Area 2C communities could be eligible under a 20-trip minimum.

<sup>47</sup>A minimum of 10 and a maximum of 14 Area 3A communities could be eligible under a one-trip minimum, depending on the business threshold selected (either 5 or fewer; or 10 or fewer). A range of 13 to 14 Area 3A communities could be eligible under a 20-trip minimum.

Council may want to establish a lower limit on the number of permits that may be held by CQEs in Area 2C than Area 3A, given that there are more potentially eligible communities in Area 2C than in Area 3A.

The criteria under consideration to determine eligible communities result in a range of 23 to 33 eligible communities, recognizing that this range represents the *maximum* number of potentially eligible communities under each option, as each community would also have to meet the criteria in the year (or two years) prior to implementation. Thus, one can estimate that *up to* 23 to 33 communities would be eligible for this program under the options. The following table shows the overall use cap options that could be applied to CQEs and the resulting number of permits that could be held in total by CQEs in Area 2C and 3A (whether purchased from the existing pool of permits or new permits issued by NMFS).

**Table 23 Maximum number of charter halibut permits that could be held by CQEs, whether purchased or requested, under Issue 12**

Overall use cap option (# permits per community)	Minimum estimate of eligible comm. = 13 in Area 2C and 10 in Area 3A			Maximum estimate of eligible comm. = 19 in Area 2C and 14 in Area 3A		
	Area 2C	Area 3A	Total	Area 2C	Area 3A	Total
1 permit	13	10	23	19	14	33
3 permits	39	30	69	57	42	99
5 permits	65	50	115	95	70	165
10 permits	130	100	230	190	140	330
15 permits	195	150	345	285	210	495
25 permits	325	250	575	475	350	825
30 permits	390	300	690	570	420	990
50 permits	650	500	1150	950	700	1650

Recall that while the table above is based on the maximum number of potentially eligible communities, each community would also need to form an approved CQE in order to request any charter halibut permits. **Currently, there are only 7 communities represented by CQEs in Area 2C and 3A.** One of those communities with a CQE (Craig) would not qualify to receive halibut charter permits under any of the eligibility options.

Establishing an **overall use cap** on the number of charter permits that can be held by CQEs serves to limit the level of consolidation of charter permits by defining a minimum number of holders, similar to the goal of the use caps in the general moratorium program. The intent behind establishing a higher overall use cap on CQEs compared to other businesses (notwithstanding businesses that will receive a number of permits at initial issuance that exceed the overall use cap due to the grandfather provision), is that use of the permits by a CQE is intended to serve the community as a whole, as opposed to an individual business. In that sense, it is appropriate to consider an overall use cap for CQEs that is higher than that established for individual businesses.

Recall that under the general program, the business owner will receive the charter permit, based on charter activity by a vessel(s) during the qualification period. In the proposed program, it is intended that a business would need a charter permit for each vessel it operates for halibut charters. Thus, if a business intends to operate a fleet of three vessels simultaneously, the business owner would need three permits. The same permit requirement would apply to any business, including permits being used by CQEs. Thus, if a CQE is limited to a total of 5 permits per represented community, those 5 permits could support operation of up to 5 vessels at any one time. The way in which the permits would be used would be at the

discretion of the CQE; all 5 permits could be used to support a lodge business in the community, or each of the 5 permits could be used for 5 different start-up charter operations.

**The policy decision for the Council is thus to determine the appropriate maximum number of permits a CQE is allowed to hold and use, in order to balance the dual but somewhat conflicting goals of: 1) limiting consolidation of permits; and 2) providing for meaningful opportunities for CQEs to support a rural community's development of the halibut charter industry.** One approach would be to establish the number of potential charter operations the Council would want to support through this program. For example, if the Council intends for a CQE to support a maximum of 5 new businesses in a rural community, assuming that each business operates an average of 2 vessels, it could consider establishing an overall use cap of 10 permits per community.

Recall that this overall use cap includes any permits that the CQE purchases on the open market. If the overall use cap is set higher than the cap on requested permits, CQEs could purchase a number of permits over and above the number of permits that they request from NMFS. **As CQEs would be purchasing permits from the existing pool of initial permits issued, a possible effect is that some redistribution of permits could occur from ports with the highest historical charter activity (Sitka, Juneau, Homer, Seward, Ninilchik) to the more rural communities represented by CQEs.** Recognizing that several of the CQE communities conduct (or would likely conduct) charter operations in the same or nearby waters as the larger ports, a redistribution of charter permits does not necessarily mean that halibut charter fishing effort would also be redistributed. However, it is possible that some geographic redistribution of both permit holders and halibut charter fishing effort could occur in this case. The level of redistribution will depend upon several factors, including the use caps established for CQEs; the number of eligible communities that form CQEs in order to participate; client demand for halibut charter operations in rural areas not connected to the road system; and the financial ability of CQEs to purchase halibut charter permits.

Note that the number of estimated permits issued under the general program ranges from 471 to 761 in Area 2C and 455 to 662 in Area 3A. While an extremely unlikely result, if the overall use caps for CQEs were set at 25 permits or more for each represented community, it is theoretically possible that all of the initially issued halibut charter permits could be purchased by CQEs and redistributed to rural areas if the maximum number of Area 2C communities is deemed eligible (19). In Area 3A, if the overall use caps for CQEs were set at 30 permits or more for each represented community, it is theoretically possible that all of the initially issued halibut charter permits could be purchased by CQEs and redistributed to rural areas if the maximum number of Area 3A communities is deemed eligible (14). These comparisons have limited value, however, as there are several implicit assumptions, including the very unlikely scenario that all 33 eligible communities would form CQEs and each CQE would *purchase* existing charter permits to the maximum extent allowed.

#### Use cap on requested (new) permits

While evaluating the effects of the proposed overall use caps, it is important to discuss, in tandem, the proposed use caps on the number of new permits that a CQE could request from NMFS. These permits would be in addition to the existing pool of permits that results from the qualification period selected in Issue 10. While permit consolidation is a concern and can be mitigated with overall use caps, the limit on the number of newly created halibut charter permits for rural communities, in the context of the problem statement and the general purpose of a limited entry program, is likely more controversial.

The use cap options for requested (new) permits by communities are:

Area 2C = 3, 5, or 7 permits per eligible community represented by a CQE  
 Area 3A = 5, 10, or 15 permits per eligible community represented by a CQE

There are 21 Area 2C communities eligible under Amendment 66, four of which have approved CQEs to date. There are 14 Area 3A communities eligible under Amendment 66, 3 of which have approved CQEs to date. Referring to Table 19 and Table 20, the minimum and maximum number of Area 2C communities that could be eligible for receiving halibut charter permits is 13 and 19, respectively. The minimum and maximum number of Area 3A communities that could be eligible is 10 and 14, respectively. **Table 24 below shows how many potential new permits could be created and issued to CQEs under the respective use cap options, assuming that all eligible communities would create a CQE and request the maximum number of permits allowed.**

**Table 24 Maximum number of new halibut charter permits that could be requested by CQEs under the options in Issue 12**

AREA 2C		
Use cap on requested permits (# permits per community)	Minimum estimate = 13 communities	Maximum estimate = 19 communities
3 permits	39	57
5 permits	65	95
7 permits	91	133
AREA 3A		
Use cap on requested permits (# permits per community)	Minimum estimate = 10 communities	Maximum estimate = 14 communities
5 permits	50	70
10 permits	100	140
15 permits	150	210

Note that the Council may want to select an overall use cap that is higher than (or at least equal to) the use cap on requested permits, otherwise the overall use cap is irrelevant. Meaning, it would not make sense to select an overall use cap of 1 permit per community (see options in Table 23) and a use cap of 3 requested (new) permits per community (see options in Table 24).

The halibut charter harvest has exhibited steady growth in the past several years in Areas 2C and 3A, and the moratorium program is intended, in part, to limit effort in the halibut charter fishery as the first step to a long-term management solution. The primary long-term solutions being discussed are a limited entry program with client day endorsements or a quota share program based on past participation in the fishery. The Council selected a control date of December 9, 2005, to implement a moratorium on entry into the charter sector, as the problem statement notes, "to address the potential against the rush of new entrants into the guided sport fishery..." The moratorium program is thus expected to minimize the potential for speculative investment and participation in the charter fishery during the interim period in which a quota share program or other solution is being developed. The National Research Council found that early adoption and adherence to control dates and moratoria on new entry, licenses, and effort greatly reduces the incentive for speculative entry.<sup>48</sup>

However, while the moratorium program is intended to minimize new entrants into the charter fishery, it is not expected to reduce the level of halibut charter harvest such that it is below the current guideline harvest level. This is discussed earlier in Section 2.5. ADF&G estimates that the GHGs in Area 2C and Area 3A were exceeded by 42% and 9% in 2006, respectively. While the goal of this particular measure

<sup>48</sup>Sharing the Fish, National Research Council, 1999. p. 199.

(implementing a moratorium on new entry) is not to meet the GHL (that goal is part of the allocation decision in a subsequent analysis), it is assumed that the provisions enacted are also not intended to exacerbate the current situation. Under Issue 12, the Council may consider balancing the identified need to limit new entry in the halibut charter fishery in the context of exceeded GHs in recent years, with the conflicting identified need to maintain access to the halibut charter fishery in specified rural communities by creating additional permits.

The use cap on the number of halibut charter permits that each CQE can request is intended to limit the number of newly created halibut charter permits in excess of the pool of permits issued to individual business owners using the qualification period. As the use cap options are currently structured, recall that the maximum number of new permits that could be created for CQEs representing eligible Area 2C and Area 3A communities is 39 - 133 and 50 - 210, respectively. Recall that a range of 509 - 761 permits could be issued under the general program in Area 2C under Option 10.1, and 481 - 662 permits in Area 3A under Option 10.1. Depending on the eligibility criteria selected and the CQE use cap, an additional 5% - 12% of 2C permits could be issued to CQEs (1-trip threshold) or an additional 11% - 26% (20-trip threshold). In Area 3A, an additional 8% - 23% of 3A permits could be issued to CQEs (1-trip threshold) or an additional 15% - 44% (20-trip threshold).

**At the December Council meeting, the Council requested that staff provide information on a potential approach to stratifying the potentially eligible communities based on population, in the case that the Council wants to select a different use cap on requested permits for communities based on various population thresholds.** The associated rationale is that some of the smallest communities would not need or be able to use the same number of permits that a larger community could, and that a method of distribution based on population is preferable to issuing an equal number of permits to each rural community, whether the community has a population of 27 (Karluk) or 1,375 (Metlakatla). While the existing level of charter halibut industry development in these communities overall is relatively low, note that several factors other than population likely affect the level of current development and the potential for future development. These include, but are not limited to: the existence of regular air or ferry (or cruise ship) transportation service; proximity to a larger port on the road system; proximity to the halibut fishing grounds; the demographic composition of the population; and whether other infrastructure exists to support client accommodations. Population, as a sole factor, does not appear to affect the level of current charter operations in the communities at issue (refer back to Table 14 and Table 15). For instance, Elfin Cove (2000 U.S. Census population of 32), has several reported charter businesses operating out of the community, while several Southeast communities with populations exceeding 300 have no reported recent charter activity.

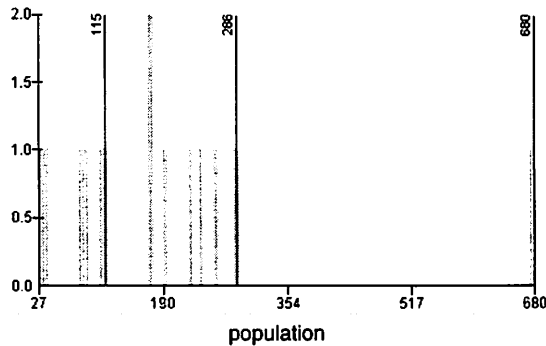
However, using population as a method to differentiate between the benefits distributed among communities is not without merit, and this approach is likely perceived as more equitable and objective than one based on perceived economic development need or the likelihood of a community to use the permit. Recall that all of the eligible communities met criteria to be considered small (population of <1,500), rural (not connected by road system to a larger community), coastal Gulf communities, in order to be originally eligible under Amendment 66.

Using a common method of natural breaks, in which classes of data are based on natural groupings of data values, the data values are first grouped in order. The class breaks are determined statistically by finding adjacent feature pairs, between which there is a relatively large difference in data value. If three classes of data are desired (see figures below),<sup>49</sup> the natural break approach results in classifying Area 2C

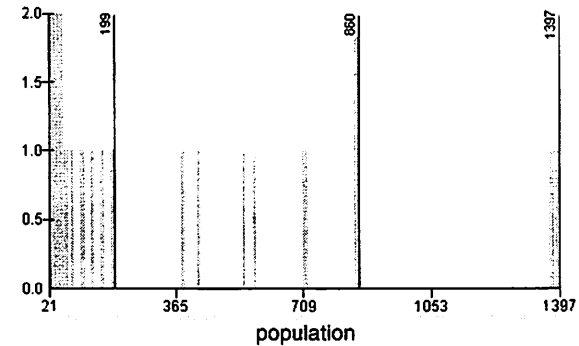
<sup>49</sup>The y-axis of the figures is frequency/count. The counts are a result of the selected resolution of the graph (100 column resolution was used). For example, in the Area 3A data, the data spread is from a low of 27 to a high of 680. When the graph is constructed using a 100 column resolution, it results in  $(680-27)/100 = 6.53$  units of resolution per column. So for the Area 3A

communities into the following groups based on population: <200; 200 – 860; and >860. For Area 3A communities, the natural breaks based on population are: <116; 116 – 286; and >286. Another approach would be to simplify into two classes. For Area 2C it might be those communities with populations of <200 persons and those with ≥200 persons. For Area 3A, it might be those communities with populations of <300 persons and those with ≥300 persons.

Area 3A



Area 2C



**Table 25 Natural break approach to stratifying Am. 66 communities based on population**

AREA 2C			
If 3 Groups:	<200 pop.	200 – 860 pop.	>860 pop.
# communities in each group	12	7	2
If 2 Groups:	<200 pop.	≥200 pop.	
# communities in each group	12	9	
AREA 3A			
If 3 Groups:	<116 pop.	116 – 286 pop.	>286 pop.
# communities in each group	6	7	1
If 2 Groups:	<300 pop.	≥300 pop.	
# communities in each group	13	1	

There are other possible methods to stratifying the communities based on population data; the Council should clarify if another method is desired. If the above approach is used to stratify the potentially eligible communities, it assumed that the intent would be to select a different use cap for each group of communities that increases with population group. The stated rationale is that some of the smallest communities would not need or be able to use the same number of permits that a larger community could, and that a method of distribution based on population is preferable to issuing an equal number of permits to each rural community. Thus, the number of newly created permits for CQEs under Issue 12 could be determined by multiplying the number of communities in each group with the use cap applied to that group. For example, the options for use caps on requested permits for Area 2C communities are currently 3, 5, or 7 permits per community; the options for use caps on requested permits for Area 3A communities are currently: 5, 10, and 15 permits per community. These use caps might correspond to the three groupings by population in each area above.

Alternatively, using two groupings per area, one example would be to select a use cap on requested permits of 3 permits per Area 2C community with a population of <200, and 5 permits per Area 2C

data. this means that any two population values that differ by less than 6.53 are grouped as the same value. This is why values of 171 and 177 show as a frequency of 2.0 on the Area 3A graph, while values of 27 and 35 show as a frequency of 1.0. The selected resolution does not change the breakpoints, only the display of the data.

community with a population of  $\geq 200$ . This could result in a total of 81 new permits held by CQEs in Area 2C [(3 permits x 12 communities) + (5 permits x 9 communities) = 81]. Using two groupings in Area 3A, one could select a use cap on requested permits of 5 permits per Area 3A community with a population of  $< 300$ , and 10 permits per Area 3A community with a population of  $\geq 300$ . This could result in a total of 75 new permits held by CQEs in Area 3A [(5 permits x 13 communities) + (10 permits x 1 community) = 75].

**If the Council intends to classify communities based on population, for the purpose of applying a different use cap to each group, it may want to provide an indication as to the possible groupings it would select prior to final action.** This would allow the public review draft of the analysis to provide specific information on the estimated number of potential new permits that would result from the combination of options under Issue 12.

In addition, recall that each eligible community must form a CQE in order to participate in the program. **Under the existing number of eligible CQEs, a maximum of 21 permits could be issued in Area 2C and 45 permits in Area 3A.** In addition, it is more likely that those communities with the support services and transportation network available to support halibut charter operations (e.g., regular air service, ferry access, cruise ships, lodges, harbors, etc) would take advantage of the permit opportunity. Varying levels of support services are in place in the communities with existing CQEs, but most have regular air service with daily flights, bed-and-breakfasts or lodges, fish cutting, cleaning, and sealing services, cultural attractions, and residents with USCG licenses and vessels.

**Absent analysis to determine the ‘optimum’ or ‘preferred’ number of charter halibut limited entry permits issued in each area, it is a policy decision by the Council to determine the appropriate number of permits created for use by CQEs, in order to balance the dual goals of limiting entry and reducing an economic barrier to future access for small, rural communities.** For example, if the Council intends for a CQE to support a maximum of 5 new businesses in a rural community in Area 3A, with each business operating an average of 2 vessels, it could consider allowing each community to request up to 10 permits.

The expansion of the total pool of charter halibut permits to include permits issued to CQEs may affect the overall market for charter permits in each area, as charter operators seeking to enter the fishery may choose to apply for use of the permit through the community CQE as an alternative to purchasing a permit. The extent of this effect, while unknown, is likely less than would be the case if the permits issued to CQEs were permanently transferable. While the pool of potential buyers may be reduced if a substantial number of communities form CQEs and request charter permits, the pool of permits for sale on the open market would not be affected. This may result in downward pressure on the price of permits for charter operators seeking to purchase a permit. This issue is discussed further in the following sections.

#### **2.5.12.4 Other rules governing use of the permit by the CQE**

There are several additional provisions that govern how CQEs could use the requested charter permits. Note that these rules do not apply to those permits purchased by a CQE; in that case, a CQE would be subject to the general rules of the program, similar to any other permit holder, with the potential exception of the level of the overall use cap. The other provisions that apply to CQE requested permits are:

- The permit must be used within the first full season after receiving the permit, or it will not be renewed. CQEs can re-apply for permits in the future.
- The permit is designated for the area in which the community represented by the CQE is located.
- The permit is endorsed for 6 clients.
- The permit cannot be sold (i.e., permanently transferred).

This section provides a brief evaluation of the provisions above. **The first requirement establishes a condition of the permit: it must be used within the first full season after receipt from NMFS, or it will not be renewed.** The season referenced here is interpreted to mean a calendar year, although a halibut charter season is typically no longer than April – October. This means that if a CQE received a permit in March 2009, it would have to use the permit by the end of 2010 or it would not be renewed for the following year. The intent of this provision was in part to prevent CQEs from requesting the maximum number of charter permits allowed at the start of the program, and holding them without using them, thus preventing another possible business from purchasing and using the permit.

**However, because CQEs would not be allowed to permanently transfer the requested charter permit, and because each individual CQE is subject to its own use cap, whether a CQE uses the permit does not reduce the opportunity for any other potential operator, including other CQEs.** While the intent of Issue 12 is not to create ‘latent’ permits, there does not appear to be a compelling reason to require that the CQE use the charter permit during any specified timeframe. Given that the CQE could reapply for another permit or permits in the future, up to the use cap, the CQE is not penalized by this provision except for any administrative costs associated with requesting another permit. While one could thus argue that the requirement does not cause undue harm, there is also no apparent rationale for maintaining the requirement. Thus, while requiring use of the permit within a designated timeframe may provide some incentive for a CQE to delay requesting a permit until its plans for use of the permit are developed, there does not seem to be any economic or other reason to establish this requirement. If the requirement were eliminated, it is assumed that each qualified CQE could request the maximum number of permits allowed under the use caps, and could use them as it sees fit to best benefit the community. The CQE would continue to be the holder of the permit, in perpetuity for the length of the program, unless the program is subsequently amended by the Council.

**The second requirement establishes that the permit issued to a CQE is designated for the area (Area 2C or Area 3A) in which the community represented by the CQE is located.** Note that the overall moratorium program only applies to Areas 2C and 3A, thus, permits would only be designated for these areas. This provision has not appeared to be controversial to date, and is consistent with the intent that the CQE use the permit in the community that it represents. However, there are a few communities that are located close to the boundary of the two IPHC areas for which permits will be designated. It may be worth considering whether CQEs representing these communities should be allowed to choose the area for which their permits are designated.

Refer to Table 14 for a short description of the location of each community, and Figure 6 and Figure 7 for maps. Of the potentially eligible communities in Area 2C, only a few communities on the northwest coast of Chichagof Island appear to be located near the boundary of IPHC Areas 2C and 3A and are likely to be able to charter for halibut in either area. Pelican and Elfin Cove are two Area 2C communities nearest to the boundary, but public testimony may provide additional information on other communities to which this consideration should apply. If these communities were determined eligible under Issue 12 and formed the requisite CQE, the Council may want to consider allowing the CQE to choose the area for which its permit(s) are designated. Assuming multiple permits can be requested by each CQE, the Council would also need to clarify whether the CQE would have to select the same area for all permits it requests.

The practical effect of this consideration would be that two or more Area 2C communities would be able to instead receive permits designated for Area 3A. Because the halibut charter effort in Area 2C has grown at faster rate than that in Area 3A, and because the guided sport sector harvest has exceeded the Area 2C GHL substantially more so than in Area 3A in recent years,<sup>50</sup> issuing a small portion of the ‘new’

<sup>50</sup>ADF&G, December 2006. ADF&G estimated that in 2006, the Area 2C and Area 3A GHLs were exceeded by 42% and 9%, respectively. This projection was based on traditional method based on linear trends in Statewide Harvest Survey estimates.



CQE halibut charter permits to Area 3A that would otherwise be issued to Area 2C, is a relatively insignificant issue.

Finally, as discussed in the background section, Akhiok is located at the southern end of Kodiak Island in Alitak Bay. Akhiok was originally reported in the analysis and final Council motion for GOA Amendment 66 as located in Area 3A, however, IPHC staff has confirmed that Akhiok (and Alitak Bay) is actually located in Area 3B.<sup>51</sup> Akhiok is on the border of Area 3A and 3B, and the vast majority of Kodiak Island is located in Area 3A – but the nature of the IPHC boundary is such that it follows the part of the southern Kodiak coastline (see Figure 7).

This is of no practical importance under GOA Amendment 66, as all communities located in either Area 3A or Area 3B are allowed to purchase commercial quota share in both areas. The community provisions in the halibut charter program, however, are explicitly limited to “*Area 2C and 3A communities previously identified under GOA FMP Amendment 66.*” Because Akhiok was identified under GOA FMP Amendment 66 as an eligible community in Area 3A, staff assumes that Akhiok is included under the halibut charter provisions considered in this amendment. It is thus further assumed that, should it be deemed eligible under Issue 12, charter halibut permits requested by a CQE representing Akhiok would be designated only for Area 3A. (Area 3B is not included in the halibut charter moratorium program.)

**The third requirement is that each permit requested by a CQE under Issue 12 is designated for six clients (i.e., a six-pack license).** Recall that an individual guide business owner issued a permit under the general program will receive a permit endorsement equal to the highest number of clients on board on any trip during 2004 or 2005, but no operator can receive a permit endorsement of fewer than four clients. Because there is no charter history associated with a CQE’s requested permit, the Council must choose the maximum number of clients for which each CQE permit will be designated.

In December 2006, the Charter Halibut Stakeholder Committee, Advisory Panel, and the Council supported establishing a permit endorsement of 6 clients for each permit requested by a CQE. This means that the permit could be used like any other permit endorsed for 6 clients under Issue 7 – each vessel with this license could carry a maximum of 6 clients.<sup>52</sup> In general, this permit endorsement was chosen because it is the most common type of license for a charter operation. Since the ADF&G data do not identify whether a vessel was a six-pack or some other type of vessel, it is not possible to determine the maximum number of clients a vessel was allowed to carry from the data available. However, ADF&G provided data on the maximum number of clients that were reported on a trip for each vessel from 1999 – 2005. Overall, the vast majority of vessels operating in both areas carried 6 or fewer clients on any trip during this time period (see Issue 7). This endorsement thus appears reasonable for permits requested by CQEs.

Note that a permit purchased by a CQE would retain its original endorsement for the number of clients on board. The requirement under Issue 12 is only applicable to new permits issued to CQEs. Note also that unless otherwise defined, it is assumed that a CQE is subject to the rules that apply to every other permit holder, and thus could stack multiple permits (e.g., use two six-pack licenses on one vessel) if desired.

<sup>51</sup>Tom Kong, personal communication, November 15, 2006. According to the regulations, the 3A/3B border is defined as: “...a line extending from the most northerly point on Cape Aklek (57°41’15” N. latitude, 155°35’00” W. longitude) to Cape Ikolik (57°17’17” N. latitude, 154°47’18” W. longitude), then along the Kodiak Island coastline to Cape Trinity (56°44’50” N. latitude, 154°08’44” W. longitude), then 140° true.”

<sup>52</sup>It should be noted that ADF&G staff have questioned whether the Council/NMFS have the authority to restrict the number of clients a charter vessel may carry under Issue 7, because not all clients may be fishing halibut. They have suggested that this provision should instead focus on restricting the number of clients allowed to retain halibut on a charter trip.

**Finally, the provisions prohibit the CQE from selling a requested permit.** This has been discussed briefly in this section previously, and is intended to treat the permits as an endowment for the communities' long-term use. This would prevent the CQE from selling the permit if it experienced a short-term financial need or no longer had any active resident charter operators. By requiring that the CQE maintain its status as the permit holder, without the ability to benefit from the sale of the permit, it ensures that the benefit is linked to the community in perpetuity, or until the program is amended.

Then intent of the above requirement is to ensure that the community is the beneficiary of the permit(s) over the long-term. Note, however, that while this provision is intended to support long-term community access to the halibut charter fishery, there is nothing in this program that requires the CQE to: 1) hire a resident of the community to conduct the charter operation; 2) use the permit to conduct a charter operation in its represented community; or 3) own a vessel in order to use the permit. The following section discusses these issues in brief.

First, as discussed previously, while some of the Council's previous programs have tied community benefits to residency in an eligible community, this is not the primary objective of the moratorium program. The Council clarified that the intent of the community options is to benefit communities by encouraging or allowing new businesses to operate out of small rural communities in Area 2C and 3A that have under-developed halibut charter industries, regardless of whether the charter operators are residents of these communities. This would allow, for example, a CQE representing Port Graham, to retain a skipper that is a resident of Homer, to operate a charter business in and out of Port Graham using the CQE's permit. The Council determined that this interpretation (requiring community residency) was too narrow to meet the broader objectives of community fisheries development and mitigation, in part, of the effects of a moratorium on small, rural communities with underdeveloped charter ports.

Given the objective above, the Council clarified that the intended beneficiary of the community provisions (i.e., holder of the charter halibut permit) is the non-profit entity (CQE) chosen by the community to represent it. This step is fundamental to the development and implementation of Issue 12. In effect, the CQE would be issued the permit and would designate a skipper with a USCG license to take clients halibut charter fishing, similar to any other business. In this case, whereby the CQE is the intended beneficiary, there is no issue regarding the delegation of Secretarial authority. **While this program design is intended to allow the CQE to determine how best to use the permit (within the confines of the regulations) to benefit its community, it does not require that the charter business supported by the permit operate in the represented community's port.** However, for the purposes of this program, the CQE would continue to be accountable to its Board of Directors, which is one safeguard to ensure that the charter permit is used to benefit the community. Further, the Council may consider requiring the CQE to submit specific information related to how the CQE is using the charter permit(s).

The information that the Council may want to consider requiring under this program falls into two groups: 1) information NMFS would require of a CQE in a request for a charter permit(s); and 2) annual information NMFS would require related to the use of the charter permit by the CQE. See below:

- What might NMFS require of a CQE in a request for a charter permit? For example:
  1. Name of CQE and the communities it represents
  2. An explanation of how the CQE intends to manage/use the charter permit on behalf of the community(ies) it represents
  3. A statement that explains the procedures that will be used to solicit requests to use the permit held by the CQE, and that sets out the criteria and procedures to be used to select from among those who have expressed a desire to use the permit (which may be different from the CQEs criteria to determine use of commercial IFQ)

- What information might NMFS require to be added to a CQE's existing annual report? For example:
  1. Number of charter permits held/used
  2. Name and address (residence) of captain retained to use permit (& crew, if any)
  3. Name/ownership info on vessel used
  4. Number of trips during season
  5. Port of landing(s) associated with trips

**Thus, while the stated intent is that the CQE's permit(s) would be used to support charter businesses operating out of its represented community (via private contract, like any other business), the CQE could use the permit any way it chooses under the legal requirements of the program. It is certainly possible, and allowed under the rules of the program, for a CQE to determine that retaining a skipper who operates out of a different community is in the community's best interest.**

Although this approach could generate either revenue for the CQE, employment for residents, or both, the effect could thus be that instead of supporting new businesses operating out of rural communities, the program could support additional businesses operating out of the most common ports of landing. This could result in increasing growth in the industry in the relatively few communities whose businesses will receive the majority of limited entry permits allocated under the general moratorium program. **If desired, it is possible that the Council could require that the charter business using the CQE's halibut charter permit operate out of its particular port/community.**<sup>53</sup> It would likely be a matter of developing a sufficient record for how this requirement would further the Council's jurisdiction to regulate fishing activity under the Northern Pacific Halibut Act. This provision would ensure that the permit would be used for a charter business operating out of the eligible community.

Anecdotal evidence suggests that the communities which have already established CQEs in Area 2C or 3A are interested in using the permits to support businesses either physically located in, or operating out of, the represented eligible community. An informal survey of the existing CQEs provided information on the ways that the CQEs would anticipate using the permits should this provision be selected at final action.<sup>54</sup> Several CQE representatives listed small, start-up lodges that would need the permits in order to operate, as well as individual residents, primarily young people, in the community that are just getting started in the halibut charter business that would not otherwise receive a permit under the general program. In addition, some communities already have one or two lodges, which typically hire community residents to captain their charter vessels. These individual captains also retain a few to several of their own charter clients that they host annually, outside of their work for the lodges. For some individuals, these clients comprise the client base from which they are attempting to grow to establish their own charter business in the future. Some individuals may expand to make charter fishing their primary income, while many permit recipients will likely use the charter permits as a means of supplemental income to commercial fishing or other employment. Thus, there are several different ways in which the CQEs would anticipate using the charter permits.

Even if not required, each respondent thought that its CQE would use the permit by designating a charter operator with a vessel that operates out of its community and is a permanent resident of its community, primarily because there is sufficient need, interest, and capability within the community. Because of community dynamics, identity, and the demand for employment opportunities, it is somewhat unlikely that a non-resident would be allowed to use a CQE's permit. Most respondents anticipate incorporating

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<sup>53</sup>Robert Babson, NOAA General Counsel, NMFS Alaska Region. Personal communication, 11/9/06 and 1/9/07.

<sup>54</sup>The seven existing CQEs in Area 2C and 3A were contacted by the analyst, informed of the proposed action, and asked a few questions related to anticipated use of the charter permits. All seven CQE representatives responded. As no formal survey was conducted, all information should be considered anecdotal.

the opportunity into their overall community economic development plan, as one component of a larger plan to either re-establish or maintain a fisheries-based economic structure. While the opportunity could support charter businesses and individual operators and deckhands in the community, it would also support other local businesses such as local fish packing and processing businesses, artists, shop owners, restaurants, bed and breakfasts, etc.

Still other communities, Pelican for example, contend that outside businesses (from Sitka, Juneau, Elfin Cove) with substantial financing are increasingly basing their operations out of the Pelican harbor, and displacing year-round Pelican residents from an opportunity to partake in the halibut charter industry. (Note that the number of outside business entities that operate seasonally in an Amendment 66 community may prevent the community from qualifying under Issue 12, although participation by year-round residents of the community is much preferred from a community benefit perspective.) The CQE in Pelican would anticipate allowing year-round residents to use the charter permits held by the CQE, likely to generate a livelihood that supplements their commercial fishing and subsistence lifestyle.

However, if there were not a resident demand for all of the CQE permits, it is theoretically possible that the CQE may designate the use of the permit to a business that operates outside of the represented community, if use of the permit would generate either revenue for the CQE, jobs for residents, or both. If the purpose is to provide a net benefit to the community, then it would appear that this purpose is accomplished. However, the primary purpose of this program appears to be more specific – to mitigate the economic cost of the proposed charter permit on small, rural, communities with under-developed charter industries, in order to provide for charter business opportunities in these communities. Thus, using the permit outside of the represented community does not appear to directly meet this purpose.

In sum, as stated previously, the Council could require that the charter business using the CQE's halibut charter permit operate out of its particular port/community, if an adequate record is developed to do so. Alternatively, the reporting requirements recommended above and the Board of Directors could potentially provide sufficient accountability to ensure the program is working as intended. If it is found they do not, the Council could modify the halibut moratorium program to amend or eliminate the community provision at any time, subject to analysis and rulemaking.

### Leasing of permits

The discussion under **Issue 6** provides some information on the prohibition of leasing in the general moratorium program. Prohibitions on leasing stem from a desire to keep persons from holding permits for the sole purpose of generating income from the active participants. This section notes that, due to the nature of the charter industry, accounting for whether halibut charter moratorium permits are being leased will be very difficult. As normal practice, a charter business will often hire a captain(s) to take clients fishing via private contract, and the hired captain may or may not own the vessel used to conduct the charter. Very often the business owner owns multiple vessels and hires multiple captains, and possibly deckhands, to take clients halibut fishing. Distinguishing this common business operation from a lease arrangement may not be possible, due to uncertainty as to whether a captain is leasing the permit on an annual basis or working as an employee of the business owner.

It is assumed in the community provisions proposed under Issue 12, that the CQE would use the permit similar to any other business. The CQE would receive the charter permit (or could also purchase one on the open market) and retain an individual with the necessary U.S. Coast Guard license to operate a charter vessel and take clients fishing. Under the general rules of the moratorium program, ownership of a vessel is not required for a business to hold a moratorium permit. Similarly, while the CQE and the charter captain would likely develop a private contract, the CQE is not required to own a vessel in order to use its permit. In this sense, the CQE is also not required to formally lease the permit (i.e., annual transfer of the

permit to another holder) in order to use the privilege. It is intended that the CQE would remain the holder of the permit at all times, and retain a captain to operate a charter vessel on which the permit will be used. **While this mirrors an authorized use of the charter permits issued to all other potential permit holders, if it is determined that the Council motion needs to specify that lease arrangements are permitted in the context of CQE use, the Council should consider doing so prior to final action.**

### 2.5.12.5 Summary of effects of Issue 12

The following provides a brief, qualitative summary of the expected effects of the provision to allow CQEs to request a limited number of halibut charter permits (creation of new permits) under the moratorium program. The growth in the charter industry is centered in the major halibut ports, primarily located on the road system (see Section 2.5.10); however, there are many small, rural, coastal communities with undeveloped or under-developed charter industries and few alternative economic opportunities other than fishing. The intent of the provision is remove a new economic barrier to entry (purchase of a charter halibut limited entry permit) for these small, rural communities by allowing them to receive a free permit(s), held by the CQE and non-transferable, in order to support charter business development. Some of the expected effects are summarized below.

#### General effects:

- The stated intent is that the moratorium will be an interim program, replaced by a long-term solution in the future. **However, a moratorium serves as a means of pre-selecting the set of beneficiaries in subsequent revisions to a limited entry program or development of a quota share program.** Thus, the stakeholders that are recognized in the distribution of benefits (i.e., permits) in the moratorium program, whether communities or licensed sportfishing businesses, will most likely be the same set of stakeholders that will benefit from the longer-term proposals.
- Absent analysis to determine the 'preferred' or 'optimum' number of charter halibut permits issued in each area, it is a policy decision by the Council to determine the appropriate balance between the primary goal of the moratorium program to limit new entry, and the conflicting goal of creating new permits, for use by small, rural communities.

#### Effects on communities:

- The structure of the community eligibility criteria (a community with fewer than 5 or 10 active charter businesses in 2004, 2005 and the year prior to implementation) provides a significant disincentive for a community to support new halibut charter businesses, or for an individual operator to start a new business, in the interim period prior to implementation of the moratorium program (scheduled for 2009). While the intent is to provide an economic opportunity for these communities that may not otherwise exist if the initial cost of a charter permit proves a sufficient economic barrier, one must recognize that the criteria also penalize a community that takes strides to develop a charter industry between now and implementation. This should be considered during the selection of the eligibility criteria.
- There is no guarantee that charter businesses that historically operated in a community with a 'developed' charter port, as defined by charter activity in a relatively narrow window of time (3 years), will qualify for permits under the general program, nor that the businesses will continue to operate out of that community's port in the future. This may serve to disadvantage ineligible Amendment 66 communities, relative to eligible Amendment 66 communities, that are not long established charter ports but that may have exceeded the number of businesses in one of the three years in the qualifying period.

- Depending on the criteria selected, a range of 23 – 33 of the 35 Amendment 66 communities in Areas 2C and 3A would qualify to receive halibut charter permits (note that these communities must also form CQEs, only 7 of which have been formed in these areas to-date). Depending on the limits (use caps) selected for the number of requested permits, a maximum of 39 – 133 permits could be issued to CQEs in Area 2C and 50 – 210 permits in Area 3A.
- The implementation of this provision, as a stand-alone measure, is not anticipated to ‘save’ eligible communities or generate a comparatively large economic impact. The provision is instead anticipated to support one component of a larger plan to either re-establish or maintain fisheries access, and an associated fisheries-based economic structure, in specified rural communities. CQE-held charter permits may enable residents from these communities, or residents of other communities, to participate in a fishery from which they might otherwise be excluded due to the cost of purchasing a permit.
- The structure of the CQE program creates higher administrative costs associated with using the permit (going through CQE) than would be generated if the permit was provided directly to community residents from NMFS. However, making the CQE the permit holder, and requiring that the permit is non-transferable, likely better meets the goal of providing long-term benefits to the community in terms of mitigating economic barriers to continued access to the halibut charter fishery and providing an opportunity for the community as a whole to further develop the charter industry as a part of its overall economic development plan.

#### Effects on commercial halibut sector:

- The Pacific halibut resource is fully utilized by commercial and sport fishermen in IPHC Areas 2C and 3A, and the open-ended reallocation from the commercial halibut sector to the charter halibut sector continues to exist. While the overall moratorium action is not expected to slow charter halibut harvests in the short-term, the overall program may limit long-term growth and may provide a foundation on which measures to more effectively limit charter harvests can be built. Creating additional permits to be held by CQEs in part would conflict with the goal to limit new effort in the charter halibut sector, and could potentially result in further negative impacts on the commercial halibut sector and the communities that benefit from the commercial fishery. This effect may be partially offset by the number of permits issued under the general charter moratorium program, which depends on the qualification criteria selected.

#### Effects on charter halibut sector:

- The market for charter permits could be affected by the provision to allow CQEs to hold charter permits, as charter operators seeking to enter the fishery may choose to apply for use of a permit through the community CQE as an alternative to purchasing their own permit. While the pool of potential buyers may be reduced, the number of permits available for sale on the open market would not be affected (CQE requested permits are not transferable), which may result in downward pressure on the price of permits for charter operators seeking to purchase a permit. This would affect both the existing charter sector and new entrants into the fishery.
- The existing charter sector could also be affected by an influx of new or expanded charter operations through CQE permits, depending upon the level of participation by rural communities. If the CQE uses the permit in its member community, charter operators in other communities may not be substantially affected, even with the overall increase in competition. However, there may

be some negative affects on existing charter operators in the Amendment 66 communities, as they realize increased competition within their community. In part, the eligibility criteria are intended to exclude Amendment 66 communities whose charter halibut market is already relatively developed or saturated.

- While it may be unlikely that a non-resident of the CQE community would be selected to use the CQE's permit, it is possible under the rules of the program for a CQE to determine that retaining a skipper who operates out of a different community is in the community's best interest. In addition, a CQE could retain a skipper who is a resident of its represented community, but operates a halibut charter business out of a different community. Although this approach could still result in benefits to the community, the effect could thus be that instead of supporting new businesses operating out of rural communities, the program could support additional businesses operating out of the most common ports of landing. This could result in increased growth in the industry (see estimated number of permits in Table 8) in the relatively few communities whose businesses will receive the majority of limited entry permits allocated under the general moratorium program.

#### Effects on guided halibut anglers:

- Effects on the guided halibut angler are primarily related to the increased opportunities available and the potential effect on price. As this provision would create a number of new permits that would not otherwise exist under the general program, there would be potentially more charter operations and guided angler opportunities than if Issue 12 was not selected. Guided anglers may benefit from an overall increase in the supply of charter opportunities and the geographic diversity of charter operations available in rural areas. An increased supply of permits may also result in downward pressure on the price of a charter trip for a guided angler.
- If the overall use cap for CQEs is set higher than the cap on requested permits, CQEs could also purchase a number of permits over and above the number of permits they request from NMFS. As CQEs would be purchasing permits from the existing pool of initial permits issued, a possible effect is that some redistribution of permits could occur from ports with the highest historical charter activity (Sitka, Juneau, Homer, Seward, Ninilchik) to the more rural communities represented by CQEs. Depending on the level of redistribution, halibut charter opportunities for guided anglers that want to purchase a charter trip in the most developed ports could be reduced.

## 2.5.13 Overview of Impacts under Alternative 2

### Charter fleet

The charter fleet is comprised of commercial businesses that attempt to attract clients by offering fishing experiences that are viewed as generating the greatest consumer utility. Because charter businesses operate in a competitive environment, they tend to distinguish their trips through price or attributes that are different from competitors.

Two anticipated effects of an *effective* moratorium would be a shift towards more full-time operations, and an increase in the price of a charter. Some of the underutilized fleet consists of vessels that are only used during peak times of the season or on certain days of the week. As growth in charter demand pressed upon the limits of the fleet, part-time operators would tend to become full-time operators either as they took on more clients, or transferred their right to participate to a full-time operator. This scenario assumes that the qualified fleet would increase its load factor, and/or that the demand for halibut trips would increase to fill the available supply.

If demand increased to such a level, the charter price would tend to rise to ration the demand across the available supply of boats. Unlike the case of a quota where additional boats could enter the market during times of heaviest demand and keep the price from rising, under a moratorium that limited the number of vessels, the higher price could not be driven back down by additional competition. There would, however, be some competition among the existing boats that could cause an increase in the cost of operations as operators vied with one another to offer the best services and accommodations to capture the largest share of the market. The likelihood of increased demand could be offset by other management measures being considered, such as reduced bag limits that may affect the consumer's willingness to pay for a charter trip. A final impact relates to reduced competition and an increased operational stability for those charter vessels remaining in the fishery.

### Charter clients

The most obvious impact to charter clients, as discussed above, would be the ability to procure a charter trip and the associated price of that trip. The effectiveness of the moratorium will impact the availability of trips and trip prices. If a moratorium constrains the available number of trips below client demand at the current trip price, the demand will push up the price of trip. In that sense, increased benefits to the charter fleet resulting from a moratorium may be at the expense of charter clients. If the moratorium does not constrain the supply of trips, the moratorium will be expected to have a minimal impact on charter clients.

### Commercial fishery

The impacts of a moratorium on the commercial IFQ fishery are expected to be minimal in the short term. It is unlikely that any of the alternatives will constrain the growth in the number of trips or the number of halibut harvested. If the number of halibut harvested on charter vessels continues to grow, the percentage of the CEY allocated to the IFQ fishery will decline. That decline will reduce the amount of halibut the commercial IFQ fleet may harvest. Whether those reductions decrease the profits of the commercial IFQ fishery will depend on the ex-vessel prices of halibut they sell. The ex-vessel prices of halibut will be determined by the elasticities of supply and demand.



### Other fisheries

One of the concerns managers have expressed relative to the moratorium options are the potential impacts to other, already crowded charter fisheries. A limit on the number of halibut charter vessel permits would leave few alternatives for new entrants, other than salmon sport fish guiding services or eco-tourism based charters.

The impacts of a moratorium on state-managed species, including salmon, lingcod, rockfish, and other freshwater species will vary by local area, by the restrictions of the moratorium, and by the reaction of potential guided anglers to a moratorium. In areas where there are only a few charter vessels operating or where existing charter vessels catch limited numbers of halibut there would probably be very little if any impact on other state-managed species. However, impacts on other species could be significant in local areas with large, active charter fleets that do harvest large numbers of halibut.

The level of impact on state-managed species would depend on how many potential charter clients decided not to fish at all if they are unable to book a halibut charter and how many would decide to fish anyway, but for other species. Approximately 80% of all angling effort in Area 2C currently occurs in saltwater. Many charter operators offer multi-species fishing trips thus giving them clear opportunity to shift their client's fishing effort from halibut to other marine species.

The sport fishery in Area 2C has a specific allocation of king salmon from the Board. ADF&G monitors the sport harvest inseason with a comprehensive creel survey and port sampling program. Under the provisions of the King Salmon Management Plan, the sport harvest is reduced when the total harvest is projected to exceed this allocation. If a moratorium caused charter vessels to target king salmon to a higher degree than under current conditions the king salmon harvest could increase and harvest restrictions would need to be imposed on all sport sectors earlier in the summer fishing season.

Other species of salmon, as well as rockfish and lingcod stocks would be impacted if charter operators increased their fishing effort on these stocks in response to a moratorium on halibut. ADF&G has expressed conservation concerns for lingcod and rockfish stocks in most areas of Southeast Alaska. Based on these concerns the Board has adopted very restrictive regulations for yelloweye rockfish in the Sitka and Ketchikan areas and for lingcod in the Sitka area. Increased exploitation by the guided sector due to a moratorium would add to these conservation concerns.

Another potential impact of a moratorium in Area 2C could be a shift in guided fishing effort from marine waters to freshwater systems. If charter and lodge businesses started offering freshwater fishing opportunities to compensate for a moratorium, guided effort and harvest would increase dramatically for freshwater species. There are thousands of small freshwater drainages in Area 2C that produce relatively small numbers of adult salmon each year. Major increases in harvest in these systems would probably result in inseason restrictions or closures on a number of drainages to assure escapement goals were achieved.

ADF&G has also expressed considerable conservation concerns for cutthroat and steelhead trout stocks in Area 2C. In 1993, ADF&G proposed the most conservative suite of regulations for these species anywhere in the Pacific Northwest and the Board has adopted these proposals. A sizable increase in freshwater effort would impact these stocks resulting in a need for additional restrictions in the sport fishing regulations to ensure sustained yield.

A moratorium in Area 3A would likely result in increased effort toward mixed marine stocks of chinook and coho salmon, as well as lingcod, rockfish, and other groundfish. There could also be impacts to existing freshwater fisheries for salmon and resident species. Most marine salmon fisheries in

Southcentral Alaska are fully allocated. Diversion of effort to marine salmon fisheries will likely increase conservation concerns and intensify existing allocation conflicts. This diversion is likely because many charters in Area 3A offer chinook or coho salmon fishing in addition to halibut. There is now an elevated level of concern for coho salmon conservation following poor returns throughout Southcentral Alaska. Marine chinook fisheries in Cook Inlet have also grown in recent years with freshwater restrictions designed to ensure adequate escapement. In addition, there has been modest growth in off-season troll fisheries for feeder chinook salmon, with concerns over interception of threatened or endangered stocks. This growth has ignited allocation battles in marine fisheries and concerns over accountability of harvest in mixed-stock fisheries.

Restrictions in the halibut fishery would probably also divert a significant amount of effort and harvest toward other groundfish stocks for which there are already conservation concerns. ADF&G and the Board have expressed conservation concerns for rockfish, lingcod, and sharks throughout the region. The Board has enacted progressively restrictive harvest regulations for all of these species during the last ten years, including some of the most restrictive bag limits, seasons, and size limits on the West Coast. Increased guided effort on these stocks would exacerbate concerns for the sustained yield of these stocks.

The majority of salmon harvested by sport anglers in Area 3A are taken in freshwater fisheries. Every major salmon stock in Area 3A is already fully allocated. If charter and lodge businesses turned to freshwater fishing opportunities in response to the moratorium, the increase in effort and harvest would also elevate existing allocation battles between user groups.

## **2.6 Implementation issues**

### **2.6.1 Permit eligibility**

To qualify for a halibut charter moratorium permit, a person<sup>55</sup> must demonstrate a minimum number of bottomfishing trips as reported in the ADF&G logbook in 2004 or 2005 and the year prior to implementation. For this reason, NMFS will need access to the person's historical logbook and business information to determine the number of permits issued and associated client and area endorsements.

To qualify for a charter moratorium permit, a person would be required to demonstrate the minimum number of bottomfishing trips required to receive a permit and complete a Federal application package. Associated with the qualification criteria is a requirement that persons record bottomfishing effort in the logbook prior to the year the moratorium program is implemented. However, meeting the qualification criteria the year prior to implementation does not allow permits to be issued in time for the implementation year for two reasons: (1) NMFS requires a full season of charter logbook information to determine eligibility; and (2) NMFS will need time to process applications and issue permits. For this reason, the effective participation year is two years prior to program implementation. For example, if the final rule publishes in 2009, the "year prior to implementation" qualification year would be January 1, 2007 to December 31, 2007. NMFS staff suggests that the year prior to implementation should refer to the year in which the final rule becomes effective. The final rule would provide a date certain needed for NMFS to determine the "year prior to implementation" eligibility period for logbook history.

A current State of Alaska statute prevents direct access of ADF&G logbook or ADF&G business license information by NMFS or NOAA Office of Law Enforcement (OLE). Federal access to these sources of information would require the State of Alaska legislature to amend the State confidentiality statute to

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<sup>55</sup> A "person" as defined at 50 CFR 679.2 means any individual (whether or not a citizen or national of the United States), any corporation, partnership, association, or other entity (whether or not organized, existing under the laws of any state, and any Federal, state, local, or foreign government or entities of any such aforementioned governments).

allow NMFS access to confidential business and logbook information. Without this information, NMFS cannot directly access State business and logbook information to determine permit qualification. Charter logbook information would also be required by NMFS appeals to adjudicate "hardship claims" and NOAA OLE to enforce the program.

At the December 2006 Council meeting, ADF&G indicated that it is seeking a legislative change to the confidentiality statute during the 2007 legislative session. For this change to meet Federal information needs, it would need to allow Federal access to logbook information for both administrative and enforcement purposes. If the legislative change is not adequate or fails to pass the State of Alaska Legislature prior to the application period for the moratorium, NMFS would need to obtain charter business and logbook information directly from moratorium permit applicants. Under this scenario, the State would provide certified business and logbook information to the applicant who would personally deliver or mail it to NMFS. This option is much less desirable than the direct access provided by a statutory change because it increases the burden on both the operator and agencies such that:

- An applicant would need to request the information from the State and submit that information along with a permit application to NMFS. The logbook and business information provided by the State would need to be certified and sealed to insure the information was unaltered and legitimate. Once received from the State, the applicant could then mail or personally deliver the application materials to NMFS who would process the information and determine eligibility.
- All application materials (including logbook information) would need to be electronically transferred into a Federal database. This transcription process would slow down the application process under current staffing levels; especially if logbook information is not provided to NMFS in an easily accessible electronic format.

This option would also reduce the effectiveness of outreach efforts by NMFS to notify eligible charter operators about the application process for the moratorium permit. Direct access to the logbook allows NMFS, through an audit of logbook and ADF&G business license information, to generate a list of persons eligible for the moratorium permit and send them application materials. Applicants not directly contacted by NMFS may download application materials from the internet or obtain the materials directly from NMFS. The public would also be notified about the permit application period and permitting process through the *Federal Register* and other outreach activities conducted by ADF&G, NMFS, and the Council. NMFS has found that the mailing of application materials to persons eligible for a moratorium is the most efficient method to disseminate information about the new permit system.

Finally, a person not licensed as charter businesses with ADF&G or connected to the charter fishery in any way may hold a permit if they met the qualification criteria or obtained a permit through a transfer. This allows an individual to hold a permit without any participation in the charter fishery. Thus, a person could have no involvement with the fishery and hold a permit(s) in perpetuity.

#### **2.6.1.1 Application process**

Persons applying for a charter moratorium permit would be required to provide a complete application to NMFS during a designated application period which would not be less than a 90-day period. Notice of the application period will be provided in the *Federal Register*. During the application period, NMFS will evaluate the applications and compare claims on the application with information provided in the logbook. Applicants with an incomplete application or who have made claims that are inconsistent with the logbook record will be provided an evidentiary period of 60 days. During this evidentiary period, the applicant may present evidence to NMFS demonstrating that the eligibility criteria are met, including information explaining discrepancies with the official logbook record. Upon expiration of the 60-day

evidentiary period, an Initial Administrative Decision (IAD) that either grants or denies the applicant the moratorium permit will be issued by the Regional Administrator. If the decision is a denial, the IAD will indicate the deficiencies in the application, including any deficiencies with the information in the application or evidence submitted in support of the application, and which claims cannot be approved based on the available information. An applicant may appeal the IAD through the NOAA Office of Administrative Appeals (OAA). This appeal process and associated issues are discussed in Section 2.6.2.

### **2.6.1.2 Business affiliation and ownership**

Alternative 2 specifies that all persons receiving a moratorium permit either through initial qualification or transfer would need to meet a 10 percent rule of affiliation that is similar to the one promulgated under the American Fisheries Act (AFA). There are two parts to the 10 percent ownership rule that must be enforced: determining an affiliation, and determining if the affiliates have at least 10-percent ownership. At 50 CFR 679.2, affiliation is defined as a “relationship between two or more individuals, corporations, or other business concerns in which one concern directly or indirectly owns a 10 percent or greater interest in another, exerts control over another, or has the power to exert control over another; or a third individual corporation, or other business concern directly or indirectly owns a 10 percent greater interest in a second corporation or other business concern.” A 10 percent or greater ownership is deemed to exist if an individual, corporation, or other business concern directly or indirectly owns 10 percent or greater interest in a second corporation or other business. These regulations provide an extensive description of indirect interests and control that are specific to AFA commercial fisheries, but could be modified to meet regulatory requirements for the charter fishery.

One option to document affiliation would be to require the person trying to obtain a permit to disclose all affiliations and provide documentation of such affiliations. While on the surface this requirement appears self explanatory, it is extremely cumbersome for NMFS to review and interpret contractual arrangements. The high degree of intricacy often associated with affiliate relationships would require NMFS to interpret contractual arrangements (often multiple contracts) describing affiliations and ownership levels. NMFS does not currently have the administrative and legal staff that would be required to review the myriad of contractual agreements that may be associated with initial qualification and transfer. For this reason, other programs such as crab rationalization and AFA have required permit applicants to disclose affiliates and ownership, and sign an affidavit attesting to the accuracy of the application. Providing false information on the application would be a Federal offense and may be prosecuted. The charter moratorium program would have a similar requirement.

Persons would need to annually disclose affiliation and ownership through an application to NMFS. Enforcement of this provision would require NMFS to have the authority to suspend a permit until the business provides the necessary annual documentation. For this reason, a due date for the affiliation disclosure application would be required. The application would require disclosure of the applicants name, signature, business tax ID (to aid in enforcement), business mailing address, business telephone number, business e-mail, name of the managing company, and declaration of US citizenship.

### **2.6.1.3 Permit-specific information**

Under Alternative 2, each permit holder would be issued a moratorium permit with a unique NMFS identification number as well as the permit holder’s name, business name, regulatory area endorsement (Area 2C or 3A), and client endorsement. A permit that is lost, stolen, or destroyed could be replaced through NMFS. Lost, stolen, or destroyed permits would be invalidated by NMFS once reported by the applicant.

Moratorium permits may be transferred between persons without any linkage to a vessel or a requirement for the permit holder to be onboard the vessel. A vessel linkage would require the authorized vessel to be indicated on the permit. Without this linkage, a permit can be quickly transferred between vessels without changing information on the permit. If a vessel linkage existed, at least several days to change the vessel information on the permit and issue an amended permit. This time delay may prevent charter operators from quickly changing vessels as needed due to breakdown or increased client load. However, the lack of a vessel linkage allows fishing operations not holding a moratorium permit or adequate client endorsement to easily obtain a moratorium permit through private business arrangements. As discussed in Section 2.6.3.2, the ability of operators to make quick dockside transactions could be reduced by requiring operators to designate authorized users.

A change in vessel information on the permit would likely increase administrative costs because of the need for NMFS to re-issue permits. Data are not available on the number of transfers between vessels that may occur annually. However, slowing the speed of transfers by linking permits to the vessel would negatively affect some operations by reducing their ability to compensate for breakdowns or client load.

#### **2.6.1.4 Transfers**

Transfers allow a person to obtain a moratorium permit up to the use caps, or obtain a group of grandfathered permits upon the sale of an entire business. In either situation, the transferor and transferee would need to complete a notarized transfer application containing contact information and business ownership information, as well as signing an affidavit declaring U.S. citizenship, meeting the business ownership requirements, and attesting that the information on the application is true, accurate, and complete. A transfer approval (through RAM) would cause issuance of a new permit to the transferee and the transferor would surrender their privilege to use the permit. A database will be used by NMFS to track permit holders and insure permits are not issued to a person in excess of the use caps.

A person may receive more permits than is allowed by the use cap by obtaining a group of grandfathered permits. A group of grandfathered permits is composed of several permits issued as a single package to a business during initial issuance. These permits may be transferred to another business only if the permits are sold as a group to a business. If any permits are transferred out of the group, the permit would lose its grandfathered status and would be subject to the use caps in perpetuity. Grandfathered permits would be electronically cataloged by NMFS using a serial number that is associated with the permit holder information and permits within the group. A business would need to provide NMFS with documentation indicating a change in ownership to receive a group of grandfathered permits.

#### **2.6.2 Appeals**

Permit applicants that are initially denied a moratorium permit or transfer by NMFS may appeal the initial administrative decision through the NOAA Office of Administrative Appeals (OAA). The OAA is a separate unit within the office of the Regional Administrator for the Alaska Region of NOAA Fisheries Service. The OAA, which is independent of NMFS, is charged with developing a record and preparing a formal decision on all appeals. Unless the Regional Administrator intervenes, the OAA decision becomes the Final Agency Action thirty days after the decision is issued. An applicant who is aggrieved by the Final Agency Action may then appeal to the U.S. District Court. Regulations at 50 CFR 679.43 provide a regulatory description of the appeals process. This appeals process would be applied to the charter moratorium permit.

The charter moratorium permit system has an appeals process for situations involving “unavoidable circumstances” with explicit inclusion of medical emergencies, constructive losses, and military service. Because these hardships are difficult to define and include many different kinds of circumstances, a

discussion about the specific types of unavoidable circumstances that may be claimed is discussed in detail below.

### **2.6.2.1 Medical hardships**

**The Council could recognize an exception for documented medical or psychological conditions that prevented a business owner who would have otherwise met certain qualification criteria from fishing or hiring an operator to fish the vessel.** In this situation, the focus of the medical hardship is on the vessel because an ill or injured could have hired an operator. In some situations the owner may be incapacitated and unable to make a business decision to hire an operator. For example, a business owner could be in a coma, or so severely constrained by a medical or psychological condition that it is not reasonably possible for him or her to arrange for another person to fish with the vessel. Under this scenario, the business owner could not make a decision to hire an operator to fish the vessel.

**A more lenient version of a medical hardship would recognize hardships as documented conditions associated with the business owner, family member, or operator (guide) that effectively kept the business owner from fishing a vessel, without regard to whether an operator could have been hired to operate the vessel.** The disadvantage with this more “lenient” medical hardship provision is the scope of the hardship that may be claimed is larger. This could result in more appeals, and the nature of the hardships may be more complex and difficult to document. The criteria described in Section 2.6.2.3 could be applied to these hardship cases to guide the administrative decision.

### **2.6.2.2 Constructive loss**

In December 2006, the Council added the term “constructive loss” to the list of specific unavoidable circumstances that should be considered during the appeals process. A similar term, “constructive total loss,” is often used by insurance companies to mean a partial loss of such significance that the cost of restoring damaged property would exceed its value after restoration. For example, a car is so badly damaged that repairing it would cost more than the repaired vehicle would be worth. However, the term “total” is not part of the hardship provision suggested by the Council. For this reason, the extent of a constructive loss could be much more inclusive as summarized in the following two categories:

- **Vessel loss** implies that the vessel sank or was destroyed and there is no evidence that loss of the vessel was intentional.
- **Vessel unavailability** is a broader exception than vessel loss because it includes not only vessel destruction or sinking, but also unavailability due to repairs, maintenance, conversions, or construction. This type of constructive loss would exclude unavailability that was avoidable. For example, an avoidable situation might include confiscation by the courts, IRS, or law enforcement authorities due to violations of the law, or unavailability resulting from the owner’s poor planning or lack of funds. Implicit in this exception is that the vessel must have been physically incapable of being used by anyone for fishing during the qualifying period.

Information is not available that would allow a quantitative prediction of the number of small entities affected by constructive loss under the explanations provided above. However, narrowing the type of constructive losses considered by NMFS and OAA would likely result in a small increase entities qualifying for a moratorium permit.

### **2.6.2.3 Other hardships**

Hardships other than medical emergencies, constructive losses, and military exemptions may be considered by NMFS for initial qualification. These hardships would recognize any condition or

circumstance that would prevent a person from fishing the vessel because of a condition or circumstance that is unavoidable and beyond the person's control. Hardships that could be claimed include natural disasters, weather events, or unforeseeable events. These hardships would not include economic reason such as a severe depression in the value of a charter trip due to a reduction in the number of tourists visiting Alaska or a large increase in fuel prices.

**Staff request that the Council provide guidance about the types of "other hardship" claims that could be made by applicants.** The following guidance used by the Council during the development of the groundfish LLP hardship regulations could be applied to the proposed moratorium: (1) the condition or circumstances were unforeseeable and unavoidable; (2) the condition or circumstance were severe enough to have kept the applicant from using the vessel either personally or by obtaining an operator; and (3) the applicant did everything reasonable under the circumstances to overcome the condition or circumstance. These criteria provide NMFS with guidance about the types of hardship claims that should be considered. Moreover, the criteria established with the groundfish and crab LLP provide an appellant with a transparent set of conditions that must be met to successfully appeal an initial administrative decision.

The groundfish and crab LLP regulations also specify that the hardship circumstance must be unique to a vessel. This provision eliminates hardship claims that are made because of poor weather or other types of natural or man-made occurrences that are not unique to an individual vessel. The moratorium alternatives and options do not specify if claims made because of natural disasters or poor weather are eligible.

Finally, for all hardships claims (included medical and constructive losses) there would need to be some indication that but for the hardship condition, the owner would have operated the vessel. In other words, the hardship condition should actually prevent the individual from conducting his business for the time period being claimed. For example, a person could be hospitalized in 2004 for an injury that prevented him or her from making a business decision. If later in 2004 the person was no longer incapacitated by the injury, he or she could not claim the medical hardship in 2005 or the year prior to implementation.

#### **2.6.2.4 Number of unavoidable circumstance claims**

The number of unavoidable circumstance claims would likely be linked with the level at which the Council sets the minimum qualification criteria and the scope of unavoidable circumstances allowed by regulation. A more restrictive qualification criterion would increase the number of persons that may appeal because they did not have the necessary qualifying history. Furthermore, more restrictive hardship criteria would result in fewer people that could obtain a permit without the required history. Because data are not available to describe the type and number of hardship claims that could be made, it is not possible to predict the number of small entities that could be impacted by a more restrictive hardship definition. However, a less permissive hardship criterion would decrease the number of appeals and successful claims.

Other Federal limited access programs have provided applicants with an interim permit while hardship claims are being reviewed by OAA. Interim permits allow an appellant to fish while an appeals case is being reviewed. **The Council should indicate its preference for the issuance of interim permits to an appellant.** The advantage to issuing an interim permit is that the appellant is able to continue fishing during the appeals process. However, past experience with other LLPs have demonstrated that some appeals occur to obtain an interim permit, and that these appeals may continue for many years (e.g., some groundfish LLP licenses still have not been resolved). Thus, providing interim permits may increase the number of appeals and associated staff time to adjudicate a larger number of appeals. The disadvantage to not issuing interim permits is that persons with justifiable hardship claims may not be able to operate

during the appeals process. This would impose a substantial economic hardship on these persons if they have a charter business that could not operate during the appeals process.

### **2.6.3 Leasing**

Leasing is a nebulous term that describes a multitude of arrangements between two or more persons, but generally infers a temporary transfer of a right to possess or use specific property or a property-like right (e.g., fishing permit). Leasing arrangements are often designed to generate rent on the property while allowing the lessee to use the property without the large outlay of capital required if the property right was transferred. One type of leasing arrangement that is common in the commercial halibut fishery is the leasing of halibut individual fishing quota (IFQ). Leasing in terms of the IFQ program occurs when there is a transfer of IFQ from the quota share (QS) holder to another party. In this situation, the QS holder retains the annual right of receiving IFQ, but transfers the right to catch the IFQ to another person. In this way, the persons involved in the transfer (conducted through NMFS) likely have an arrangement that allows for mutual gain.

An important difference between the IFQ program and Alternative 2 is that there is not a short-term harvest privilege (i.e., IFQ) associated with the moratorium permit that could be transferred through NMFS. In the case of the proposed charter moratorium, any change of the persons holding the moratorium permit would involve a transfer conducted by NMFS. For example, a permit holder who wanted to “lease” a permit, could conduct short term transfers through NMFS or completely circumvent NMFS by making private business arrangements without changing the permit holder’s name. Thus, in the latter example, NMFS and NOAA OLE would not have any documentation that a private business exchange took place. Moreover, there may be a greater incentive for permit holders to use private transactions because transaction costs associated with the application process can be avoided.

Private business arrangements are extremely difficult for NOAA OLE to enforce because documentation is often not available, and a large amount of enforcement resources are required to prosecute leasing situations. This problem has been encountered by NMFS with current leasing provisions in the groundfish LLP and IFQ. Regulations governing current programs such as the groundfish LLP prohibit leasing and allow NMFS to review transfer agreements to check if leasing has occurred. Despite having access to the transfer agreements, it is very difficult for NMFS to determine if the transfer is a lease. Moreover, defining the term “lease” is problematic because business contracts can be carefully worded to obfuscate a lease so that NMFS cannot deny an application. The nature of charter businesses also make it extremely difficult to determining the types of leasing agreements that would be prohibited.

In many cases, a charter business may hire a captain to take clients fishing. Contracts with captains are business arrangements that can extend within a year, or over a number of years, and may be terminated at any time. These business arrangements make it difficult to determine with certainty whether permits are being leased to a captain for a year or if the captain is working as an employee of the owner. Given the structure of business arrangements within the halibut charter industry, enforcing a prohibition on leasing would be extremely difficult at best, and impossible in many situations. Section 0 provides more information about enforcement issues associated with a no leasing provision.

#### **2.6.3.1 Purpose of prohibiting leasing**

Fisheries generally have leasing prohibitions for permits because of concerns by fishermen about the “absentee landlord” syndrome (Wilens and Brown 2000). In fisheries, this syndrome broadly refers to situations where a permit holder does not personally fish the permit or have any direct involvement with the fishery. Business arrangements involving owners who are not operating the charter vessel is common for the halibut charter industry. Many charter business owners hire captains or deckhands to operate the



charter vessel, whether the vessel is owned by the business or captain. For example, a charter business owner in Atlanta may own a lodge in Southeast Alaska that relies on staff to manage the lodge, market trips, and provide guide services. Thus, while maintaining and managing capital in the sport fishery, this type of charter business owner is not on site fishing or working in fishery operations. Alternative 2 would not eliminate or reduce this type of absentee ownership. Alternative 2 was intended to allow charter businesses to operate the way they do currently, which includes owning a business and hiring skipper and crew to operate the vessel, and/or operate several vessels under a single business.

The extent of the absentee ownership issue in the charter fishery is difficult to predict prior to program implementation. Given that some businesses owners currently do not personally fish the permit, incentives that currently exist for absenteeism would likely continue under Alternative 2. Wilen and Brown (2000) outlined several issues that may contribute to the absentee situation, including the balance of benefits associated with the flexibility provided by leasing permits and the social costs associated with absenteeism, and the level at which economic incentives work against absenteeism.

One important incentive in the charter fisheries is the ability to catch fish and attract clients. The ability to catch fish and manage clients may involve years of acquired knowledge about the abundance of fish, methods used to harvest fish (Wilen and Brown 2000), and knowledge about charter client preferences. The difficulty associated with acquiring these skills influences incentives for absenteeism. Associated with these skills is the ability of an operator to market a fishing experience, including the audience targeted by a marketing campaign. Certain owners may have differential successes at marketing an experience. For example, a large company such as Princess Cruise Lines may have marketing experience that allows effective targeting of non-residents, but they may be ineffective at marketing charter trips for resident anglers. In this case, resident anglers may have specialized needs that are largely marketed through word of mouth. These factors would help determine the level at which absentee owners exist in the charter fishery. It is likely that many business models would favor absenteeism, especially if operating more than one vessel.

### **2.6.3.2 Non-leasing options**

Given the problems associated with enforcing the no lease provision, other types of regulatory controls that do not directly prohibit leasing should be considered by the Council. The types of controls that may be considered adjust behavior by increasing the transaction and opportunity costs associated with business arrangements. From an implementation standpoint, several types of options are considered in the following paragraphs.

The IFQ program has several controls in place that increase transaction costs between IFQ users by limiting the use of a vessel. These types of controls include a requirement for a certain level of vessel ownership before IFQ may be fished from that vessel, and a proposed regulation that prevents short-term transfers of vessel ownership (i.e., vessel ownership for at least 12 months). The vessel ownership regulation requires a corporation, partnership, or entity who did not receive an initial issuance of QS to demonstrate 20-percent ownership of a vessel before the IFQ may be fished (50 CFR 679.42). This capital investment imposes an opportunity cost for individuals wanting to use QS/IFQ and thus reduces the incentive for some individuals to enter contractual agreements. To further reduce the number of short-term leasing transactions a 12-month vessel ownership requirement was recently published a proposed rule in the *Federal Register*. A vessel ownership requirement is an effective method for limiting some types of short term transactions; however, a vessel use restriction is not an option for the charter moratorium program described in Alternative 2. A vessel use restriction would require registration of the vessel with NMFS which would substantially reduce the charter fleet's ability to quickly change vessels in case of breakdowns (see Section 2.6.1.3).

Vessel use restrictions could be avoided by requiring the permit holder to authorize permit users and limiting the number permits an authorized person could use. Authorization would require permit holders to indicate who is authorized to use the permit through an application to NMFS. The application would require basic contact information to identify the authorized individual and to indicate the permits he or she is authorized to use. A person authorized to use the permit would need to be onboard the vessel during a charter fishing trip, and NOAA OLE would need to be able to identify this person as an authorized permit user. The number of permits an individual is authorized to fish could also be limited through the application process. This limit would prevent non-permit holders from exceeding the use cap that is applied to permit holders. Thus, without a use restriction, a business could make arrangements with several permit holders to allow that business to operate in excess of the use caps.

The number of persons authorized to use a permit could be reduced by requiring certain qualification criteria. Some examples of qualification criteria that have been considered by the Stakeholder Committee and Council in the past include being a registered guide with ADF&G, having USCG operator license, and U.S. citizenship. An ADF&G guide license requirement would exclude individuals not licensed as ADF&G charter guides. Similarly, the USCG operators license requirement would exclude individuals not licensed to operate a charter vessel, but would not necessarily include all charter operators because of the State guide licensing requirements. USCG operator licenses are currently required to obtain a State guide license. For this reason, limiting authorized users to ADF&G licensed guides would insure that USCG guide requirements were met.

The most restrictive measure would be to require an ADF&G guide license. In 2006, a person registered as a fishing guide with ADF&G was required to be a citizen of the United States, possess a current first aid card, State of Alaska sport fish license, and a USCG operator license if operating navigable waters. In addition, guides were required to pay a fee of \$50 to obtain the ADF&G license. A copy of the ADF&G guide license and application for authorization would need to be submitted to NMFS prior to receiving permit authorization.

**In summary, the no leasing provision is very difficult to enforce on the charter fishery. An alternative to the no leasing provision would be to require permit holders to authorize users, restrict authorization, and limit the number of permits a user could be authorized to use. These measures would reduce the amount and types of lease and sub-lease agreements that could occur in the fishery.**

## **2.6.4 Enforcement**

### **2.6.4.1 Client endorsement**

The client endorsement requirement under Alternative 2 is focused on limiting charter operators to a certain number of clients that are allowed to fish for halibut, which could effectively impose a limit on the total number of halibut harvested. Enforcement of a regulation that limits the number of clients allowed to fish would require enforcement officers to determine if a client is fishing for halibut. This poses a significant enforcement challenge because the moratorium program would be specific to the halibut fishery and not concurrent state fisheries.

Several enforcement options were considered by NMFS, including limiting the number of clients onboard the vessel, line limits, and limiting the total number of halibut that may be harvested. Enforcement prefers limiting the total number of halibut harvested. A limit on the number of harvested halibut would link the daily bag limit allowed for each client to the total number of clients endorsed on the vessel or the number of anglers fishing on the vessel, whichever provides for the fewest number of halibut. A line

limit infers that regulations would specify the total number of fishing lines that may be fished at any time during a charter halibut trip. Each of these enforcement measures are discussed in detail below.

**Client limit:** A client limit would require the number of clients onboard a vessel to be limited to the designated client endorsement if any harvested halibut are onboard the vessel. An approximate definition for a client would be anyone onboard the vessel that is not the vessel operator (ADF&G licensed guide), employed by the vessel operator, vessel owner, or permit holder. This definition would basically indicate that clients are anyone who is not skipper or crew, including guests of the operator, vessel owner, or permit holder. This definition allows enforcement officers to distinguish the vessel operator (skipper) and crew from clients. Skippers are documented through the ADF&G guide license; however, no documentation exists for crew.

NMFS would need onboard documentation for crew either using the logbook, Federal registration, or employment papers. Federal enforcement officials would need authorization by the State to check state reporting tools (including guide licenses), and a change to the confidentiality statute described in Section 2.6.1 to use the logbook as evidence. Federal registration (crew licenses) would be the most burdensome because crew would be required to provide employment and contact information to NMFS. Employment papers would also be cumbersome because of the large number of employment arrangement that may occur between crew and business operators. For these reasons, NMFS staff recommends that the ADF&G licensed vessel operator declare crew in the logbook. The regulatory definition for crew would need to include anyone receiving any compensation (monetary or otherwise) from the vessel operator; vessel owner; or charter business owner, operator, managers, permits holder, or booking agent. Even with the designation of crew in the logbook, vessel operators could designate an angler that would otherwise be a client as a crew member. Without a Federal crew permit, it would be impossible to completely close this loophole.

Finally, a limit on the number of clients onboard a charter vessel is very difficult to enforce without significantly changing current business practices in the charter fishery. This requirement would constrain non-halibut fisheries by limiting the number of clients that may be onboard a vessel with any harvested halibut. The saltwater charter fishery commonly has a mixture of clients on a vessel during a trip. These clients may target salmon, halibut, rockfish, lingcod, shark, or be a non-angler along for the experience. Combination trips are common, with clients targeting one species using one type of gear then switching to another gear type and target species. For example, a group of clients may focus fishing effort on halibut during the morning and salmon during the afternoon. In this case, the number of clients allowed to salmon fish would be constrained by the permit endorsement for halibut. Another characteristic of the charter fishery are multi-day charter trips. These charters may carry more clients than the number indicated on their halibut permit endorsement. In this situation, no halibut could be harvested because more clients are present than allowed under the permit endorsement.

**Line limits:** Line limits could either limit the number of lines fishing or the number of rods on a vessel. A large problem with enforcing line limits is determining when the line is fishing and observing the line while fishing. A line would be "fishing" when it is in the water. Thus, enforcement would need to observe and document the number of lines in the water to enforce an infraction of the client endorsement (i.e., more lines in the water than the client endorsement). This would require a significant amount of enforcement resources because dockside checks could not be conducted and enforcement would need to observe the infraction while on the water. NMFS staff does not recommend this enforcement method.

An alternative to observing a line that is "fishing," is it to limit the number of rods on a vessel. Under this limitation, enforcement could check a vessel at any time and issue a citation if too many rods were onboard the vessel. While this method offers a higher degree of enforceability than observing a line while fishing, it imposes a considerable burden on the charter fleet. A rod limit would greatly reduce an

operator's ability to carry spare rods and rods that are specialized for certain conditions and fishing methods.

**Harvest limits:** The most effective and efficient enforcement method for the client endorsement would be to limit the number of harvested halibut from all sources (client, skipper, and crew). This limit would be linked to the collective daily bag limit associated with the number of charter anglers endorsed on the moratorium permit or aboard the vessel; whichever provides for the fewest halibut.

There are two issues associated with controlling the number of halibut harvested aboard a charter vessel: angler specific bag limits and the "gifting" of fish by skipper and crew. A bag limit of two fish per angler per day is currently promulgated in the International Pacific Halibut Commission (IPHC) and Federal regulation. The charter moratorium client endorsement would need to be tied to the IPHC bag limit so the total number of halibut harvested on the vessel would not exceed the collective daily bag limit for charter anglers endorsed on the permit or aboard the vessel; whichever provides for the fewest halibut. The second issue involves the gifting of fish to clients by skipper and crew. This poses an enforcement problem because clients may exceed their bag limit by accepting gifted fish from skipper and crew. This situation results in a greater number of halibut harvested than the collective bag limit for the number of endorsed clients. For example, a charter operator may have ten harvested halibut onboard, but only eight halibut would be allowed under an endorsement for four clients. This scenario would prevent enforcement of the client endorsement using a harvest restriction. For this reason, retention of halibut by skipper and crew needs to be eliminated or controlled by limiting the total number of harvested halibut on the vessel to the number of clients (up to the use cap) onboard the vessel. It should be noted that a prohibition on skipper and crew fish was promulgated by ADF&G in 2006 for Area 2C and may be used again in 2007 for Areas 2C and 3A.

Enforcement based on the number of harvested halibut is most desirable because it provides a high level of accountability at sea, at the dock, and post season. This option would avoid the pitfalls associated with documenting skipper and crew, limiting non-halibut fisheries, and enforcing line limits. Moreover, there would not be any additional documentation required than what is currently recorded in the logbook.

**In summary, a harvest limit linked to an angler's bag limit and client endorsement is the most enforceable option.** This enforcement method would also not restrict other state fisheries or the gear used aboard a vessel. Enforcing a limit on the number of clients onboard a vessel would require a change to the logbook to allow crew to be designated.

#### **2.6.4.2 Business ownership requirement**

Section 2.6.1.2 describes issues associated with the 75 percent U.S. business ownership requirements for the moratorium permit and 10 percent ownership rule of affiliation to determine the number of permits that may be associated with a single entity. Additionally, businesses that do not meet the U.S. ownership requirements will be grandfathered into the moratorium permit system; however, a change in ownership invalidates the grandfathered ownership status.

As discussed in Section 2.6.1.2, the affiliation requirement poses significant enforcement issues because of the problems associated with determining affiliation. Without information about business ownership it is impossible in some situations for NOAA OLE and General Council (GC) to prosecute cases of fraud and enforce the ownership requirements.

### 2.6.4.3 Leasing

Enforcement of a no leasing provision is very difficult for NOAA OLE and GC to investigate and prosecute. There are two primary issues that complicate enforcement: (1) often it is impossible for enforcement to obtain private business contracts that are not submitted to NMFS; and (2) even when business contracts are submitted to NMFS, it is impossible in some situations for NMFS and enforcement to determine that the business arrangement described in the contract is a lease. The first issue cannot be avoided under Alternative 2 because of the myriad of small business arrangements that may be arranged by a permit holder. NOAA OLE does not have capacity to enforce private business arrangements outside of agency processes such as requiring transfers and associated contractual documentation through NMFS. Even if NMFS receives contractual documentation during a transfer, the term "lease" is very difficult to define and contracts can be constructed in such a way that they obfuscate lease arrangements by avoiding key terms that may trigger suspicion by enforcement authorities. Thus, leasing requires a very large amount of staff resources to investigate and prosecute. Additionally, many situations would likely not contain the level of documentation necessary to prosecute a case.

### 2.6.5 Community Quota Entity (CQE) permits under Issue 12

Regulations describing the CQE program are currently only applicable to the commercial IFQ Program, but could be modified to incorporate the charter halibut moratorium permit. In addition to the CQE's current requirements to be a non-profit entity, disclose business relationships and structure, obtain approval by the regional administrator to represent a community, and describe the procedures used to manage and use commercial halibut QS, the CQE could be required to also submit information relevant to the use of a charter halibut moratorium permit. The information that the Council may want to consider requiring under the moratorium program falls into two categories: 1) information NMFS would require of a CQE in a request for a charter permit(s); and 2) annual information NMFS would require related to the use of the charter permit by the CQE. See below:

1. The types of information the NMFS may require for a CQE permit request; for example:
  - a. Name of CQE and the communities it represents
  - b. Authorized permit users
  - c. An explanation of how the CQE intends to use and manage the permit on behalf of the communities it represents
  - d. A statement that explains the procedures that will be used to solicit requests to use the permit held by the CQE, and that sets out the criteria and procedures used to select from among those who have expressed a desire to use the permit (which may be different from CQEs criteria to determine use of commercial IFQ)
2. The types of information that NMFS could require be added to a CQE's annual report; for example:
  - a. Number of charter permits held and/or used
  - b. Name and address (residence) of captain retained to use permit (& crew if any)
  - c. Name and ownership information about vessels used
  - d. Number of trips during season
  - e. Port of landings

The CQE regulations for the IFQ program also have a recordkeeping and reporting requirement for IFQ landing and fee calculation. These regulations would not be applicable to the charter fishery and would thus not be carried over to the moratorium system.

In addition to meeting CQE qualification requirements, a CQE would also need to meet the minimum qualification criteria detailed in Alternative 2, Issue 12. In evaluating whether a CQE is qualified to receive a moratorium permit, NMFS would use the ADF&G logbook data to determine if the community met the trip criteria selected at final action. As previously discussed in Section 2.6.1, direct access to the logbook is the most efficient method for NMFS to determine qualified CQEs, as well as notify qualified CQEs that they may apply for a moratorium permit(s). Permits issued to CQEs would be endorsed by area (2C or 3A) and designated as six clients per permit. The same client endorsement and use cap issues discussed in Section 2.6.4.1 apply to permits requested by CQEs.

A CQE would be responsible for selecting the person authorized to use a permit and, under the current options in Issue 12, demonstrating use in the year following the first calendar year the permit was issued. If use is not demonstrated after the first calendar year, then the permit would not be renewed and the CQE would need to apply for a new permit. Thus, to continue fishing, a CQE that did not use the permit within the first calendar year would need only to reapply with NMFS to continue fishing.

The annual renewal requirement would require agency resources to track logbook information for CQEs initially receiving a permit. Federal use of the logbook would be preferable if authorization is obtained to access effort information and the logbook is modified to record the moratorium permit number associated with each fishing record. A Federal logbook would be required if these conditions cannot be met. The Federal logbook may include electronic reporting in addition to a written Federal logbook. A written logbook is required to enforce recordkeeping regulations. Removal of the renewal requirement would negate the need for logbook recordkeeping and reporting for the CQE program unless a future management action (such as a QS program) requires the use of logbook catch history during the moratorium period.

Renewal of a CQE permit will require the CQE to complete a renewal application and maintain a logbook record during the first year after issuance. Upon receipt of the renewal application, NMFS will query logbook information or access Federal logbook information if the logbook cannot be used. Compared with the status quo, a Federal logbook would increase the burden on CQE permit holders because it would add a new reporting requirement in addition to current State reporting requirements. A Federal logbook program would also increase the burden on NMFS to distribute, collect, and electronically transcribe logbook information. These costs are described in Section 2.6.6.

Because CQEs would not be allowed to permanently transfer the requested charter permit, and because each individual CQE is subject to its own use cap, whether a CQE uses the permit does not reduce the opportunity for other potential operators, including other CQEs. In sum, there does not appear to be a compelling reason to require the CQE use the charter permit during any specified timeframe. Given that the CQE could reapply for another permit or permits in the future, up to the use cap, the CQE is not penalized by the provision except for any administrative costs associated with requesting another permit.

## **2.6.6 Program costs**

The moratorium program will increase administrative and enforcement burdens on agency resources. This burden can be translated into costs imposed on the agency that include the hiring of new staff or the redirection of current staff resources. Redirection of staff resources would reduce the ability of the agency to administer current management programs and enforcement activities. It is not possible to determine which management functions would suffer from a redirection of staff resources because some programs are currently being developed and agency resources for existing programs change through time. Moreover, the annual agency budget also determines the availability of resources and to a certain extent how those resources are applied. The cost estimates provided below should be considered approximate

estimates of staff resources required to administer and enforce the moratorium system. Table 26 provides a summary of the costs associated with implementing the moratorium system.

### **2.6.6.1 Enforcement costs**

The moratorium program would substantially increase Federal enforcement and administrative costs in Areas 2C and 3A. These areas contain a large charter fleet that operates in remote areas which are difficult for NOAA OLE to access. These remote fishing operations increase the enforcement costs for several reasons: (1) travel time to and from the enforcement area is increased; (2) enforcement activities may require several days to adequately cover an area; and (3) angler patterns such as fishing locations and daily fishing schedules are poorly understood. It is important that NOAA OLE has adequate staff and enforcement tools to overcome these issues to ensure the regulations associated with the moratorium are perceived as credible (i.e., they may get caught if in violation) by charter operators.

To provide adequate enforcement coverage for the charter fishery, NOAA OLE would need to have an enforcement presence and administrative support for the following communities: Petersburg, Sitka, Juneau, Anchorage, Homer, and Seward. With the exception of Anchorage, all other communities are major charter fishery ports, with Sitka, Homer, and Seward being major landing sites for charter clients fishing for halibut. NOAA OLE estimates that one enforcement officer at an annual cost of \$150,000 would be needed for each of these ports. The annual cost for seven officers is approximately \$1,050,000. This cost estimate includes the enforcement time required to conduct on-the-water enforcement, collect evidence, and perform other administrative duties. Enforcement staff would either need to be hired or redirected from other management programs to provide this level of coverage.

Costs required to prosecute cases should be considered part of the enforcement costs. NOAA GC estimates that one full time attorney (GS-11) at an annual cost of \$100,000 would be required to prosecute permit violations.

Given the 2007 Federal budget situation, additional money would likely be difficult to obtain. For this reason, a redirection of NOAA OLE and GC staff at the detriment of other programs would need to occur. The magnitude of the effect would be dependent on the level of staff reduction for each program.

### **2.6.6.2 Administrative costs**

Additional NMFS staff would be required to process applications, provide notification of eligibility, and potentially distribute and collect logbooks. NMFS estimates that one full-time staff person at an annual cost of \$75,000 would be required to cover administrative needs, including entering permit and logbook information, issuance of permits, and addressing public inquiry. Initial programmer time would also be required to construct the database used to determine eligibility (using logbook information), hold personal/business information associated with permit holders and authorized users, and determine CQE trip history for the renewal requirement. The cost estimate for the database is between \$3,000 if the logbook is used and \$10,000 if a Federal logbook with electronic reporting is used. Annual database maintenance is expected to be minimal, requiring one to two weeks of NMFS staff time.

If the ADF&G logbook cannot be used, a Federal logbook would need to be distributed to a CQE. A small number of CQE permits will actually need a logbook because the recordkeeping and reporting requirement would only be needed for CQEs that are required to renew a permit. This excludes CQEs that have met the renewal requirements for each permit issued. For this reason, a small number of logbooks would need to be issued, with the number declining as the program matures.

The number of logbooks required for recordkeeping and reporting of the renewal requirements is dependent on the number of qualified CQEs. Under the options to determine eligibility in Issue 12, a range of 23 to 33 Amendment 66 communities could qualify to receive charter permits. Of those potentially eligible, only three communities in Area 2C (Hydaberg, Pelican, Hoonah) and three communities in Area 3A (Ouzinkie, Larsen Bay, and Old Harbor) have formed approved CQEs to date.<sup>56</sup> It is currently unknown if new CQEs would be created and the number of existing CQEs that may participate in the charter permit system. Based on the existing number of CQEs, the maximum number of permits that could be issued (based on the CQE use cap options in Issue 12) is 9, 15, or 21 for Area 2C (under a use cap of 3, 5, or 7, respectively) and 15, 30, or 45 (under a use cap of 5, 10, or 15, respectively). This level of participation would result in a maximum cost of \$500 for logbook production. Even if all 33 communities formed a qualified CQE, logbook production costs would be less than \$2,500. These costs are based on the requirement that a community can only be represented by one CQE.

**Table 26 Federal agency cost estimates for implementing the moratorium program**

<b>Attribute</b>	<b>Estimated Cost</b>	<b>Justification</b>
Six full time enforcement officers	Six officers at \$150,000 each Total = \$1,050,000	Provide enforcement coverage for Petersburg, Sitka, Juneau, Homer, Seward, and an additional officer based in Anchorage
One GS -11 attorney	\$100,000	Prosecute cases for a moratorium permit violation
One full time RAM staff person	\$75,000	Process applications and administer program
logbook processing and production costs	Initial year: \$4,500 – \$12,500  Annual: approximately \$3,500	Determining eligibility and CQE renewal requirements  Cost estimate includes database construction and maintenance, logbook production, and logbook distribution
<b>Total annual cost</b>	<b>\$1,228,500</b>	

### 2.6.7 Future logbook requirements

The Council is considering long-term management options that would utilize the charter limited entry program to establish a group of persons qualified for a limited access program in the future. Long-term management programs for the charter fishery being considered by the Council currently do not use a qualifying period for logbook history during the moratorium period; however, the Council may amend the options being considered at a later date. For this reason, it may be desirable to collect catch and effort information that is specific to each moratorium permit. The current State of Alaska logbook could be used to collect moratorium-specific information if it is modified to record catch associated with each moratorium permit. The scope of this change is currently unknown.

<sup>56</sup> Craig (Area 2C) has also formed a CQE, but it is not eligible under any of the eligibility options in Issue 12.



## 2.7 Summary

Table 27 provides a summary of the costs and benefits that are expected to result from the two alternatives considered. Overall, the status quo will continue to allow new entry into the charter fishery. Client demand will continue to determine the number of trips taken. Prices for charter trips will be set in a competitive market based on the forces of supply and demand. Persons taking trips with fewer clients will operate inefficiently and waste resources. Those wasted resources are additional expenditures that may benefit suppliers of charter businesses.

The moratorium is not expected to limit the number of halibut charter trips in the near future. As charter catch increases, the halibut assigned to the commercial IFQ fishery will decline. The impact of that decline on firm revenues will depend on the elasticities of supply and demand. Charter client's consumer surplus will not be impacted if they continue to be able to book trips that generate the same utility as under the open access at a competitive market price. Charter operators will be protected from competition from new entrants, but will be allowed to expand the number of trips they take, in most cases. The only time trip supply may be a constraint in the near term would be during holidays (e.g., July 4<sup>th</sup>) and perhaps popular fishing weekends.

**Table 27 Summary of costs and benefits by alternative**

Issue	Alternative 1	Alternative 2
<i>Summary of the Alternatives</i>	<i>Status quo. Continue current management structure of the halibut charter fishery, including the GHL program approved by the Council</i>	<i>Implement a vessel moratorium in the halibut charter fishery</i>
Impacts on resource management	None	The fishery would be conducted as it is currently, so minimal impacts would be expected.
Benefits to commercial sector	No change in benefits	Limits on the number of charter vessels that may participate in the fishery. These benefits are mitigated under a liberal initial allocation of permits and as charter operators more fully utilize/increase a vessels harvest capacity.
Benefits to charter sector	No change in benefits	Charter operators that are dependent on the fishery and receive a permit under the initial allocation would receive some protection from new entry. These benefits are mitigated under a liberal initial allocation of permits that allows persons not currently in the fishery to receive a permit.
Benefits to guided anglers	No change in benefits	Guided anglers are not expected to appreciably benefit from this program
Costs to commercial sector	No change in costs	Liberal initial allocation of permits could allow charter fleet harvests to continue growing as each moratorium qualified vessel is more fully utilized
Costs to charter sector	No change in costs	Persons excluded from the initial allocation of permits that had planed on participating in charter fishery in the future would be harmed. Also persons that are restricted to fewer than six clients may face a competitive disadvantage
Costs to guided anglers	No change in costs	A moratorium that does not limit a client's choice of trips will have little or no impact. A moratorium that effects a client's choice of trips could tend to increase the price of a trip. It may also force clients to take trips with a charter operator that was not their first choice or not be able to book a trip.
Costs to Federal government	No change in costs	See Table 26 above.
Estimated net benefits to the Nation	No change in net benefits	Impossible to quantify with the available information.
Program objectives	Does not fully address issues of unconstrained growth of the halibut charter fleet. GHL imposed a target harvest amount, but the tools currently used to limit charter growth have not constrained catches to the GHL.	Could limit charter growth in the future but is not expected to limit the number of clients that may fish in the near term. Provides a platform to build a more restrictive program in the future. Defines the winners in any future allocation programs.
E.O. 12866 significance	Does not appear to be significant	Does not appear to be significant

## **3.0 INITIAL REGULATORY FLEXIBILITY ANALYSIS**

### **3.1 Introduction**

The Council considered limiting the vessels that may operate in the halibut charter industry by implementing a moratorium on new entrants. The Regulatory Flexibility Act (RFA) emphasizes predicting significant adverse economic impacts on small entities (e.g., businesses) as a group distinct from other entities, which may result from regulations being proposed. Since the RFA is applicable to businesses, non-profit organizations, and governments, guided anglers fall outside of the scope of the RFA. Therefore, they will not be discussed in the RFA context. The focus of the RFA section will be the halibut charter businesses and the 23 - 33 communities that may expand their participation in this fishery.

Until the Council makes a final decision, a definitive assessment of the proposed management alternative(s) cannot be conducted. In order to allow the agency to make a certification decision, or to satisfy the requirements of an Initial Regulatory Flexibility Analysis (IRFA) of the preferred alternative, this section addresses the requirements for an IRFA, which is specified to contain the following:

- A description of the reasons why action by the agency is being considered;
- A succinct statement of the objectives of, and the legal basis for, the proposed rule;
- A description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply (including a profile of the industry divided into industry segments, if appropriate);
- A description of the projected reporting, recordkeeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record;
- An identification, to the extent practicable, of all relevant Federal rules that may duplicate, overlap or conflict with the proposed rule;
- A description of any significant alternatives to the proposed rule that accomplish the stated objectives of the Magnuson-Stevens Act and any other applicable statutes and that would 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, such as:
  1. The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;
  2. The clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities;
  3. The use of performance rather than design standards;
  4. An exemption from coverage of the rule, or any part thereof, for such small entities.

### **3.2 A description of the reasons this action is being considered**

The Pacific halibut resource is fully utilized by commercial and sport fishermen in IPHC Areas 2C and 3A. The Council has adopted a GHF for guided sport fishermen, but that action alone has not resolved allocation issues between the guided sport sector and other users of the halibut resource. The open-ended reallocation between the commercial and guided sport fishermen still exists, and members of the commercial halibut sector are concerned about the stability of their access to the halibut resource. While this action is not expected to slow charter halibut harvests in the short-term, the program may limit long-term growth and may provide a foundation on which measures to more effectively limit charter harvests can be built.

National Standard 8 of the Magnuson-Stevens Act directs that “conservation and management measures shall, consistent with the conservation requirements of this Act (including the prevention of overfishing and rebuilding of overfished stocks), take into account the importance of fishery resources to fishing communities in order to: (a) provide for the sustained participation of such communities, and (b) to the extent practicable, minimize adverse economic impacts in such communities.” Although the halibut IFQ program was developed under the Halibut Act, which does not require consistency with all of the Magnuson-Stevens’ national standards, the Council believes Congress clearly intended that the Council consider the impacts of all its management measures, including halibut management regulations, on fisheries-dependent communities.

A major motive in developing this program was to take a first step towards stabilizing sector harvests of halibut taken as part of the commercial and charter fisheries. Commercial halibut fishermen were concerned that, if left unchecked, growth in the charter fleet would erode their percentage of the harvest. That could result in negative impacts on the communities that benefit from the commercial fishery. However, because communities that benefit exclusively from the commercial IFQ program are not directly regulated by this amendment, they are not considered under this Regulatory Flexibility Act analysis.

The moratorium alternatives, with qualification based on the number of trips taken in 2004 or 2005, was not designed to provide community development opportunities. One aspect of the proposed action focuses specifically on communities within which residents will likely receive an insufficient number of permits to sustain or increase economic development opportunities in halibut charter businesses.

In pursuing a community based permit program, the Council seeks to:

- a) prevent introducing an economic barrier to entry in the halibut charter fishery for residents of rural, small communities with under-developed charter ports;
- b) provide for sustained participation in the charter industry;
- c) increase geographical diversity of charter operations and;
- d) foster economic development and stability in these communities.

### **3.2.1 Objective Statement of Proposed Action and its Legal Basis**

The objective of the proposed action is to design a program that will start the process to resolve conflicts between the commercial and guided sport sectors of the halibut fishery in IPHC Areas 2C and 3A. During the early 1990s, the guided sport fleet experienced substantial growth. Projections made in the mid-1990s, indicated that, if left unchecked, the charter fleet could grow to a level equal to or greater than the commercial fleet in Areas 2C and 3A by year 2008. Growth rates in charter fleet harvests are difficult to ascertain, but a clear trend in growth has been apparent over the past 10 years. Yet, it is highly unlikely that those early projections would be realized. However, decreases in halibut biomass levels, combined with any growth in catch by the charter fleet, results in a *de facto* reallocation away from the commercial halibut fleet, under the status quo. The Halibut Act, along with the Magnuson-Stevens Act, grants the Council authority to oversee allocations of the halibut fishery in Alaskan and Federal waters. Setting overall removals of halibut is under the authority of the International Pacific Halibut Commission.

### **3.2.2 Description of each Action (non-mutually exclusive alternatives)**

A complete list of the primary alternatives is contained in Chapter 1 of this document. That section is incorporated here, by reference. The major alternatives being considered are:

- Alternative 1. Status Quo - Do not develop measures to implement a moratorium on new entrants into the halibut charter fishery.
- Alternative 2. Implement a moratorium on new vessel entry into the halibut charter fishery in Areas 2C and 3A, and include an option that would issue additional permits to small, isolated, rural communities that have few or no halibut charter businesses operating out of their community.

### **3.2.3 Reason for, and focus of, an IRFA**

To ensure a broad consideration of impacts and alternatives, this draft IRFA has been prepared pursuant to 5 USC 603, without first making the threshold determination of whether or not the proposed actions would have a significant adverse economic impact on a substantial number of small entities. In determining the scope, or 'universe', of the entities to be considered in an IRFA, NMFS generally includes only those entities, both large and small, that can reasonably be expected to be directly regulated by the proposed action. If the effects of the rule fall primarily on a distinct segment, or portion thereof, of the directly regulated group(s) (e.g., user group, gear type, geographic area), that segment would be considered the universe for the purpose of this analysis.

### **3.2.4 Requirement to Prepare an IRFA**

The RFA, first enacted in 1980, was designed to place the burden on the government to review all proposed regulations to ensure that, while accomplishing their intended purposes, they do not unduly inhibit the ability of small entities to compete. The RFA recognizes that the size of a business, unit of government, or non-profit organization frequently has a bearing on its ability to comply with a federal regulation. Major goals of the RFA are: (1) to increase agency awareness and understanding of the impact of their regulations on small business, (2) to require that agencies communicate and explain their findings to the public, and (3) to encourage agencies to use flexibility and to provide regulatory relief to small entities. The RFA emphasizes predicting (negative) impacts on small entities as a group distinct from other entities and on the consideration of alternatives that may minimize the impacts, while still achieving the stated objective of the action.

### **3.2.5 What is a Small Entity?**

The RFA recognizes and defines three kinds of small entities: (1) small businesses, (2) small non-profit organizations, and (3) and small government jurisdictions.

Small businesses. Section 601(3) of the RFA defines a 'small business' as having the same meaning as 'small business concern' which is defined under Section 3 of the Small Business Act. 'Small business' or 'small business concern' includes any firm that is independently owned and operated and not dominate in its field of operation. The SBA has further defined a "small business concern" as one "organized for profit, with a place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials, or labor... A small business concern may be in the legal form of an individual proprietorship, partnership, limited liability company, corporation, joint venture, association, trust, or cooperative, except that where the form is a joint venture there can be no more than 49 percent participation by foreign business entities in the joint venture."

The SBA has established size criteria for all major industry sectors in the U.S., including fish harvesting and fish processing businesses. A business involved in fish harvesting is a small business if it is independently owned and operated and not dominant in its field of operation (including its affiliates) and if it has combined annual receipts not in excess of \$4 million for all its affiliated operations worldwide. A

seafood processor is a small business if it is independently owned and operated, not dominant in its field of operation, and employs 500 or fewer persons on a full-time, part-time, temporary, or other basis, at all its affiliated operations worldwide. A business involved in both the harvesting and processing of seafood products is a small business if it meets the \$4 million criterion for fish harvesting operations. A wholesale business servicing the fishing industry is a small business if it employs 100 or fewer persons on a full-time, part-time, temporary, or other basis, at all its affiliated operations worldwide. And, of particular relevance to this proposed action, SBA specifies that for marinas and charter/party boats, a small business is one with annual receipts not in excess of \$6.0 million.

The SBA has established “principles of affiliation” to determine whether a business concern is “independently owned and operated.” In general, business concerns are affiliates of each other when one concern controls or has the power to control the other, or a third party controls or has the power to control both. The SBA considers factors such as ownership, management, previous relationships with or ties to another concern, and contractual relationships, in determining whether affiliation exists. Individuals or firms that have identical or substantially identical business or economic interests, such as family members, persons with common investments, or firms that are economically dependent through contractual or other relationships, are treated as one party with such interests aggregated when measuring the size of the concern in question. The SBA counts the receipts or employees of the concern whose size is at issue and those of all its domestic and foreign affiliates, regardless of whether the affiliates are organized for profit, in determining the concern’s size. However, business concerns owned and controlled by Indian Tribes, Alaska Regional or Village Corporations organized pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601), Native Hawaiian Organizations, or Community Development Corporations authorized by 42 U.S.C. 9805, are not considered affiliates of such entities, or with other concerns owned by these entities solely because of their common ownership.

Affiliation may be based on stock ownership when (1) A person is an affiliate of a concern if the person owns or controls, or has the power to control 50% or more of its voting stock, or a block of stock which affords control because it is large compared to other outstanding blocks of stock, or (2) If two or more persons each owns, controls or has the power to control less than 50% of the voting stock of a concern, with minority holdings that are equal or approximately equal in size, but the aggregate of these minority holdings is large as compared with any other stock holding, each such person is presumed to be an affiliate of the concern.

Affiliation may be based on common management or joint venture arrangements. Affiliation arises where one or more officers, directors, or general partners control the board of directors and/or the management of another concern. Parties to a joint venture also may be affiliates. A contractor and subcontractor are treated as joint venturers if the ostensible subcontractor will perform primary and vital requirements of a contract or if the prime contractor is unusually reliant upon the ostensible subcontractor. All requirements of the contract are considered in reviewing such relationship, including contract management, technical responsibilities, and the percentage of subcontracted work.

Small organizations. The RFA defines “small organizations” as any nonprofit enterprise that is independently owned and operated and is not dominant in its field.

Small governmental jurisdictions. The RFA defines small governmental jurisdictions as governments of cities, counties, towns, townships, villages, school districts, or special districts with populations of fewer than 50,000.

### 3.2.6 Description of the Businesses and Communities Directly Regulated by the Proposed Action(s)

#### 3.2.6.1 Charter Fishery

**Businesses:** Chapter 2 of this document provides a detailed description of the current guided halibut sport fishery. Chapters 3 and 5 of the halibut charter IFQ EA/RIR/IRFA (NPFMC 2005), the associated appendices, and particularly the 1997 EA/RIR/IRFA (NPFMC 1997), provide detailed descriptions of the guided halibut sport fishery in earlier years. In summary, the number of business that submitted ADF&G logbooks for bottomfish activity in IPHC Area 2C, between 1999 and 2005, ranged from 352 in 2002 to 412 in 2000. More businesses submitted logbooks for bottomfish activity in IPHC Area 3A. The number of businesses over the same time period ranged from 402 in 2003 to 455 in 2000. Table 28 shows the number of businesses that reported bottomfish activity in ADF&G logbooks from 1999 through 2005.

**Table 28** Number of bottomfish guide businesses submitting ADF&G logbooks, 1999 - 2005

Area	1999	2000	2001	2002	2003	2004	2005
2C	388	412	386	352	355	364	381
3A	454	455	452	406	402	421	451

Source: ADF&G Bottomfish Logbook Data, 1999-2005.

The proposed moratorium alternatives would issue permits based on whether a business achieved a specified level of participation during 2004 or 2005, and in the year prior to implementation of the program. Because a final alternative has not been selected, the number of business that may qualify for a permit cannot be determined. The maximum number of businesses projected to qualify range from 258 to 447 in Area 2C and 360 to 520 in Area 3A, depending on the option selected. Because the qualifying criteria include participation in the year prior to implementation, the final number of qualifying businesses would not be known until the implementation of the program.

The charter fleet is a fairly homogeneous group with similar operating characteristics and vessel sizes, with the exception of a few larger, 'headboat' style vessels, and lodges that operate several vessels. The vast majority of vessels are 25'- 50' in length and carry up to six paying fishermen each. While these vessels are very similar in size, the operations have different annual participation patterns in the fishery. Table 2 shows the number of businesses and vessels that participated in the commercial and charter halibut fisheries from 1995 to 2005. Table 2.X provides detailed data on the maximum number of trips each charter vessel took in 2004 or 2005. In IPHC Area 2C, 477 businesses used 855 vessels to carry clients in 2004 or 2005. In IPHC Area 3A, 520 businesses used 709 vessels to carry clients those years. Table 2.X also shows the maximum number of clients carried on each vessel during 2004 or 2005.

The EA/RIR/IRFA developed to provide information on implementing a halibut charter IFQ program provided information on catch by vessel (NPFMC 2005). That analysis reports the halibut catch by owner during 1999. According to those data, about 175 vessels in Area 3A and 240 vessels in Area 2C harvested fewer than 100 halibut each. Therefore, over one-third of the fleet harvested fewer than 100 halibut that year. These vessels retained an average of 5 and 9.6 halibut per trip in Areas 2C and 3A, respectively, according to 1999 logbook data. To retain 100 halibut at these rates, vessels would need to make 20 trips in Area 2C and 10.4 trips in Area 3A. At \$1,000 per trip (\$200 per person and assuming, on average, five clients) this amounts to \$10,000 to \$20,000 per owner. These charter operators likely spend only part of the year taking halibut clients fishing, given that number of trips and the gross revenue it would generate. The remainder of the year they may have been offering charters for other types of fishing, sightseeing, hunting, or camping activities. Alternatively, these owners may only be part-time

participants in the charter business. During the remainder of the year they may hold other jobs outside of the charter boat for hire field.

The four owners with the largest catch histories harvested over 4,000 halibut, on average, in Area 2C and just under 3,800 halibut in Area 3A during 1999 (NPFMC 2005). At an estimated 20 pounds per fish, this equates to 80,000 pounds of halibut for those four Area 2C owners on average, and 76,000 pounds for the four Area 3A vessel owners on average. The largest of these companies, which are lodges, may be considered large entities under SBA standards, but that cannot be confirmed. All of the other 800-plus charter operations would likely be considered small entities, based upon SBA criteria, since they would be expected to have gross revenues of less than \$6.0 million on an annual basis.

Chapter 2 contains more detailed breakdowns on the businesses that operated in 2004 and 2005. Some information presented reports the number of vessels that a business submitted logbooks for during the year, the maximum number of clients carried, number of trips taken, and port where the trip terminated. Additional information on the economic characteristics of vessels operating in the Cook Inlet portion of Area 3A has been described by Hermann (Hermann et al 1999 and Hermann 1999).

The halibut charter IFQ amendment showed that only 13 of the 434 charter business in Area 3A were run by residents of states other than Alaska (the residence of 3 of the owners were unknown) (NPFMC 2005). Therefore, about 97% of the charter owners in Area 3A reside in Alaska. In Area 2C, 48 of the 386 business owners resided outside Alaska. That translates into just under 87% of businesses being Alaskan-owned. It is likely that most of the Alaskan owners reside in small communities. Owners from outside Alaska may reside in either small or large communities.

The moratorium program was created to limit the number of vessels that may operate at one time in the halibut charter fleet. Issuing moratorium permits effectively limits the number of vessels, but is not expected to constrain the amount of halibut retained in the guided sport halibut fishery to historic levels identified in the GHL. An additional benefit of the moratorium is to identify persons that may be eligible for additional rationalization measures. For example, if the Council proceeds with adding endorsements to the permits or allocating individual fishing privileges, the persons owning the moratorium permits could create the pool of eligible participants.

Communities: Traditional charter communities are not directly regulated as part of this amendment. The only regulations that directly regulate communities are included in the permit allotment part of this action (Issue 12). That action seeks to help small remote communities develop charter businesses, by mitigating the economic barrier associated with purchasing a charter halibut permit and creating a number of non-transferable permits that can only be held by the non-profit entity representing the eligible community. Under the proposed options, a range of 23 – 33 small communities could be eligible, depending upon the preferred alternative. All of these communities would be considered small entities under the SBA definitions. If these communities are able to benefit from the additional permits, it would be at the expense of communities that have traditionally been involved in the fishery. Almost all of those communities, that have charter industries operating from their ports, would also be considered small entities.

The 23 - 33 communities in Area 2C and 3A directly regulated as part of this amendment are discussed in Section 2.5.12.2. Each of those communities was selected for the community permit program because they were eligible under GOA Amendment 66 and also met a specified maximum level of charter halibut participation in 2004 and 2005. The universe of communities eligible under Am. 66 has the following characteristics:



- 1) population of greater than 20 but less than 1,500 according to the U.S. Census;
- 2) located on the coast of the Gulf of Alaska (in Areas 2C and 3A);
- 3) have a commercial landing of either halibut or sablefish by a resident between 1980 – 2000, according to the Commercial Fisheries Entry Commission data for permit and fishing activity;
- 4) not connected to a larger community on the road system; and
- 5) designated on Table 21 to Part 679 of Federal regulations.

In addition, Amendment 66 communities in Area 2C and 3A must meet the following criteria (to be selected at final action) in order to request halibut charter permits under this program:

- 1) form a Community Quota Entity (CQE), as defined under Amendment 66; and
- 2) [5 or fewer or 10 or fewer] active<sup>57</sup> charter businesses must have terminated trips in the community in each of the years 2004, 2005, and the year prior to implementation.

Communities that meet these requirements were deemed by the Council to deserve consideration for a separate allocation of permits because of their limited economic opportunities. Any of the 23 - 33 communities that meet the selected threshold for active halibut charter businesses in their community are eligible to apply for a limited number of additional permits from NMFS. The permits will be held by the community's CQE (this subset of new permits cannot be transferred) and may be assigned to vessels operating in that community. The Council expressed a desire to create a community-based permit program that is designed to create business opportunities in communities that are considered small entities.

### **3.2.6.2 Commercial fishery**

Businesses operating in the commercial halibut fishery are not directly regulated by this action. These businesses will continue to operate under the existing IFQ program. The commercial fishery catch limits will be set after guided sport removals have been deducted from the pool of halibut available for the two fisheries.

### **3.2.7 Recordkeeping requirements**

Permit applications must be submitted prior to start of the program. The application will require information about the business applying for the permit including the ownership structure of the business (U.S. citizenship papers for individuals) and information on the charter activities of the business (see Section 2.5.1). After submitting the initial permit application, additional applications will not be required. NMFS will only require additional reports when the structure of the business owning the permit changes or the permit is transferred. NMFS may also require some additional reports, depending on how well the current ADF&G logbooks meet their management and enforcement needs and the level of access NMFS has to those data. A complete discussion of the recordkeeping and reporting requirements may be found in Section 2.6.

In and of itself, the proposed recordkeeping and reporting requirements would not likely represent a 'significant' economic burden on the small entities operating in this fishery.

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<sup>57</sup>Active is defined as it is defined in the general moratorium program under Issue 10 (e.g., at least 1, 5, 10, or 20 bottomfish trips). The Council will make this determination at final action.

### **3.2.8 Potential Impacts of the Alternatives on Small Entities**

#### **3.2.8.1 Alternative 1: Status quo**

The status quo alternative specifies the GHL as a target amount of halibut that the charter fleet can harvest. If the GHL is exceeded then management measures would be imposed to constrain the harvest of halibut. For example, ADF&G did not allow skipper and crew to retain halibut for part of the 2006 fish year in Area 2C. An example of another action that could be taken by management agencies to curtail catch would be to reduce bag limits for the guided angler. Such an action has not been taken to date. That action could result in fewer trips, thereby reducing revenues for the charter fleet. Harvests (and revenues given our current understanding of price elasticities) in the commercial sector then would be larger than without the GHL, since charter harvests directly reduce the amount of halibut available to the commercial sector.

Because both the charter and commercial sectors are primarily comprised of small businesses, the impacts of the status quo will be to shift benefits between small businesses in the commercial and charter sectors. The way that the GHL is structured, benefits will likely flow from the commercial sector to the charter sector as charter harvests increase. If stricter management measures are imposed (i.e., bag limit reductions), benefits could flow from the charter sector to the commercial sector, at least in the short-term.

#### **3.2.8.2 Alternative 2: Implement a moratorium on new entry into the halibut charter fishery**

Passage of a moratorium would likely benefit the current owners of charter businesses, which are almost all small businesses, because the total number of charter operations would be limited. The status quo implements management measures that are designed to limit the charter harvest of halibut to the GHL targets (e.g., prohibition on skipper and crew fish), but the number of vessels that can enter the fishery is not limited. Therefore, potentially, as more vessels enter the fishery, each vessel (on average) would be able to harvest fewer halibut, if the sector were to remain at or below the GHL. The moratorium would provide an upper bound on the number of vessels that would be allowed to participate in the fishery at any one time. Persons wishing to leave the fishery would then be allowed to sell their moratorium permit and receive some compensation. However, the sale of the permit may negatively impact the other charter owners remaining in the fishery if the new business is able to attract clients that would allow them to harvest more halibut than the business they replaced. The impact of a moratorium is to redistribute the benefits from the charter operator currently in the fishery and those that wish to enter (or that do not have enough participation history to qualify for a moratorium permit). All of those businesses are likely to be small entities. Additional information can be found in Chapter 2.

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## APPENDIX 1

### History of Actions Related to Management of the Charter Halibut Fisheries in Areas 2C and 3A

1993 Control Date In the early 1990s, the rapid growth of the guided recreational (or charter) halibut fishery fleet led to increased concerns that unrestrained catch by the charter fishery would result in smaller allocations of halibut resources to the commercial sector. In 1993, the Council created a Halibut Charter Working Group and directed it to develop suitable alternatives for a regional or statewide moratorium on the entry of new charter vessels into the fisheries in Areas 2C and 3A. The Group presented various management options to the Council for consideration and the Council announced a *control date of September 23, 1993*, as the last day to qualify for a potential moratorium on entry into the fisheries. The Council deferred further action on the issue because of other priorities. In 1995, the Council reviewed the Group's findings, received public testimony, developed a problem statement, and discussed development of alternatives for managing harvests of halibut by the charter fishery. Again, staffing priorities and lack of funding for adequate research delayed formal analysis of the management alternatives until 1996.

Guideline Harvest Level In 1996, the Council narrowed the scope of potential management alternatives by eliminating consideration of the unguided sport fishery and focusing alternatives exclusively on the guided segment of the halibut sport fishery, which includes lodges, outfitters, and charter vessel guides. The Council also reviewed the possibility of allowing charter vessel owners and operators to purchase or lease IFQ in the existing commercial halibut IFQ Program. Two GHL analyses included an alternative for *a moratorium on entry into the charter halibut fisheries*. Instead, the Council identified its preferred alternative to implement guideline harvest levels (GHLs) in Areas 2C and 3A for controlling charter halibut harvests. In both cases, the GHLs were intended as an initial step towards developing a management strategy that would limit charter halibut harvests while maintaining the historic length of the charter season and allowing growth in the charter halibut fishery. The GHLs define the level of harvests permissible in the charter halibut fishery without further reallocating halibut from the commercial sector; however, they do not constrain harvests without restrictive management measures. The 1997 preferred alternative was rejected by NMFS because it did not contain those restrictive measures; the 2000 preferred alternative was rejected by NMFS because it did contain restrictive measures that would be frameworked in regulation. Case law had changed in the intervening years to disallow each approach.

Based on the Council's third recommendation of a preferred alternative, a final rule established a GHL for charter halibut harvests and a process whereby the Council is notified if the GHL is exceeded in the two areas in September 2003. The GHLs established pre-season estimates of acceptable annual harvests for the halibut fisheries in Areas 2C and 3A, beginning in 2004. To accommodate limited growth of the charter fleet while approximating historical harvest levels, the GHL for each area was based on 125 percent of the average of 1995-99 charter harvest estimates, as reported by the ADF&G Statewide Harvest Survey (SWHS). The GHLs were set at 1,432,000 lb net weight in Area 2C and 3,650,000 lb net weight in Area 3A. Upon notification that a GHL has been achieved, the Council may initiate analysis of possible harvest reduction measures and NMFS may initiate subsequent rulemaking to reduce charter harvests. While the Council's second preferred alternative included a suite of measures tied to ranges of harvest reductions that were intended to be implemented when harvests exceeded the GHLs, the final rule did not implement the proposed measures. The final rule did not prevent the Council from recommending measures before the charter harvests exceeded a GHL, nor did it obligate the Council to take specific action if the GHL is exceeded. This GHL policy, as implemented, serves only to notify the Council that a specific level of charter harvests has been achieved. Area 2C charter halibut harvests exceeded the GHL during the first year of the program in 2004, and the Council recommended a 5-fish annual limit for charter halibut anglers. This preferred alternative was rescinded in December 2006, based on a

recommendation from NMFS that estimated enforcement costs of \$600,000 were excessive. The Council has scheduled a revised analysis with additional restrictive measures for action in June 2007. The Council may also consider increasing the GHGs to reflect increased harvests by that sector in both areas in recent years. A discussion paper is scheduled for review in April 2007.

While commercial quotas fluctuate directly with stock abundance, the fixed GHG is established annually in pounds. The GHG is responsive to reductions in stock abundance. If either area's total Constant Exploitation Yield (CEY) is reduced by at least 15 percent below the average 1999-2000 total CEY, as determined by the IPHC, then the GHG would be reduced. For example, if the total CEY in Area 2C were to fall between 15 and 24 percent below its 1999-2000 average, then that GHG would be reduced by 15 percent to 1,217,200 lb. If it fell between 25 and 34 percent, then it would be reduced by an additional 10 percent to 1,095,480 lb. If the total CEY continued to decline by at least 10 percent, then it would be reduced by an additional 10 percent.

These "stair step" reductions were implemented because at the time of final action in 2000: (1) the status of the halibut stock was predicted to have been at its peak and declining; (2) the GHG formula allowed for a 25 percent increase in past harvests; and (3) the charter sector requested a fixed allocation to provide better predictability for planning bookings for the next summer's fishing season. The overall intent was to maintain a stable charter fishery season of historic length, using area specific measures to control harvests to the GHGs.

Charter IFQ Program Concurrent with the adoption of the GHG Program in February 2000, the Council initiated an analysis for integrating the charter sector into the commercial halibut IFQ Program. The 2001 analysis also included an alternative to establish a *moratorium in the charter halibut fishery in Areas 2C and 3A*. In April 2001, the Council adopted its preferred alternative that incorporated the charter sector into the existing commercial halibut IFQ Program. Under the preferred alternative, quota share would be issued only to a person who owned or leased a charter vessel that transported guided clients who caught halibut during 1998 or 1999 from Areas 2C or 3A. During the next several years, NMFS developed the proposed regulation and implementation plan for the recommended charter halibut IFQ Program. However, the Assistant Administrator for Fisheries sent a letter to the Council in August 2005, which requested that the Council confirm its support of its 2001 preferred alternative to incorporate the charter sector into the commercial halibut IFQ Program before NMFS published the proposed rule in the *Federal Register*. After receiving public testimony about the proposed charter halibut IFQ Program, the Council indicated its concern for the lengthy process, but neither confirmed nor denied its continued support of the proposed charter halibut IFQ Program. At a subsequent meeting, the Council adopted a motion to amend its April 2001 action recommending a charter halibut IFQ Program. The preamble to the motion cited the following concerns about the time delay in implementing the charter halibut IFQ: "a lengthy delay in enacting this program has resulted in a large number of current participants that do not qualify for quota share. This has resulted in controversy and a lack of broad support for the program as well as potential legal vulnerabilities."

2005 Charter Control Date In response to public testimony, the Council formed a stakeholder working group comprised of representatives of affected charter and commercial groups. This group is responsible for developing alternatives that provide for the long-term management of the charter halibut fishery. Because these management alternatives may limit access to the charter halibut fishery, the Council set a control date of December 9, 2005, after which charter operators entering the charter halibut fishery will not necessarily be assured access to the halibut resource.

The Council and NMFS intend, in setting the control date, to discourage speculative entry into the charter sport fishery for Pacific halibut while potential entry or access control management measures are considered by the Council. The control date will help distinguish established participants from speculative

entrants into the fishery. Although participants are notified that entering the charter sport fishery for Pacific halibut after the control date will not assure them of future access to the fishery based on participation, additional or other qualifying criteria may be applied. The proposed limited entry program that is the subject of this analysis is the result of this control date.

Mark Miller



February 6, 2007

Stephanie Madsen, Chair  
North Pacific Management Council  
605 W 4th Avenue, Suite 306  
Anchorage, AK 99501-2252

Dear Ms Madsen:

The Alaska Travel Industry Association (ATIA) represents over 1,000 member Alaskan tourism interests and many of these are reliant on sports fishing in coastal waters of Alaska, including halibut. The long-term health of the tourism industry in these areas in part relies on your Council's actions regarding the sports charter halibut fishery. Based on the extensive work of the NPFMC stakeholders group and recent International Pacific Halibut Commission (IPHC) actions, ATIA submits the following comments.

At the December 2006 meeting of the NPFMC, a number of viable actions to begin managing the sports charter halibut fishery were discussed. There appeared to be general consensus on a moratorium and skipper-crew catch elimination. It was also acknowledged that the catch in excess of the GHF in the sports charter halibut fishery must be addressed and abated if all halibut fishing sectors were to function within the sustainable biomass.

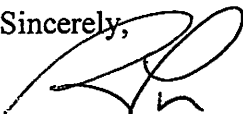
Independent of this, and in disregard of their own staff recommendations, the IPHC stepped beyond their authority to institute a one fish limit at certain times in Areas 2C and 3A. Particularly disturbing was the action that set the one fish limit in area 3A based on concern for the halibut biomass when an increase was given to the commercial catch.

ATIA would like to recommend that the NPFMC continue to resolve this important sports charter halibut fishery issue by ignoring the IPHC outcome, instituting a NPFMC approved series of recommendations for implementation and moving forward with permanent solutions to maintain the health of the sports charter halibut fisheries of Alaska and the economic viability of the small coastal communities they support. Thus far the NPFMC has addressed the sports charter halibut fishery with a transparent and open process based on science and input for all halibut harvesting sectors and this process should move forward to conclusion.

2600 Cordova Street, Suite 201  
Anchorage, AK 99503-2745  
Tel (907) 646-3319  
Fax (907) 561-5727  
ATIA@alaskatia.org  
www.alaskatia.org

Thank you for the opportunity to comment. If you have further questions, please feel free to contact me or Mark Miller of the ATIA staff.

Sincerely,

A handwritten signature in black ink, appearing to be 'Ron Peck', written over the word 'Sincerely,'.

Ron Peck  
President & COO

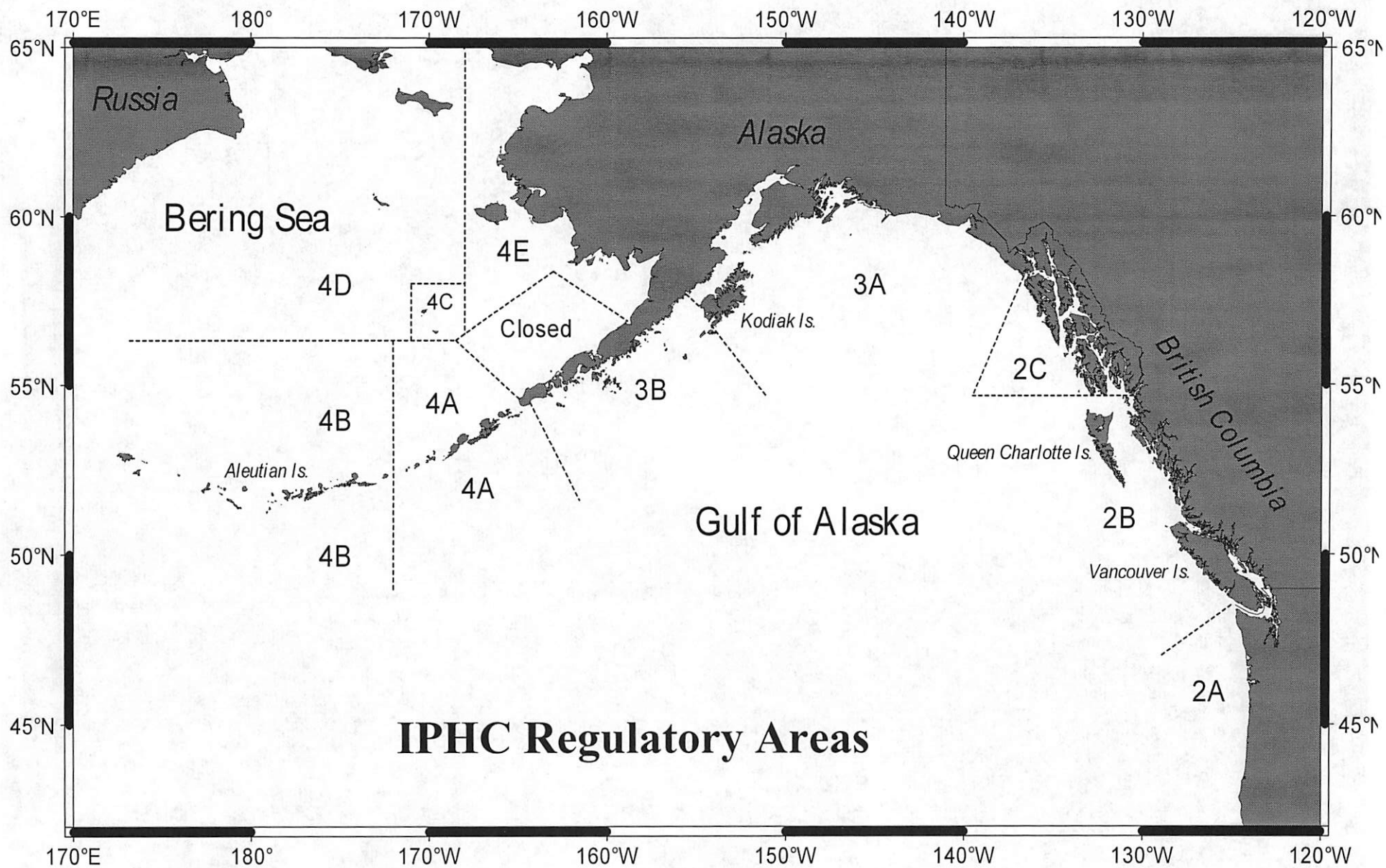


# The Eighty-third IPHC Annual Meeting



Victoria B.C.  
January 16-19, 2007

PHOTO BY JEFF CHRISTIANSEN



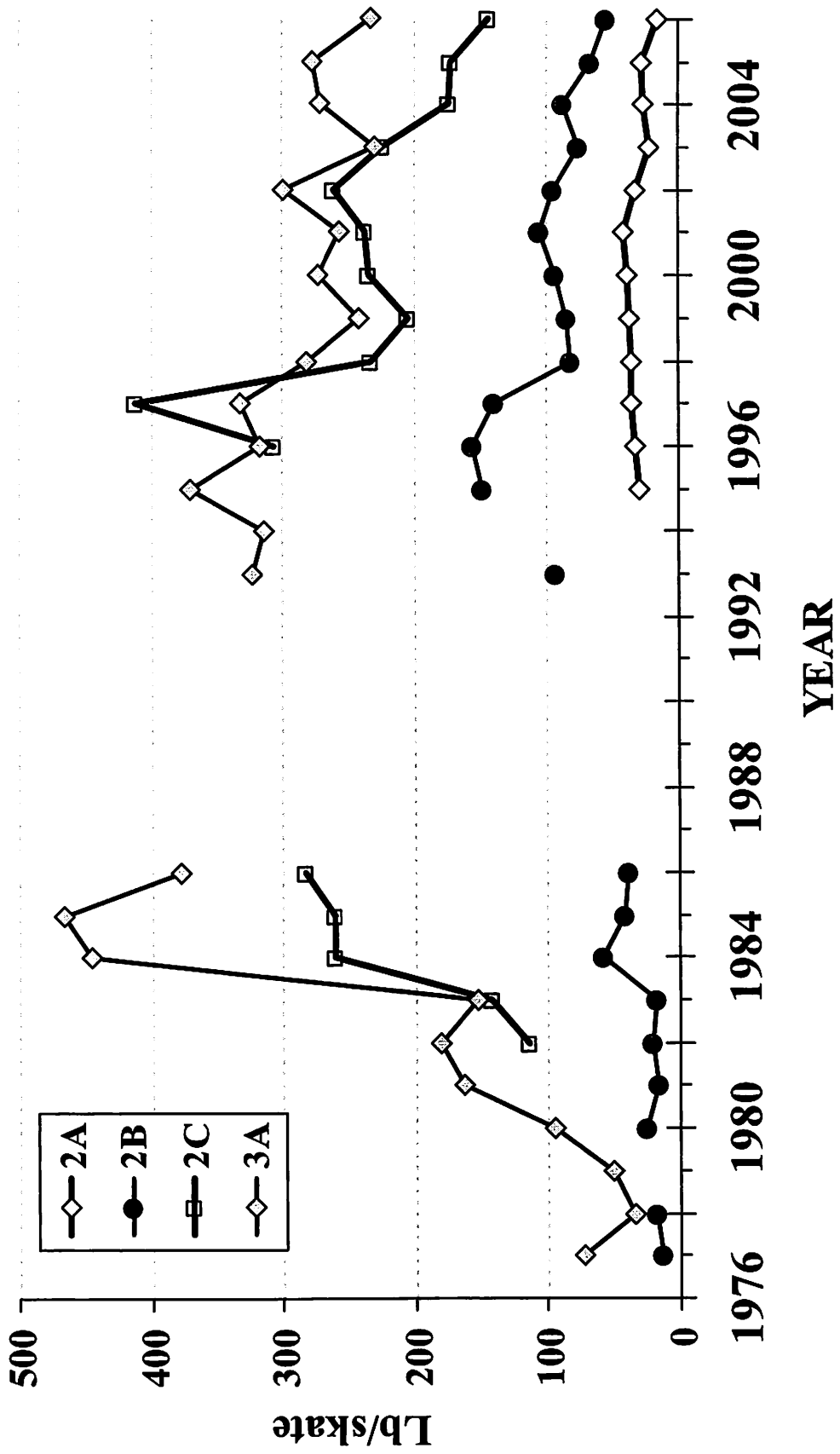
### IPHC Regulatory Areas

# **Stock Condition Indicators**

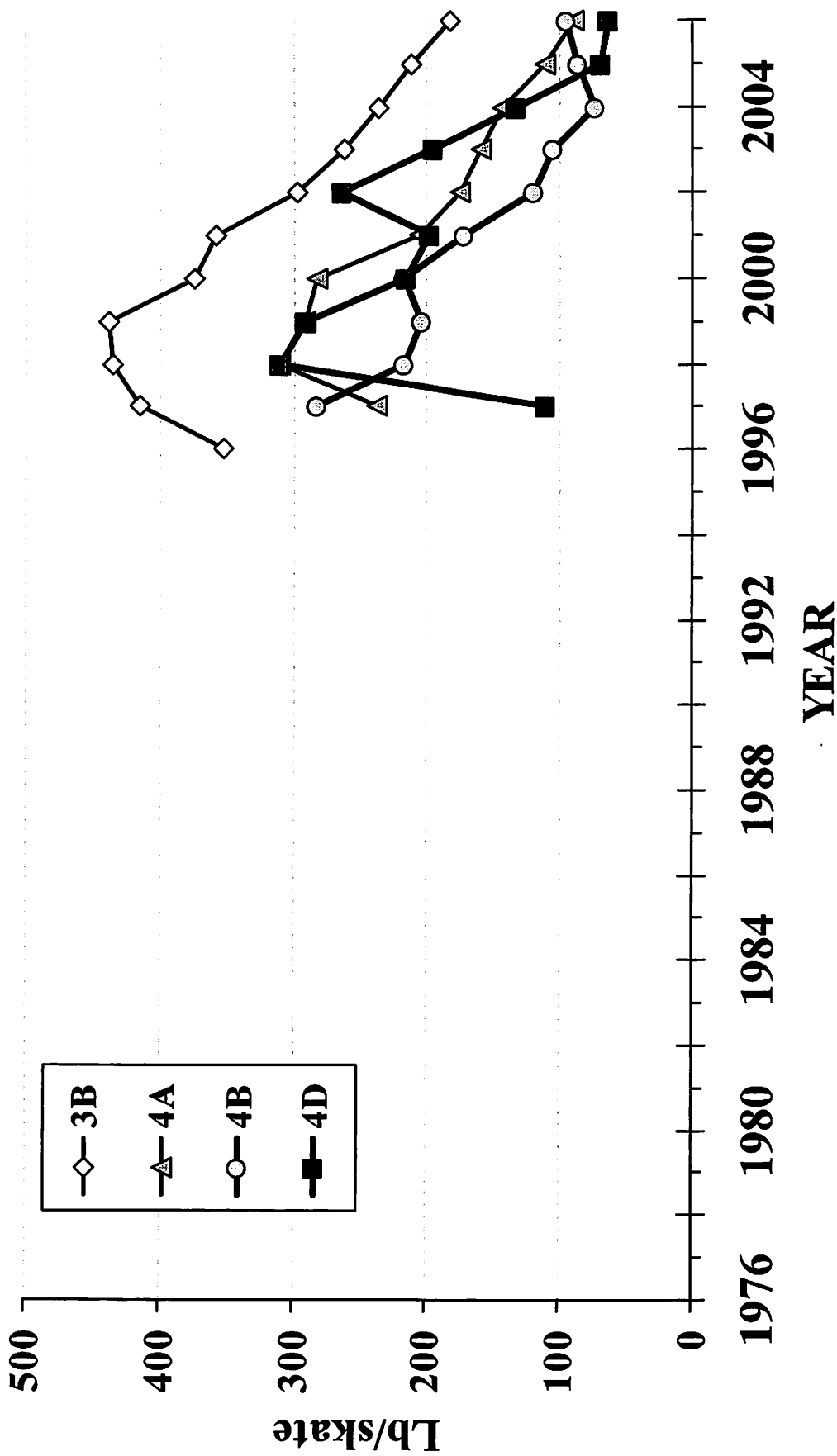
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- **Survey CPUE**
- **Commercial CPUE**
- **Analytic stock assessment**
- **Biomass distribution**

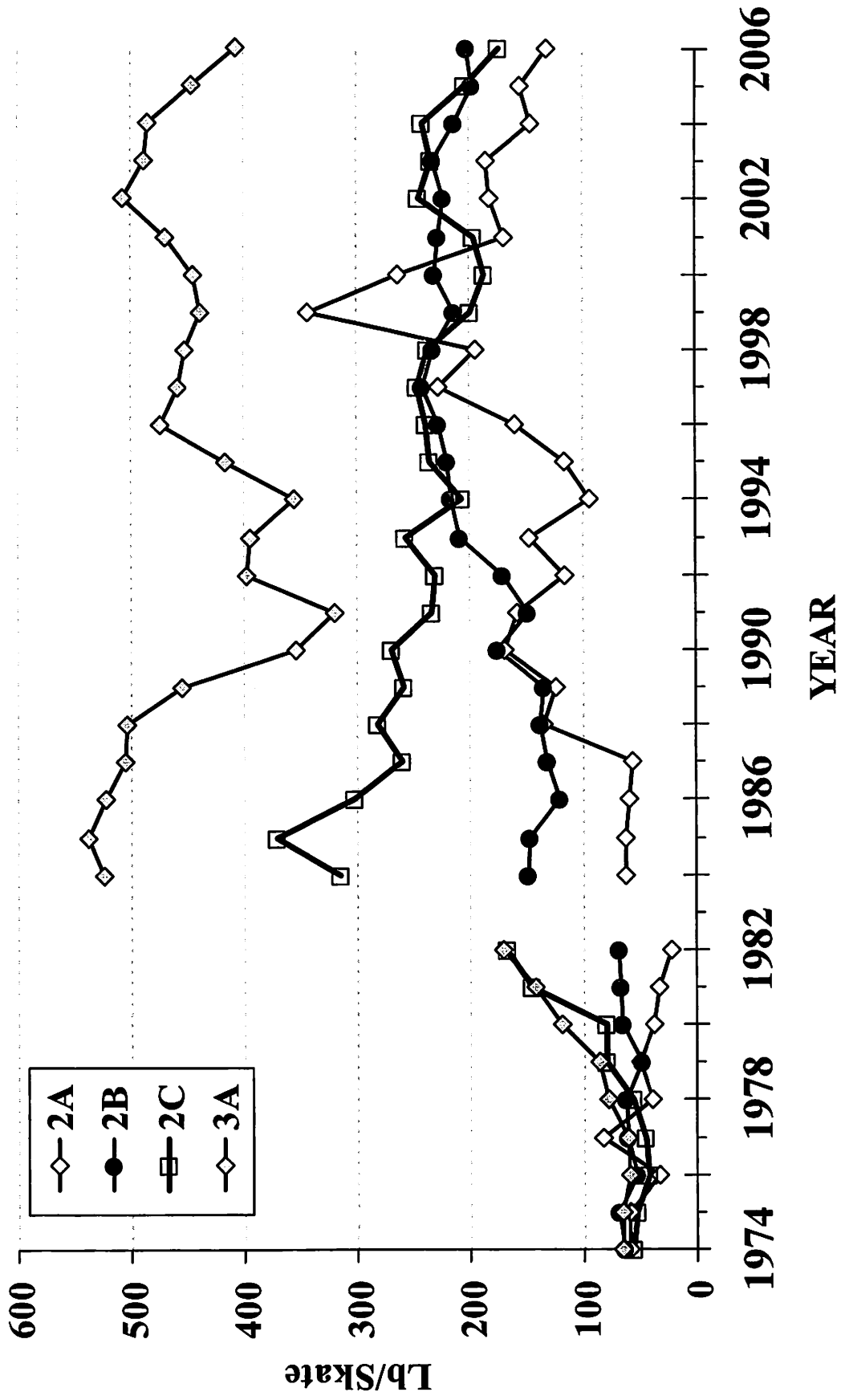
# Survey CPUE



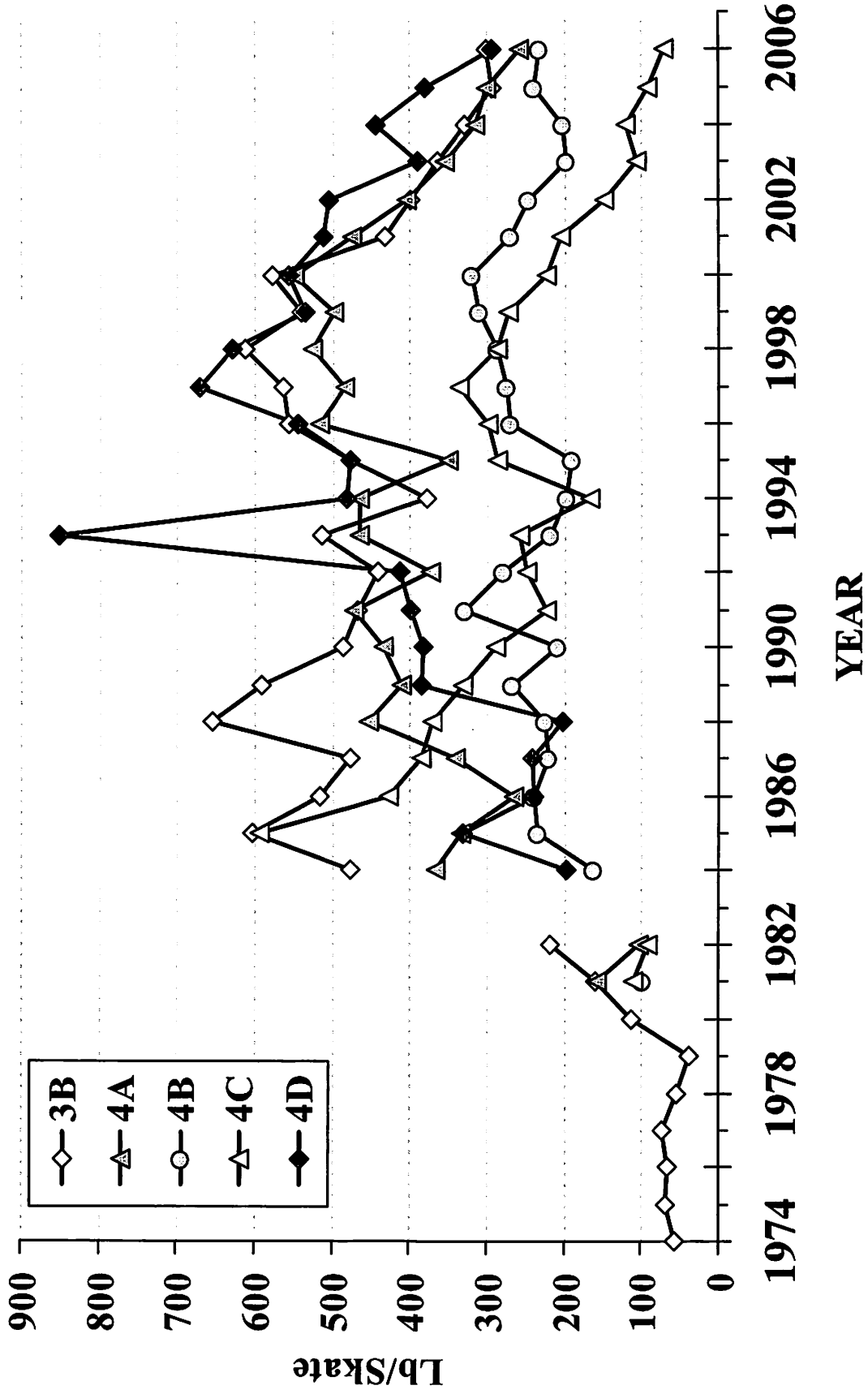
# Survey CPUE



# Commercial CPUE



# Commercial CPUE



# **Approach to 2007 Catch Limit Recommendations**

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- **PIT tags showing closed-population assumption not met in area-specific assessments; biomass distribution from closed-area assessment inconsistent with other unbiased estimates of distribution; therefore, a coastwide assessment required.**
- **Optimum Harvest Rate for coastwide biomass re-analyzed and estimated at 20% (compared to 22.5% in 2006).**
- **Coastwide biomass apportioned to regulatory area using three-year average survey data, the only available data that are objective and consistent.**
- **Calculation of CEY by area should use consistent HR unless area-specific concerns exist (e.g., Area 4B and 4CDE).**
- **HR of 20% is long-term goal but we can transition to this lower HR; therefore, recommending a HR of 25% in Area 2.**
- **Employ standard phasing method (slow up – fast down) to determine recommended catch limits.**



# Catch Limit Concerns

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- **Total CEY exceeded in Areas 2B, 2C, and 3A in 2006 due to significant overruns of identified targets for recreational fisheries.**
- **Fishing intensity and realized harvest rates very high in Area 2 in recent years.**
- **Continued productivity and sustainability concerns for Areas 4B and 4CDE.**

**Table 1. 2006 Total CEY and harvest figures (millions of pounds, net wt.).**

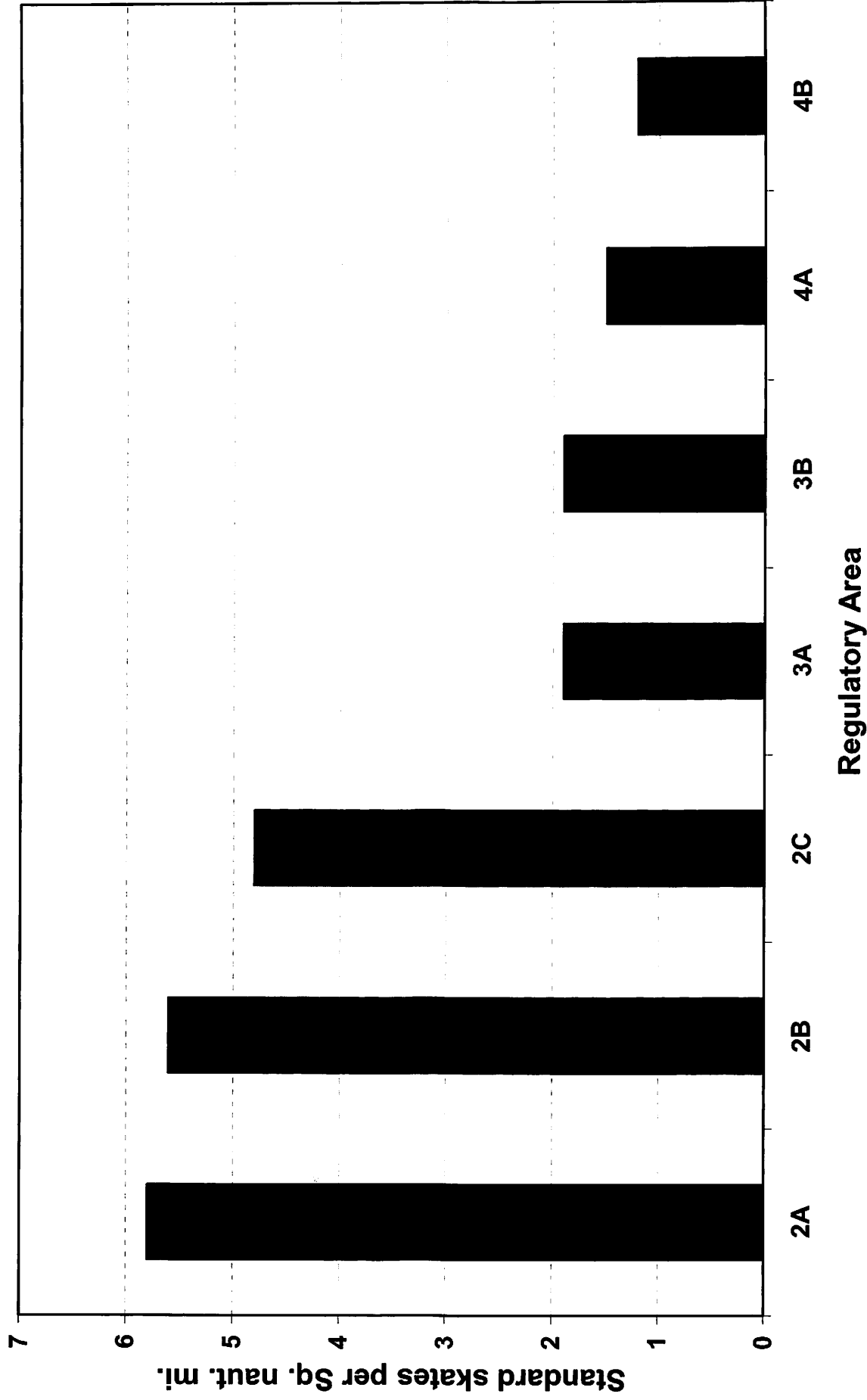
	Area 2B	Area 2C	Area 3A
<b>Total CEY</b>	<b>13.73</b>	<b>13.73</b>	<b>32.18</b>
<b>Removals</b>			
Commercial fishery	11.68	10.35	24.87
Sport	2.26	3.03	6.09
Personal Use	0.30	0.60	0.43
Bycatch - Legal-sized	0.19	0.14	1.32
Wastage - Legal-sized	0.04	0.02	0.05
<b>Total</b>	<b>14.47</b>	<b>14.14</b>	<b>32.75</b>
<b>Overage:</b>			
<b>M lbs</b>	<b>0.74</b>	<b>0.41</b>	<b>0.57</b>
<b>GHL/Sport allocation (M lbs) (A):</b>	<b>1.589</b>	<b>1.432</b>	<b>3.650</b>
Guided Harvest (M lbs)		2.03	3.97 *
Private Harvest (M lbs)		1.00	2.12
Combined	2.26	3.03	6.09
<b>Guided Harvest vs. GHL/Allocation (A)</b>			
<b>Overage in M lbs</b>	0.67	0.60	0.32
<b>Overage as pct of (A)</b>	<b>42.2%</b>	<b>41.6%</b>	<b>8.7%</b>

**Notes: Area 2B allocation and totals apply to both guided and unguided catch**

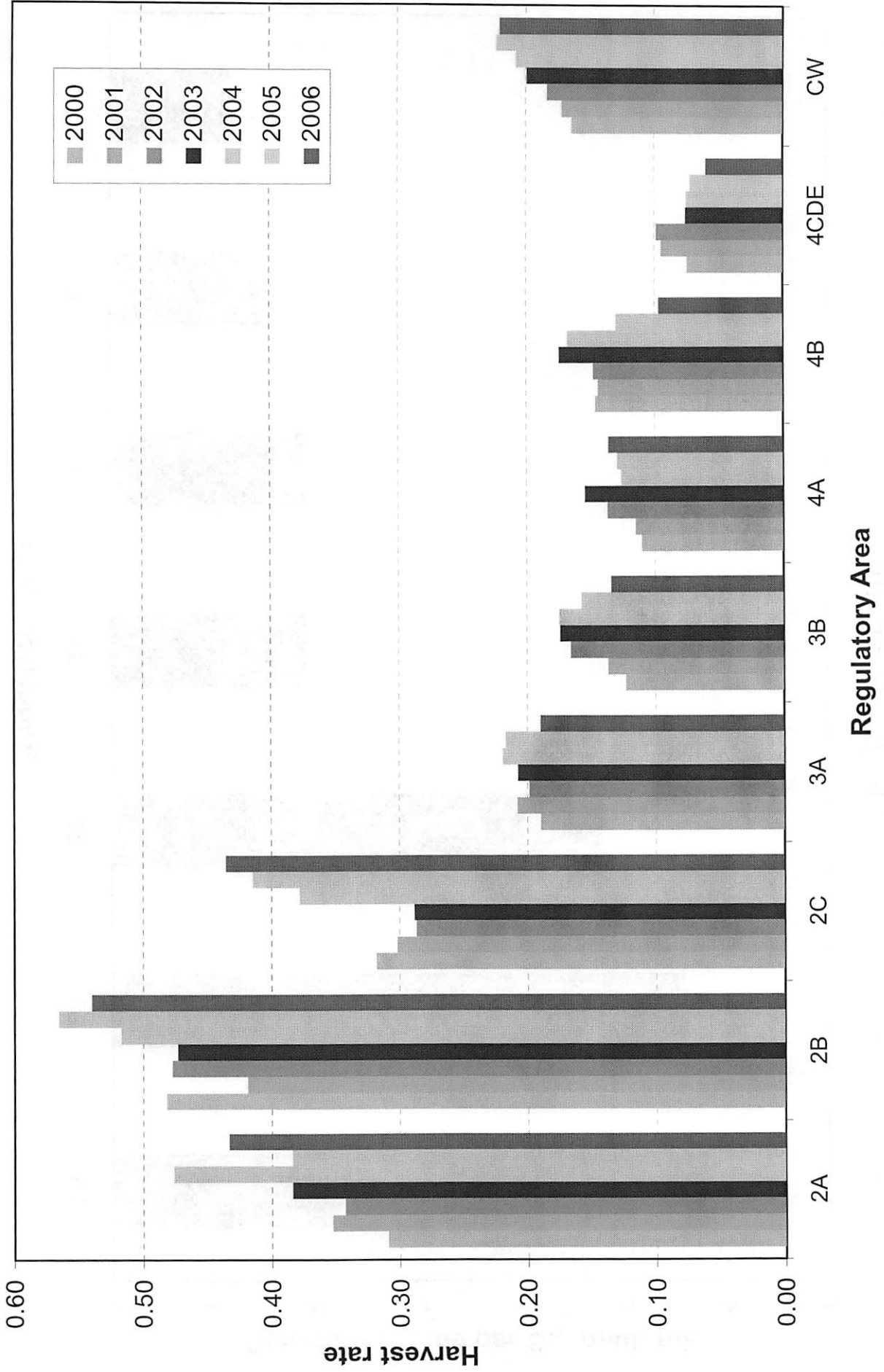
**Data are preliminary.**

**\*Does not include 0.469 Mlb crew fish for Area 3A**

# Fishing Intensity



# Realized harvest rates



# Coastwide Assessment Catch Limits

## [All Fisheries Adhere to Domestic Limits]

Reg Area	Exploitable biomass	Harvest Rate	Total CEY	2006 Other Removals	2006 Catch Limit	2007 Fishery CEY	2007 Catch Limit Recommendation	
<b>2A</b>	3.70	25.0%	0.93	0.27	1.38	0.66	<b>1.02</b>	1,4
<b>2B</b>	27.00	25.0%	6.75	0.53	13.22	6.22	<b>9.72</b>	2,4
<b>2C</b>	33.00	25.0%	8.25	3.27	10.63	4.98	<b>7.81</b>	4
<b>3A</b>	176.00	20.0%	35.20	7.57	25.20	27.63	<b>26.01</b>	3
<b>3B</b>	86.00	20.0%	17.20	0.43	10.86	16.77	<b>12.83</b>	3
<b>4A</b>	29.00	20.0%	5.80	0.57	3.35	5.23	<b>3.98</b>	3
<b>4B</b>	19.00	15.0%	2.85	0.29	1.67	2.56	<b>1.97</b>	3
<b>4CDE</b>	41.00	15.0%	6.15	2.30	3.55	3.85	<b>3.65</b>	3
<b>Total</b>	414.70	20.0%	83.13	15.23	69.86	67.90	<b>66.99</b>	

NOTE: Exploitable biomass from coastwide assessment, survey partitioning to regulatory area

<sup>1</sup> Catch limits and Fishery CEY for 2A includes commercial, sport, and treaty subsistence catches

<sup>2</sup> Catch limits and Fishery CEY for 2B includes commercial and sport catch

<sup>3</sup> Calculated as 2006 catch limit plus 1/3 of the difference between  
2007 Fishery CEY and 2006 Catch Limit

<sup>4</sup> Calculated as 2006 Catch Limit minus 50% of the difference between  
2007 Fishery CEY and 2006 Catch Limit

# 2007 Adopted Limits

<b>Millions of Pounds</b>					
<b>Reg Area</b>	<b>Coastwide Recomm</b>	<b>Conf Bd Recomm</b>	<b>Processor Recomm</b>	<b>Closed area Recomm</b>	<b>IPHC Adopted</b>
<b>2A*</b>	<b>1.02</b>	<b>1.34</b>	<b>1.02</b>	<b>1.34</b>	<b>1.34</b>
<b>2B^</b>	<b>9.72</b>	<b>11.97</b>	<b>9.72</b>	<b>11.97</b>	<b>11.47</b>
<b>2C</b>	<b>7.81</b>	<b>8.51</b>	<b>7.81</b>	<b>9.12</b>	<b>8.51</b>
<b>3A</b>	<b>26.01</b>	<b>26.01</b>	<b>26.01</b>	<b>26.20</b>	<b>26.20</b>
<b>3B</b>	<b>12.83</b>	<b>12.83</b>	<b>12.83</b>	<b>9.22</b>	<b>9.22</b>
<b>4A</b>	<b>3.98</b>	<b>3.98</b>	<b>3.98</b>	<b>2.89</b>	<b>2.89</b>
<b>4B</b>	<b>1.97</b>	<b>1.97</b>	<b>1.97</b>	<b>1.44</b>	<b>1.44</b>
<b>4CDE</b>	<b>3.65</b>	<b>3.65</b>	<b>3.65</b>	<b>4.10</b>	<b>4.10</b>
<b>Total</b>	<b>66.99</b>	<b>70.26</b>	<b>66.99</b>	<b>66.28</b>	<b>65.17</b>

**\*^Includes sport, tribal (in Area 2A only) and commercial fisheries**

# **Regulations Adopted I**

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## **Fishing periods and catch sharing**

- March 10 - November 15 for quota share fisheries.
- Area 2A commercial and treaty Indian fisheries will fall within adopted season.
- In 2A, a series of 10-h periods for the directed fishery.
- Endorse Management Councils' catch sharing plans.

# Regulations Adopted II

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- Sport fish possession limits on land and on the vessel in California is one daily bag limit.
- Date for managers of CDQ fisheries to report the amount of sublegal halibut retained in Areas 4D and 4E CDQ fisheries to be November 1.
- For the careful-release regulation, allow halibut that need to be measured to determine if legal size to be brought on board a vessel, and then returned to the sea with minimal injury if sublegal-sized.
- In Area 2B only on pilot basis, permit retention of halibut as bycatch during sablefish fishing with traps, provided IQ obtained, and subject to DFO restrictions on bycatch amounts.



# Regulations Adopted III

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- For Alaska, the prohibition on any mutilation or processing of sport-caught halibut which prevents the determination of the size or number of fish caught, applies only on board the catcher vessel.
- Take necessary action to restrict catch by recreational fisheries in Areas 2C and 3A so that the IPHC and NPFMC management targets are achieved.

# **Charter Harvest Control Options Identified by the NPFMC**

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1. One trip per vessel per day;
2. No retention by skipper and crew;
3. Annual catch limits of 4 or 5 halibut;
4. One fish bag limit for June, July, August, or entire season;
5. Trophy size limit for second fish of 45, 50, 55, or 60 inches;
6. A season closure date of August 15, 30, or September 15;
7. Charter fishery closure on specific day of the week (pick specific day); and/or
8. Minimum size limit of 32 inches.

# Evaluation of Charter Harvest Control Options I

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1. Pre-booking of clients renders Options 1 (vessel trips), 6 (season closures), and 7 (day of week closures) very disruptive. Previous analysis of Option 1 concluded savings would be minimal. While Option 7 could save up to 10% of the annual catch, its effect would be completely dissipated by the anticipated re-booking of clients to open days.
2. Option 3 (annual bag limit) previously analyzed by NPFMC and rejected for operational and cost reasons.
3. Option 2 (skipper/crew prohibition) likely to be implemented for 2007 by ADF&G.

# Evaluation of Charter Harvest Control Options II

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1. Options 4 (bag limit restriction), 5 (trophy fish restriction), and 8 (minimum size) were examined for value as potential savings measures. All measures have potential for savings but also have significant discard mortality issues, for which there are few data to estimate impacts.

# **Minimum Size Limit of 32 inches**

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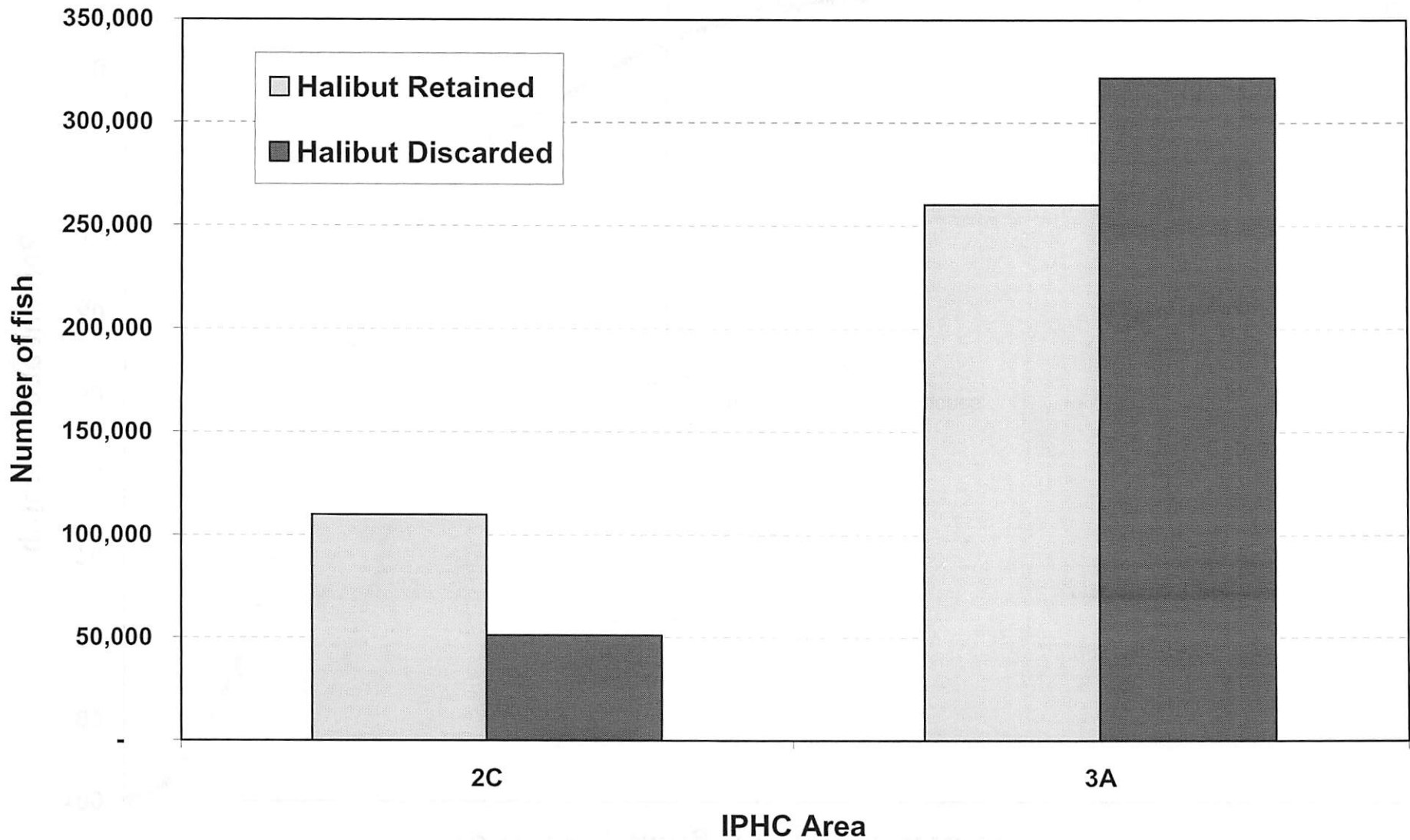
- Average weight of retained fish will increase and will require reduced total fishing effort to achieve any reduction in total catch.
- Present size composition of retained catch does not pose threat to resource productivity, although discards not well accounted for.
- Would increase rate of discarding and mortality of halibut within the recreational fishery.

# Trophy fish restriction

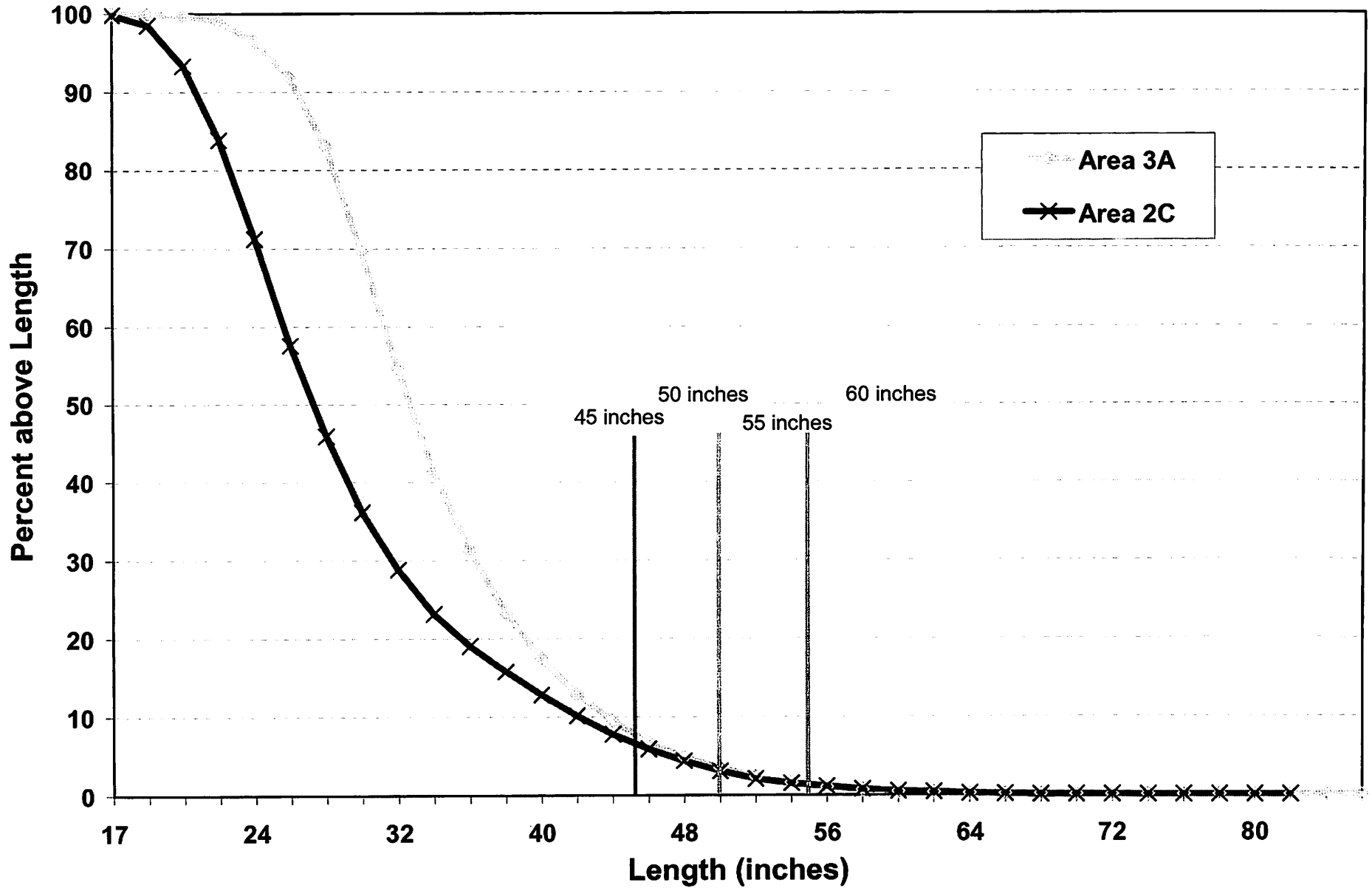
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- Savings similar to 1-fish bag limit at highest trophy size, without factoring in additional discard mortality.
- Catch of fish at trophy size will increase removals relative to 1-fish limit and would diminish savings, depending on frequency of capture for larger fish.
- Size frequency of halibut population indicates significant discard mortality would occur, increasing with trophy size.

## Kept and Discarded Halibut in 2006 Charter Fisheries (Source: Preliminary ADF&G Charter Logbook data)



# IPHC Survey Length Frequencies 2006





# Effect of One-fish Bag Limit

## % Reduction of Annual Charter Harvest by Month

Month	Area 2C			Area 3A		
	1998	1999	2006	1998	1999	2006
May	2	1	2	5	4	5
June	12	10	10	14	13	13
July	14	14	15	17	16	18
August	10	14	12	7	10	10
September	1	1	1	1	2	2
Full Year	39	40	40	44	45	47

Source: 1988-89 ADF&G charter logbooks (2001: NPFMC EA/RIR; 2006: preliminary ADF&G logbooks.

2006 Estimated charter harvests:

Area 2C      2.03 Mlb

Area 3A      3.97 Mlb

2006 Estimated GHL overages:

Area 2C      0.60 Mlb

Area 3A      0.32 Mlb

# Recreational Fishery Regulations Adopted

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- For Area 2C
  - From June 15 – July 31, implement a one-fish bag limit for charter and guided angling.
- For Area 3A
  - From June 15 – June 30, implement a one-fish bag limit for charter and guided angling.
- For Areas 2C and 3A: IPHC regulations apply until the effective date of domestic regulations that will achieve adherence to recreational catch limits.

# Discard Mortality Rate in Recreational Fisheries

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- Discard mortality rate of halibut in recreational fisheries is unknown.
- Aggregate rate used for commercial fishing is 16%.
- ‘Excellent’ condition halibut have 3.5% and ‘Moderate’ injury fish have 36% discard mortalities, respectively, in commercial fishery. Higher occurrence of J-hooks and different release expertise would likely yield higher mortalities in the recreational fisheries.
- Accurate estimation will require tag release-recapture study and take 2-4 yrs.
- Preliminary estimation based on condition factors and other fisheries data may be possible.

Pacific Fishing, Inc.  
P.O. Box 33  
Pelican, Alaska 99832

February 2, 2007

North Pacific Fishery Management Council

We support constraining the sport charter industry to the approved February 2000 guideline harvest levels for halibut. The Guideline Harvest Level (GHL) allocates halibut harvest fairly. It recognizes guided sport fishing is a commercial/business entity that must be controlled to prevent exceeding the GHL.

The significant, unrestricted, and unmanaged growth in the guided sportfish charter industry is causing harmful social and economic impacts to rural coastal communities. The growth in guided sportfish charter harvest is significantly and adversely impacting communities with close connections to commercial fishing, personal use, and subsistence use.

Our family and crewmembers rely on the commercial halibut longline fishery for income and long-term sustainable livelihood. The blatant open ended harvest of halibut by the charter fleet is an unauthorized reallocation of the halibut resource. The commercial fleet is undermined in their efforts to secure financial investments in vessels and fishing businesses. This has a trickle down affect on crewmembers, communities and processors.

Pelican, Alaska is traditionally a commercial fishing community. Many residents and their crew make a living fishing salmon and halibut. With fish processing resumed at Pelican Seafoods, much of the fish is processed locally. These local earnings are important to the numerous business entities that benefit from commercial fishing related transactions as fishermen maintain vessels, work on gear, purchase grub, supplies, bait, ice, fuel, utilize harbor moorage, restaurants, bars, airline services, and connection to transportation services. The commercial harvest's ex-vessel values are significant to Pelican, Alaska's economy and its continued sustainability.

Our local fishermen cannot understand the reasoning for a reduction in the commercial halibut harvest quota if the guided sportfish industry is allowed to continue unabated in their unregulated and unrestricted harvest of the halibut resource while they (the small boat commercial fleet) have to reduce their efforts.

The predominantly eastward migration of halibut is impeded by recreational harvest in 3A and 2C. It is critical the State of Alaska or NPFMC implement guided sportfish halibut harvest monitoring efforts to quantify harvest efforts by this industry. Rebuilding stock assessment models need to minimize harmful social and economic impacts to the traditional economic base of commercial fishing and the communities that are intricately linked to an abundant halibut resource.

Thank you for this opportunity to comment,

  
Patricia Phillips

  
James E. Phillips

## PUBLIC TESTIMONY

**LATE COMMENT**

January 29, 2007

I received and read the special issue of the *Charter Log* published by the Alaska Sea Grant Marine Advisory Program today.

First of all, I wonder why the charter client is being singled out for control. I would think it would be unconstitutional to target them for special regulations that don't apply to the rest of the sport, personal use and subsistence fishermen. Because they don't own their own boat or choose not to use their own boat as their fishing platform, has not meant they are not subject to the same restrictions and controls that apply to all other sport fishermen (even when the sport license is applied for by personal use and subsistence fishermen).

Secondly, I wonder why the charter industry in the North Pacific is being treated differently from the charter industry nation wide. I look at the *National Fisherman* magazine, and see how the commercial fishing industry has decimated the fish populations in the Eastern Banks and in the Western waters; and can only conclude that the commercial fishery in the North Pacific is attempting to claim ownership of the fish so they can do the same thing. They are granted an increase in their allocation by themselves through the NPFMC, while attempting to limit and eliminate other users of a public resource.

Thirdly, in the *Background* article of the special issue of the *Charter Log*, I see that catches of the sport fishermen have not approached the amount of waste of the commercial fishery. This seems to indicate that the NPFMC would rather see fish thrown away dead, than permit the sport fisherman to catch and use them. This seems to be a biologically unsound business practice.

The conclusion seems to be that the commercial fishery has come to monopolize a resource; and is merely demonstrating its power and its greed. The guideline harvest levels are an artificial limit that should reflect a percentage of the biomass, divided by the number of users. All sport fishermen, personal use fishermen and subsistence fishermen targeting the North Pacific resource are users, not just the commercial fishermen and their buyers and the charter industry and their clientele. If the commercial industry expands its market, other users should not have to reduce their percentage of the biomass. Disproportionate waste should not be equated as use.

The NPFMC should reevaluate the GHL percentages and the number of end users of the resource. It should be recognized that the charter industry cannot sell fish: the sport, personal use and subsistence fisherman is the end user.

In the *Approaches Currently under Consideration* article in the *Charter Log*, the **separate charter sector habitat allocation** seems to offer a good solution, given the reevaluation of the GHL percentage based on actual numbers of end users. Sport licenses can be issued for each day's fishing venture, rather than on a yearly basis - an adaptation of approach number 5. Of the various other measures, *floating GHLs* - if based on timely GHL percentages and number of end users - would seem viable.

Regarding the **Moratorium**, is it to be applied nationwide? The charter industry is a nationwide industry that has developed to fill a need by sport fishermen for fishing platforms wherever they choose to fish - whether for sport, personal use or for subsistence. The clientele using chartered boats are from all over the country - indeed, all over the world. **Community provisions** would certainly be necessary if the moratorium were to continue beyond significant population changes and changes in the sport, personal use and subsistence fishing demand for charter boats.

I would ask if Use caps are designed specially for the charter industry, or are they applied to other industries currently? Use caps seem to be an unfair restraint of trade, if they are unique to the charter industry. I am suspicious of *qualifying years*, as that is how I was eliminated from the commercial fishing industry (I only fished about 6000# a year, sold behind the boat, and thus had no 'tickets' for the qualifying years. Also, I was not as aware of the process, and did not make any effort to protest my elimination. Communication to a mobile population remains a problem).

It would be costly for the federal government to duplicate the state management of fisheries. As the sport, personal use, and subsistence fishermen come from every state; and, as every state manages its own fisheries; and, as every coastal state has a demarcation line between state waters and federal waters, it would seem natural that Alaska should have no more and no less authority over its fisheries than any other

state.

I appreciate the *Charter Log's* publishing *Sources of Information and Discussion*, as it is difficult at times to know what is going on and what to do when matters affecting my livelihood and well-being are being decided by remote organizations that do not have my well-being in mind.

I am a 67-year-old woman charter boat owner of moderate intellectual and physical abilities trying to stay alive without being too much of a burden on public resources, and

Sincerely Yours,

Leah W. Jenkin

POBox 2347

4850 Adams Drive

Homer AK 99603

[sealite@xyz.net](mailto:sealite@xyz.net)

# Prince William Sound Charter Boat Association

P.O. Box 90, Ester, Alaska 99725  
907-479-5562

North Pacific Fishery Management Council  
Stephanie Madsen, Chair  
605 W 4<sup>th</sup> Avenue, Suite 306  
Anchorage, AK 99501-2252

January 31, 2007

**LATE COMMENT**

RE: Agenda C-4 Halibut Moratorium for 5-13 Feb 07 Portland Meeting

The Prince William Sound Charter Boat Association fully supports the proposed moratorium using a control date of December 9, 2005 and more importantly the qualifying criteria set forward by the Stakeholders Committee. *The moratorium is the first step towards a long-term solution but is not a complete or permanent solution for the charter industry.*

Our priorities are:

1. Implement a Moratorium using the control date of December 9, 2005 and qualifying criteria set forward by the Stakeholder Committee.
2. Set the entry threshold for qualifying as high as possible of the 4 choices 5, 10, 15, or 20 day trips suggested by the Stakeholder Committee, to minimize the "Gold Rush" Speculators. We would suggest that a 15 bottomfish logbook trip day alternative be included in the analysis.
3. On Issue 10: Qualification Period: We support option 10.2 of the EA/RIR/IRFA analysis as being more in line with what was discussed at the Stakeholder Committee for determination of who is eligible for a permit or not. We believe that the Council will need to set a different number of qualifying bottom fish logbook trip days criteria between area 2C and 3A.
4. Issue 12: Community Provisions: We want to keep the community provisions simple to prevent slowing down the implementation of the moratorium. We believe that there needs to be an additional consideration besides the number of businesses and that is the number of permits that each business will receive for qualification of community permits. New permits in a community will be a burden to any charter business that currently exists and operates from that community. Also a "use it our loose it" concept should be attached to these permits. One of the biggest problems we have is latent capacity in the fleet in areas 3A and 2C, creating additional permits will be contrary to the entire halibut charter issue, which becomes very evident by the recent actions by the IPHC in creating a partial season 1 halibut limit in areas 3A and 2C.
5. Implementation Issues, 2.6.1 Permit eligibility: We support staff's comments and suggestion within the document to change the stakeholder wording from "year prior to implementation" to "year prior to final rule becoming effective".
6. Make Moratorium Final Action determination at the March 07 NPFMC Anchorage Meeting.
7. Move forward with analysis for the Permanent Solution at the March 07 meeting. Also must be fast tracked. We have all the catch history data needed to proceed with a permanent solution, the mechanism for implementation is all that is needed.

Speed is necessary here or this issue will fail again and put further hardship on charters and all other user groups.

Sincerely,



John Goodhand  
President, Prince William Sound Charter Boat Association

# Homer Charter Association

P. O. Box 148 Homer, Alaska. 99603 (907) 235-2282 phone/fax.

January 30, 2007

North Pacific Fishery Management Council  
Stephanie Madsen, Chair  
605 W 4<sup>th</sup> Avenue, Suite 306  
Anchorage, AK 99501-2252  
Fax 907-271-2817

LATE COMMENT

RE: Agenda C-4 Halibut Moratorium

The Homer Charter Association is a trade association representing 32 paid charter owner/operators participating in the guided halibut recreational fishery in the Homer area.

The membership fully supports the proposed moratorium using the control date of December 9, 2005. The moratorium is not a complete solution but will aid the council in identifying the most appropriate long-term solution for the charter industry.

Our comments on the initial review draft of the EA/RIR/IRFA analysis for a regulatory amendment to limit entry in Halibut Charter Fisheries in IPHC areas 2C and 3A follow:

1. Under item 10. Qualification Period, we would like to see the range of trips include a breakout showing 15 trips as the threshold.
2. Under Item 10. Qualification Period, Option 1. The text is currently written as: A business would be limited to the number of permits equal to the highest number of vessels used in any one year during the qualifying period. This should have a requirement that in the year prior to implementation the business is operating the same number of boats that it qualified for. In other words if the operator qualified for 2 boats but is only operating 1 boat in the year prior to implementation then he should be held to just 1 permit. There are many circumstances where a business will qualify for several boats but they are currently only operating 1. This should be applied to both Item 10 options 1 and 2.
3. Under Item 10. Qualification Period Option 1, and 2, we would also like to see an option that will allow someone who does not qualify for a permit due to being below the minimum number of trips threshold but who has demonstrated more than 5 years of continuous participation that they be exempt from the minimum threshold. In other words if a business has been chartering just a few trips each year, but he has been chartering for more than 5 years, he be exempt from the threshold requirement. This will allow those small operators to remain operating.

We feel with the above items included in the next draft EA/RIR/IRFA analysis, the council will be provided useful information not currently included. Thank you for this opportunity to include our concerns for your deliberations.

Most Respectfully,

  
Phil Warren

President



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January 30, 2007

N.P.F.M.C.

Stephanie Madsen, Chair  
North Pacific Fishery Management Council  
605 W. 4<sup>th</sup> Avenue, Suite 306  
Anchorage, Alaska 99501-2252

LATE COMMENT

Re: Halibut IFQ – Loss of Initial Issuee Status

Dear Ms. Madsen:

This will follow up on our recent conversation in which I mentioned that the NMFS, Restricted Access Management Division (RAM), has advised me that as a result of taking a loan under the agency's Halibut Sablefish Quota Share Loan Program, I am no longer permitted to hire a skipper to fish any of my halibut IFQ like other initial issuees. You suggested I write a letter explaining my situation.

In 1994, I qualified to receive quota share under the IFQ program and was issued an Initial Issuee Transfer Eligibility Certificate. As an initial issuee of IFQ, I was entitled to hire a skipper to fish IFQ derived from this quota share, under 50 C.F.R. § 679.42(i). I employed a skipper to fish my IFQ during the 2001 season, and anticipate doing so again as I have a medical condition that in the future may limit my ability work on board a vessel.

I currently hold two blocks of halibut quota share. One is a relatively small block of Area 3A, Class C, blocked quota share that I purchased in May 1997. The other is a larger block of Area 3A, Class D, unblocked quota share that I purchased in March 2001. I financed this purchase through a loan I obtained from National Bank of Alaska, and then refinanced it with a loan under the Loan Program. As a result of taking this loan, RAM recently advised me that I have lost my status as an initial issuee under the IFQ program and my right to hire a skipper to fish any IFQ I now hold or that I may acquire in the future.

RAM's position is based on the definition of "fishermen who fish from small vessels" found in Sec. 108(g) of the Sustainable Fisheries Act. RAM interprets this provision to require that a fisherman be on board his vessel when any IFQ he holds is fished, including IFQ derived from quota share that was not financed through, and thus has no connection with, the Loan Program. I disagree with this interpretation. To the extent this provision can be read to imply an owner-on-board requirement, it only applies to the harvest of IFQ derived from quota share financed under the Loan Program. I

January 30, 2007

Stephanie Madison, Chair  
North Pacific Fishery Management Council  
605 W. 4th Avenue, Suite 306  
Anchorage, Alaska 99501-2222

Re: Halibut IFQ - Loss of Initial Issue Status

Dear Ms. Madison:

This will follow up on our recent conversation in which I mentioned that the NMFS Restricted Access Management Division (RAM) has advised me that as a result of taking a loan under the agency's Halibut Subsidized Quota Share Loan Program, I am no longer permitted to fish a skipper to fish any of my halibut IFQ like other initial issues. You suggested I write a letter explaining my situation.

In 1994, I qualified to receive quota share under the IFQ program and was issued an initial issue Transfer Eligibility Certificate. As an initial issue of IFQ, I was entitled to have a skipper to fish IFQ derived from this quota share, under 50 C.F.R. § 679.42(b). I employed a skipper to fish my IFQ during the 2001 season, and anticipate doing so again as I have a medical condition that in the future may limit my ability to work on board a vessel.

I currently hold two blocks of halibut quota share. One is a relatively small block of Area 3A Class C, blocked quota share that I purchased in May 1997. The other is a larger block of Area 3A Class D, unblocked quota share that I purchased in March 2002. I financed this purchase through a loan I obtained from National Bank of Alaska, and then refinanced it with a loan under the Loan Program. As a result of taking this loan, RAM recently advised me that I have lost my status as an initial issue under the IFQ program and my right to fish a skipper to fish any IFQ I now hold or that I may acquire in the future.

RAM's position is based on the definition of "fishermen who fish from small vessels" found in Sec. 108(g) of the Sustainable Fisheries Act. RAM interprets this provision to require that a fisherman be on board his vessel when any IFQ he holds is fished, including IFQ derived from quota share that was not financed through, and thus has no connection with, the Loan Program. I disagree with this interpretation. To the extent this provision can be read to imply an owner-on-board requirement, it only applies to the part of IFQ derived from quota share financed under the Loan Program. I

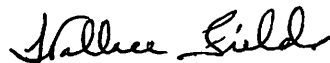
should remain free, just like other initial issuees, to hire a skipper to fish other IFQ I hold that was not financed through the Loan Program.

The Loan Program is administered by the NMFS, Financial Services Branch. When I applied for the loan in 2001, I was never advised that I would permanently forfeit my right to hire a skipper to fish any IFQ I may hold. I understood that I might be precluded from hiring a skipper to fish IFQ derived from the quota share I was financing, until the loan was paid off, but I was not told that other IFQ I held or may acquire in the future would be affected. I would never have taken the NMFS loan if I had understood that as a consequence, I would permanently lose the right to hire a skipper. I could provide you a more detailed account of the loan process and what I was (and was not) told, if that would be helpful.

I request that the Council ask RAM to clarify and support its position on this issue, as I suspect there are other fishermen who obtained a NMFS loan without realizing that their status as an initial issuee under the IFQ program could be in jeopardy. And if the Council believes that RAM's interpretation is incorrect, I urge you to so advise the agency.

Thank you for taking the time to consider this letter. I would be happy to provide additional information or answer other questions you may have.

Sincerely,



Wallace Fields

should remain free. Just like other initial issues, to hire a skipper to fish other HFO I hold that was not financed through the Loan Program.

The Loan Program is administered by the NMFS Financial Services Branch. When I applied for the loan in 2001, I was never advised that I would permanently forfeit my right to hire a skipper to fish any HFO I may hold. I understood that I might be precluded from hiring a skipper to fish HFO derived from the quota share I was financing until the loan was paid off, but I was not told that other HFO I hold or may acquire in the future would be affected. I would never have taken the NMFS loan if I had understood that as a consequence, I would permanently lose the right to hire a skipper. I could provide you a more detailed account of the loan process and what I was (and was not) told, if that would be helpful.

I request that the Council ask RAM to clarify and support its position on this issue, as I suspect there are other fishermen who obtained a NMFS loan without realizing that their status as an initial issue under the HFO program could be in jeopardy. And if the Council believes that RAM's interpretation is incorrect, I urge you to advise the agency.

Thank you for taking the time to consider this letter. I would be happy to provide additional information or answer other questions you may have.

Sincerely,

Walter Fields

**Juneau Charter Boat Operators Association**  
**P. O. Box 34522**  
**Juneau, Alaska 99803**

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LATE COMMENT

**2007 Board  
of Directors**

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*John Morrell  
Member at  
Large*

January 30, 2007

North Pacific Fishery Management Council  
605 West 4<sup>th</sup> Avenue, Suite 306  
Anchorage, Alaska 99501-2252

Dear Council Members,

The Juneau Charter Boat Operators Association (JCBOA) is working within the framework of this Council and the Stakeholders Committee to affect a permanent solution for guided sport halibut allocation. It is our desire that the NPFMC expedite this process to its fullest ability. Each year that this issue remains unfinished brings more instability to both sport and commercial halibut fisheries. We all need the NPFMC to act as soon as possible.

The JCBOA has taken the following positions on this issue:

1. We support a moratorium in the guided sport sector using the proposed cut off date of December 9, 2005 and implementation of a limited entry system.
2. We support a trip threshold for entry that is tailored separately to each management unit, 3A and 2C.
3. We support an ownership share based on the historic activities of the participants with consideration given to long time participants.
4. We feel that the guideline years and the success ratio used to establish an ownership share should be determined by an individual participant's actual catch history between 1998 - 2005 and not focused on a region wide average for one particular year or another.
5. The ownership share must be transferable and saleable between both charter and commercial users.
6. We believe this system must provide
  - o Easy tracking
  - o Room for growth
  - o In season and inter-season adjustments between participants
  - o A carry over system for small shortfalls and overages
7. We support a Halibut Stamp or other mechanism to help transfer commercial quota to the initial guided sport allocation and to help maintain room for charter industry growth and program management funding.

The JCBOA believes the Council has the necessary tools to make this decision at this time. We strongly believe this issue can be resolved this year through the Stakeholders Committee. We know that both the charter and the commercial halibut industry are behind a permanent solution.

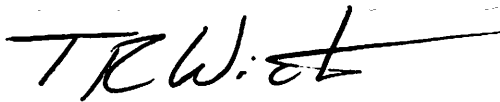
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**JAN 1950**

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The recent IPHC recommendation of a 1 fish limit through part of the 2007 season emphasizes the urgency of this matter. A 1 fish limit is an unacceptable client expectation. The impact of such a decision, will not only have dire consequences on those of us who have spent our lives building this industry, but it will send repercussions throughout Alaska's economy. We urge the North Pacific Fishery Management Council to act quickly on this matter so that we can stabilize the halibut fishery in Alaska, for commercial and recreational users alike.

Sincerely,



Todd Wicks, President  
Juneau Charter Boat Operator's Association

cc: Condoleezza Rice, Secretary, US Department of State  
Carlos Gutierrez, Secretary, US Department of Commerce  
Ted Stevens, Senator, United States Senate  
Lisa Murkowski, Senator, United States Senate  
Sarah Palin, Governor, State of Alaska  
James Balsiger, Regional Administrator, National Marine Fisheries Service  
Denby Lloyd, Commissioner, Alaska Department of Fish and Game  
Kelly Hepler, Director of Sport Fish, Alaska Department of Fish and Game  
Donna Bondioli, Executive Administrator, Alaska Charter Association