

## REGULATORY DEFINITIONS of CHARTER HALIBUT FISHING

### INTERAGENCY STAFF DISCUSSION PAPER February 2013

*Executive Summary:* In April 2012, the Council received a report from the Office of Law Enforcement highlighting a fishing practice in Area 2C that allows anglers to circumvent guided (charter) daily bag and size limits and allows operators to provide sport fishing guide services without the required Charter Halibut Limited Access Permit (CHLAP) for the Pacific halibut charter sector. The regulations defining charter anglers and operators is important for tracking and managing halibut harvest in Area 2C because charter anglers are subject to more restrictive daily bag limits than unguided anglers. Specifically, halibut fishing activities are subject to charter fishery restrictions under Federal regulations only if a guide is “onboard the vessel” with the charter angler and is providing “sport fishing guide services.” Beginning in 2011, law enforcement staff observed and received anecdotal reports of businesses offering “unguided” halibut fishing to anglers, where guides provide assistance to anglers for compensation from adjacent vessels or shore, presumably to circumvent the Federal regulations that limit charter halibut anglers. In general, State regulations would require that charter logbooks be filed for harvests by anglers receiving guide services from adjacent vessels or shore, because the state definition of “sport fishing guide services” does not require the guide to be aboard the vessel with clients. Based on this information, the Council requested a discussion paper to review the different Federal and State definitions of a charter guide in order to determine if the current Federal regulatory definitions used to determine charter fishing are consistent with its intent for management of the charter halibut harvests.

Two businesses each year from 2010 through July 2012 that submitted ADF&G charter logbooks are believed to have routinely offered guide-assisted halibut fishing that did not meet the Federal definition of “sport fishing guide services.” It is possible that more businesses engaging in this fishing practice have not been detected, but staff are unable to estimate the number based on available information. If the Council wishes to pursue a regulatory amendment to curtail this type of guide-assisted halibut fishing by what appears to be a small number of businesses, staff suggests that the analysis and development of such a regulatory amendment should include a review of relevant Federal and State regulations governing the definition of charter fishing activities to ensure a clear and consistent approach among CHLAP, State logbook, and charter harvest requirements and restrictions. Alternatively, the Council may choose to take no action at this time and reevaluate the need for action in the future since the CHLAP Program has been in effect for only two years.

## Background

In April 2012, the Council requested a staff discussion paper as a first step to determine if Council action is needed to address different State and Federal regulations defining when an angler is receiving guide (charter) services, in order to curtail business practices that may be inconsistent with Council intent. The Council requested further discussion of these regulatory differences based on a NOAA Office of Law Enforcement (OLE) report highlighting fishing practices in which guides have been observed providing assistance to anglers, likely for compensation, from adjacent vessels or shore. The persons providing assistance likely were not onboard a vessel with the anglers in order to circumvent Federal and International Pacific Halibut Commission regulations that limit charter anglers to a more restrictive daily bag limit than unguided anglers. Under Federal regulations, anglers are charter vessel anglers only if a person is "onboard the vessel" with the angler and that person is providing "sport fishing guide services."

In response, agency staffs have taken the following actions.

- 1) An interagency staff group met in May 2012 to review the relevant State and Federal regulatory definitions and to develop Federal regulatory revisions for the Council to consider (Appendix 1).
- 2) NOAA and State of Alaska staffs met in July 2012 to develop revised regulations for the Council to consider under a regulatory amendment (Appendix 2). The staffs recommended that if the Council determines that Federal regulations do not meet its intent for managing charter fishing activities, it could consider actions to:
  - a. Revise the Federal regulatory definition of "Sport fishing guide services" to remove the words "by being onboard a vessel."
  - b. Propose definitions for "compensation" and "assistance."
- 3) Federal and State charter halibut regulations were compiled and reviewed (Appendix 3).
- 4) ADF&G staff prepared a summary report of 2010-2012 logbook data for Area 2C (below).

## Design of the Charter Halibut Limited Entry Permit Program

The 2009 NMFS decision memorandum to the proposed rule for regulations to implement the CHLAP Program acknowledged that a shift to "unguided" angling could occur as a result of requiring the guide to be onboard the vessel. The memo specified that,

*"A charter vessel is a vessel used for hire in sport fishing for halibut, but does not include a vessel without a hired operator. The proposed action would not apply to an unguided or independent angler. . . . In its review of this proposed rule, NOAA General Counsel expressed concern regarding our intent to have this action apply only to charter operations that have the charter vessel guide on board the vessel. This may result in charter operators shifting their business model to unguided fishing boat rentals. Although this may in fact occur, I believe that this policy issue needs to be addressed through the Council process and in consultation with the State of Alaska before we consider broadening the scope of the regulations to encompass any sectors other than charter operations with a guide on board. Although State of Alaska regulations regarding sport fishing can be interpreted to apply more broadly than our intent with the proposed rule, I do not expect this difference to lead to substantial confusion for the sport fishing community because the Federal rules would clearly apply only to charter operations with a guide on board. Additionally, NMFS has not analyzed the effects of broadening the proposed rule to apply to various types of indirectly assisted recreational fishing operations. Our preliminary research into this issue suggests that it may be complex and controversial to define which types of entities could be affected by a broader*

*regulation. This supports exploring the matter further through the Council process rather than introducing it to the public through the proposed rule."*

The Council record for development of the CHLAP is silent on whether a guide must be onboard the vessel to be subject to charter halibut fishing regulations, but it was a likely presumption that the guide would be onboard and reasonable for NMFS to assume so in rulemaking under the CHLAP Program.

Federal regulations at § 300.61 include three definitions that are relevant for determining whether a CHP is required to be on board a vessel in Area 2C or Area 3A and also whether more restrictive charter daily bag limits apply to anglers on board the vessel. These definitions are "charter vessel angler," "charter vessel guide," and "sport fishing guide services." For purposes of regulations at §§ 300.65(d), 300.66, and 300.67:

1. "Charter vessel angler" means a person, paying or non-paying, using the services of the charter vessel guide.
2. "Charter vessel guide" means a person who holds an annual sport guide license issued by the Alaska Department of Fish and Game, or a person who provides sport fishing guide services.
3. "Sport fishing guide services" means assistance, for compensation, to a person who is sport fishing, to take or attempt to take fish by being on board a vessel with such person during any part of a charter vessel fishing trip.

NMFS interprets "services" in the definition of "charter vessel angler" to mean "sport fishing guide services" as defined at § 300.61.<sup>1</sup> Under this interpretation, a person who takes or attempts to take halibut would only be a charter vessel angler if that person is receiving sport fishing guide services from a charter vessel guide. Section 300.61 defines "sport fishing guide services" as assistance, for compensation, to a person who is sport fishing, to take or attempt to take fish by being on board a vessel with such person during any part of a charter vessel fishing trip. Therefore, a person would be a charter vessel angler only if that person is receiving assistance to catch and retain halibut from a charter vessel guide who is on board the same vessel and being compensated to assist the person to take or attempt to take halibut. A CHP is required to be on board a vessel in Area 2C or Area 3A if both of the following conditions are met: (1) One or more persons on board are catching and retaining halibut, and (2) a charter vessel guide on board the vessel is receiving compensation to assist a person to take, or attempt to take, halibut. A charter vessel guide is not required to have a CHP on board a vessel during a recreational halibut fishing trip on which he or she is not being compensated to provide assistance to persons catching and retaining halibut.

Compensation Compensation is generally defined as something given or received as payment or remuneration, as for a service. For purposes of the definition of "sport fishing guide services" at § 300.61, compensation is not strictly limited to a monetary exchange and can include a trade of goods or services in exchange for taking someone fishing. Therefore, assistance for compensation is not limited to situations where persons are directly compensating someone for sport fishing guide services. The definition of "sport fishing guide services" at § 300.61 does not require any person on board the vessel to be individually compensating the person providing assistance for this definition to be applicable. If the charter vessel guide is compensated in any way to provide assistance, then that charter vessel guide is providing sport fishing guide services under § 300.61.

NMFS recognizes that compensation for assistance can take many forms. For purposes of applying the regulations at §§ 300.61, 300.66, and 300.67, NMFS evaluates the specific circumstances of a fishing trip to determine if a charter vessel guide is receiving compensation for providing persons with assistance to take or attempt to take halibut. The lack of a Federal definition for "compensation" results in challenges for Federal enforcement staff and for the public.

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<sup>1</sup> <http://www.alaskafisheries.noaa.gov/frules/76fr19708.pdf>

Federal staff considers Federal regulations to include third party compensation (i.e., the compensator does not have to be part of the fishing trip) as compensation to a charter vessel guide for purposes of determining whether halibut fishing activities are subject to charter fishery restrictions. While ADF&G and the Department of Public Safety consider third-party compensation to be "guided," State regulations do not explicitly state this. ADF&G and the Department of Public Safety staffs jointly submitted a proposal to the Board of Fisheries for the 2012/2013 proposal cycle to clarify that the intent is to include all types of remuneration. The proposed language would define compensation for sport fishing to include third party compensation as well as non-monetary compensation (remuneration), but exclude reimbursement for fuel, supplies, etc. The proposed State of Alaska definition for compensation as it relates to sport fishing guide services is as follows:

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

Federal enforcement staff, however, identified the State's proposed definition of compensation as it relates to sport fishing guide services places the burden on enforcement staff to determine "actual" daily expenses. Deletion of "actual" in the text proposed above may resolve the difficulty or adding "reasonable" may provide a little more leeway to enforcement staff.

Assistance In the July 2012 discussion, Federal enforcement staffs also suggested that the regulations define "assistance," but proposed language has not yet been developed for Council consideration. Or rather than defining the term, some examples of assistance that should be considered guiding may be more useful. An example of assistance would be "including a handheld GPS unit containing coordinates for fishing locations."

#### **Potentially Affected Entities**

An unknown number of charter operations in Area 2C and Area 3A provide guide-assisted halibut fishing that meets the State definition of sport fishing guide services, but does not meet the Federal definition. The Federal definition is more specific than the State definition in that it requires the guide to be on the same vessel as the charter halibut angler (client). The ADF&G charter logbook program and guide and business licensing program do not track various business models. However, ADF&G requires that all fishing that meets the State's definition of sport fishing guide services be recorded in logbooks.

For Area 2C, the difference between charter and noncharter halibut bag limits was used to get an idea of the prevalence of this type of operation in recent years. ADF&G charter logbook data were summarized for all instances of reported daily halibut harvests of two halibut per person 2010, 2011, and through July 31, 2012. During this period, the charter halibut daily bag limit in Area 2C was one halibut, while the noncharter daily bag limit was two halibut. The underlying assumption in this analysis is that a charter business would be unlikely to routinely allow harvest of two halibut per client unless that business was confident that their clients did not meet the Federal definition of a "charter vessel angler." These data give a general indication of the number of businesses in Area 2C that provided guide-assisted halibut fishing that did not meet the Federal definition of sport fishing guide services (because the guide is not on board the same vessel as the angler), but did meet the more general State definition.

In 2010, 34 businesses in Area 2C reported at least one instance of an angler harvesting two halibut per angler (Table 1). All but two businesses reported eight or fewer instances of an angler harvesting two halibut per day, and 17 of these businesses reported exactly one instance. Seven businesses reported

instances of anglers harvesting two halibut per day that made up more than 5% of their total angler-days for the year. However, five of these seven businesses reported less than 40 angler-days in total for the year. It is assumed that occasional or rare reports of two halibut per angler represent reporting issues rather than guide-assisted halibut fishing. *Therefore, only two businesses that completed logbooks are believed to have routinely offered guide-assisted halibut fishing that did not meet the Federal definition of guide services in 2010.*

**Table 1. Summary of sport charter businesses that reported harvests of two halibut per person from Area 2C waters in 2010, 2011, and through July 31, 2012.**

Year	Total number of businesses reporting at least one angler-day with harvest of 2 halibut	Number of businesses with more than 5% of angler-days reporting harvest of 2 halibut	Number of businesses that likely met State, but not Federal, definition of guided
2010	34	7	2
2011	25	3	2
Jan – Jul 2012	20	3	2

The data were similar for 2011<sup>2</sup> and 2012. In 2011, 25 businesses in Area 2C reported at least one instance of an angler harvesting two halibut (Table 1). Twenty businesses reported the same through July of 2012. In both years, only three businesses reported instances of anglers harvesting two halibut that made up more than 5% of all angler-days.

Of the two businesses in 2012 that appear to have routinely offered guide-assisted halibut fishing not meeting the Federal definition of guide services, one does not hold CHPs. Anglers fish from an unknown number of skiffs. The business has two “chase boats” with guides on board that assist and direct the anglers for compensation, but the anglers are not on the same vessel as the guide. ADF&G requires that only the chase boats be registered as guide vessels. All logbook data for anglers in the skiffs are recorded in logbooks assigned to the chase boats. Therefore, from logbook data it appears this business has only two vessels, whereas the anglers are fishing on more than two skiffs.

The second business has two vessels and holds a single CHP that was issued in 2011. It appears from the data that, although this business holds an Area 2C CHP, it sometimes assists anglers in catching halibut in a manner that does not meet the Federal definition of guiding (but does meet the State definition) in order to allow anglers to harvest two halibut of any size per day (in excess of the charter halibut daily bag and size limits).

Across all years, logbook data indicate that three individual businesses may have routinely offered guide-assisted halibut fishing that did not meet the Federal definition. These businesses reported that a substantial percentage of anglers harvested two halibut (20-48% in 2010 and 2011), and two of these businesses had frequent communication with ADF&G staff regarding their business model and reporting requirements. For all other businesses, either the number of anglers that harvested two halibut was small ( $\leq 9$ ) or the proportion of anglers that harvested two halibut was small (less than 6%). Some of these reports could be guide-assisted fishing, but is too rare to be called “routine.” Although some unknown portion of these instances could also be bag limit violations, many are probably data recording errors such as reporting other species in the halibut column, or incorrectly reporting the statistical area. One business with a CHP for Area 3A often reported statistical areas in Area 2C. This was not necessarily a regulatory violation or reporting error because ADF&G logbooks only require reporting the ADF&G statistical area where most of the bottomfish were caught or targeted. A charter vessel with an Area 3A

<sup>2</sup> CHPs were required beginning in 2011.

CHP could take anglers to Area 3A to harvest two halibut, but then fish in Area 2C for other bottomfish species for the majority of the trip. In that case, the vessel would correctly report an ADF&G statistical area that was in Area 2C, even though the halibut were harvested from Area 3A.

For Area 3A, businesses that may have exploited the "loophole" in the Federal definition were identified using logbook data where halibut were reported harvested but no CHP number was reported. The logic behind this was that harvest reporting was required under State regulations, *but no CHP would have been needed*. In 2011, 14 businesses made at least one trip with halibut harvested and no CHP number recorded. Of these 14 businesses, 12 made only one trip with halibut harvest and no CHP reported. All but one of those businesses had CHPs and recorded the CHP number on all other trips with halibut harvest. Of the 14 total businesses, two appeared to not have CHPs, but combined they comprised only six trips with halibut harvest. In summary, logbook data for Area 3A did not clearly identify any businesses that routinely reported trips in which halibut were harvested but no CHP number was recorded.

There also are businesses that provide both guided halibut fishing (with a CHP) and unguided halibut fishing. *If the unguided halibut fishing does not involve guides physically directing the anglers on where or how to fish for compensation, such fishing does not meet either the State or Federal definition of guiding, and there are no logbook or other data to indicate the magnitude of that practice.* These include the following.

- Motherships serve or carry one or more smaller unguided boats. They also recover the smaller craft but do not assist the anglers after releasing the craft. No compensation for guiding occurs.
- Land-based or floating lodges may provide boats without guides, with no compensation specifically for guiding. In some cases, the angler may fish on a charter boat the first day, and then fish from an unguided skiff on subsequent trips.
- Outfitters may provide boats, gear, remote lodging, and fishing advice, but not fishing assistance for compensation during the fishing trip.

### **Proposed Federal Definition**

If the Council wishes to proceed with a regulatory amendment to better align Federal and State regulations for defining charter fishing, it could suggest removing the words "*by being onboard a vessel*" from the definition of "sport fishing guide services" from Federal regulations (50 CFR 300.61).

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

If text is revised (as noted above), then all Federal and State regulations governing charter fishing would need to be reviewed to ensure that they are clear and consistent among CHLAP, State logbook, and charter harvest requirements and restrictions. One example of additional regulatory text that likely would need to be changed is the requirement that "any operator of a vessel with one or more charter vessel anglers catching and retaining Pacific halibut *on board a vessel* must have *on board the vessel* an original valid charter halibut permit or permits.....and endorsed for at least the number of charter vessel anglers..." 50 CFR 300.67(a)(1). Other examples would need to be addressed in the development of proposed regulatory text for analysis.

### **Next Steps**

If the Council requests an analysis of the proposed definition to revise Federal regulations, the analysis would include a *de facto* requirement for a business providing guided services for harvesting halibut to hold a CHP (i.e., businesses would have to change their fishing practices). The Council could request

Federal Enforcement staffs to provide proposed language to define compensation and assistance, unless such definitions would create new conflicts with State definitions.

**Contributors**

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## **Appendix 1. Interagency staff meeting to discuss charter halibut management issues**

**May 14, 2012**

An interagency group convened on May 14, 2012 to review legal, enforcement, and policy issues related to charter halibut management issues that arose in early 2012. The staffs discussed four policy issues in order to assist in the Council in its consideration of possible regulatory changes to charter halibut management. Two charter halibut management issues were raised during the April 2012 Council meeting. Two other issues were discussed by the Charter Management Implementation Committee in April 2012, but were not addressed by the Council.

### **ISSUE 1. Regulations Defining a Charter Guide**

The Council requested a discussion paper to address different Federal and state definitions of a charter guide. This request resulted from information provided to the Council during an Office of Law Enforcement report in April 2012 and in public testimony during previous Council meetings. The Council expressed interest in amending the Federal definition of charter fishing to curtail what is essentially guided fishing by entities that do not hold a CHP. There are two types of entities currently providing guided halibut services: 1) CHP holders; and 2) those that do not hold CHPs and provide *de facto* halibut guide services. Changing the Federal definition to prohibit the latter would require them to either: 1) obtain a CHP or 2) change their fishing operations so that they do not meet the new Federal definition of guiding.

ADF&G requires licensed guides that are *compensated for providing assistance to clients to catch halibut* to report that halibut catch in the logbook. These guides may or may not have a Federal CHP. The 2011 ADF&G logbook data could be examined to determine the number of charter businesses or vessels that reported harvests of 2 halibut per client in Area 2C; these are either enforcement violations or instances of businesses that are exploiting the Federal definition to circumvent the CHP requirement or bag or size limits. While logbook data may be used to identify some operators that have exploited the loophole, it would not identify the number of operators that are exploiting the loophole, but did not report those halibut harvests in the logbook.

The staffs discussed the specifics of the charter LEP program as it related to different charter guide definitions in Federal and state regulations. NOAA General Counsel staff reported that the February 25, 2009 decision memorandum for the CHP proposed rule clarifies their viewpoint that a regulatory change would *add new entities to the CHP Program*. The staffs concurred that the discussion paper should review the record for how/who got CHPs, as described in the decision memo.

State staff identified that the State regulatory definition addressed who would be providing services and that changes to the Federal definition would *not* add new entities to the CHP, but would close a loophole that allows fishing practices that are counter to Council intent. Council staff concurred.

### **Recommendations**

*The staffs concurred that common language for defining these responsibilities under State and Federal regulations is the goal. While it would be wise for Federal regulations to mirror state regulations it may be necessary to diverge in language, but not diverge functionally.*

### **Next steps**

1. Federal and state staffs will develop new regulatory language for consideration by the Council.
2. Council staff, in consultation with Federal and state staffs, will develop a discussion paper for review by the Council.



## **ISSUE 2. Reporting and marking requirement for Guided Angler Fish<sup>3</sup>**

The Council adopted written language and then verbally corrected it, without changing the written language (below) (staff noted that the verbal correction [i.e., "skipper"] may not be accurate either). The analysis will address who would be responsible for a) marking the GAF and b) reporting the GAF lengths.

*"Include a requirement for anglers to mark GAF by removing the tips of the upper and lower lobes of the tail and report the length of retained GAF halibut to NMFS through the NMFS approved electronic reporting system." [emphasis added]*

The agency staffs identified two issues that are embedded in regulating who marks a GAF and who reports its harvest:

- a) Legal issues
- b) Policy issues

Legal issues relate to who owns the fish and who is responsible for marking and reporting a GAF under a GAF permit. NOAA staff identified that the primary responsibility for compliance lies with angler, and secondly with the CHP holder. Staff discussed "ownership" of the fish, and that while a charter operator would be selling an opportunity (or limiting one) to GAF, recording by a charter operator is where the responsibility lies in reality, as an angler is hiring a charter LEP holder to guide him/her through legal requirements to fish in Alaska. The staffs also discussed whether marking requirements would disfigure a trophy so that it could not be professionally mounted but it was noted that fiberglass can fill in the cut fin lobes.

Ultimately NOAA staff identified that it would be appropriate for the Council to require that the guides mark GAF, as the angler is hiring the guide to be the local expert on rules and requirements for halibut fishing.

## **ISSUE 3. Prohibition on Charter Halibut Permit Leasing of Non-Transferable Permits<sup>4</sup>**

The staffs briefly discussed a NMFS discussion paper on commercial IFQ leasing issues, which is scheduled for a future review by the Council, and a related December 2010 charter leasing permit discussion paper, which identified myriad implementation issues with defining leasing in the charter halibut sector. Staff noted a possible solution to the potential leakage of CHPs that were intended to be non-transferable, but which function as transferred CHPs (i.e., CHPs that are used by entities to whom they were not initially issued) would be to sunset (i.e., revoke) "non-transferable" CHPs at a time in the future that those non-transferable CHP holders might be expected to no longer be operating their business (e.g., 10 years, 20 years) in order to extinguish non-transferable CHPs. A pending NMFS RAM report on CHP implementation statistics may be useful in any future discussions on this issue.

## **ISSUE 4. Allow an Entity Representing Charter Halibut Permit Holders To Hold (Purchase) Commercial Halibut QS for Use as GAF**

The staffs felt that the Catch Accountability Through Compensated Halibut (CATCH) proposal would result in a simple amendment to Federal regulations to identify a new type of entity that may hold and use halibut quota shares in the charter sector in order to increase the sector's allocation. It would be a policy decision for the Council on whether to amend Federal regulation in anticipation that funding would be found to fund those QS purchases or whether the Council preferred to see a funding

<sup>3</sup> This issue was addressed by the Council during adoption of its Preferred Alternative in October 2012.

<sup>4</sup> In December 2012, the Advisory Panel adopted a motion that recommended that the Council request staff to prepare a discussion paper that would explore possible mechanisms for reducing or eliminating non-transferable charter permits; the Council did not adopt the AP recommendation.

mechanism in place before taking action. The Council has acted proactively in developing the commercial Community Quota Entity Program and issuing charter LEPS to communities.

**Participants**

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## Appendix 2. Interagency staff meeting to discuss charter halibut management issues

July 24, 2012

**Attending:** Julie Scheurer, Rachel Baker, Special Agent Ron Antaya, Susan Auer, Gwen Herrewig, Scott Meyer, Nicole Kimball, Capt. Burke Waldron, Lt. Bernard Chastain

**Purpose:** In April 2012, the Council issued a memo to request a discussion paper about what would be needed to close the loophole in Federal regulations that results in fishing practices that are "inconsistent with Council intent." Specifically, as written, the Federal regulations result in halibut fishing activities being subject to charter fishery restrictions only if a charter vessel guide is "onboard the vessel." This onboard requirement allows guides to provide "sport fishing guide services" from adjacent vessels or shore, thereby circumventing the Charter Halibut Permit requirement and the reduced bag limit for charter vessel anglers in Area 2C.

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JS asked a question about why crew members are excluded from the definition of sport fishing guide services. RA said that this was so that crew members are not required to have guide licenses. There must be a guide onboard for a second person to be considered crew. A crew member without a guide would be considered the guide.

SM pointed out that the 2008 Federal definition of "sport fishing guide services" was more like the state's definition in that it did not specify that the guide must be onboard. SA believed that it was a mistake that the onboard language was included in the 2010 Federal definition based on a misunderstanding of how the state was enforcing the regulations. RA suggested that removing the words "by being onboard a vessel" from the definition of "sport fishing guide services" (50 CFR 300.61) would better align Federal and state regulations

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

This led into a discussion about what constitutes compensation to a charter vessel guide. Most agreed that a discussion of compensation should be included in the white paper being prepared by Council staff. RA noted that the lack of a definition for compensation results in challenges for enforcement staff and for the public. The state is proposing a definition of compensation for sport fishing to include 3<sup>rd</sup> party compensation (i.e., the compensator does not have to be part of the fishing trip) for the 2012/2013 Board of Fisheries cycle. Federal staff consider Federal regulations to include 3<sup>rd</sup> party compensation as compensation to a charter vessel guide for purposes of determining whether halibut fishing activities are subject to charter fishery restrictions.

The proposed state definition for compensation is adapted from the one in place for big game at 12 AAC 75.940 which states:

*For the purposes of "compensation" as defined in AS 08.54.790, "payment for services" includes receiving remuneration, directly or indirectly, for any provision of services, equipment, or facilities in the field to a person who, in fact,*

- (1) engages in big game hunting; and*
- (2) uses or benefits from the services, equipment, or facilities.*

The proposed state definition does not discuss non-monetary compensation and would not include reimbursement for fuel, supplies, etc. as compensation. The proposed definition for compensation as it relates to sport fishing is as follows:

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

SA noted that the 2011 "friends and family" interpretive rule resulted in additional enforcement challenges with current Federal regulatory definitions and these should be included in the discussion paper. RA reiterated for JS that you can't have a split trip with some guided and some unguided anglers. It's all or nothing.

Another problem that was brought to light is that of guides providing guide services for other purposes (e.g., whale watching, salmon fishing), but claiming to not be guiding for halibut. RA clarified that catch and release in these cases is OK, but retention of a halibut would trigger the need for a CHP.

Yet another issue that warrants further analysis in the discussion paper is defining the line between guiding and giving friendly fishing advice. State regulations use the term "physically directing" while Federal regulations use the broader term "assisting." Discussion ensued, with the state enforcement position that physically directing had to be more than just pointing anglers to a particular location, and needed to include activities like rigging lines, baiting hooks, netting fish, etc. Another interpretation brought things back around to the compensation issue; if someone is giving fishing advice for compensation, then that should be considered guiding. It would be useful to more clearly define what constitutes assisting or physically directing.

An example was given of an operation in Petersburg that takes clients by boat to a floating cabin and skiff. Clients are given a GPS with coordinates to the fishing location, but otherwise the clients are unassisted. The state would not consider this guiding because the guide is not physically directing the clients. The Division of Wildlife Troopers and ADF&G are in general agreement that providing GPS coordinates, fishing gear, and a skiff do not constitute "physically directing," and instead consider these activities to be "outfitting."

GH brought up the potential problem for self-guided business models that were in place before the CHP program was implemented, but did not apply for or receive CHPs. Tightening the Federal definition of guiding could force these businesses to need CHPs. Would we reopen the application period for them? Issue grandfather CHPs to these businesses? It is unclear how many businesses would be affected. SM suggested asking the charter fleet for input. RB was under the impression that this business model was not widely used in Area 2C before the CHP was in place. John Lepore indicated in a May 2012 interagency staff teleconference that any regulatory action that would affect these "self-guided" business models would need to be thoroughly analyzed using the best available information.

In summary, we identified 3 issues that should be addressed in the discussion paper staff are preparing for the December Council meeting:

1. Remove the words "by being onboard a vessel" from the Federal definition of "Sport fishing guide services."
2. Include a discussion and proposed definitions for "compensation."
3. Align and better define definitions of "assisting" or "physically directing."

## APPENDIX 3a. CURRENT FEDERAL REGULATIONS

Current Federal regulations define a charter vessel guide as either a person who:

1. holds an annual sport guide license issued by the Alaska Department of Fish and Game, or
2. provides sport fishing guide services.

To provide sport fishing guide services, a person must (1) provide assistance, for compensation, to a person who is sport fishing, to take or attempt to take fish, and (2) **be onboard a vessel with such person during any part of a charter vessel fishing trip.**

### Relevant charter halibut regulatory definitions

The following Federal regulatory definitions were originally implemented by the 2009 rule implementing a one-fish daily bag limit for charter vessel anglers in Area 2C (emphasis added). Track changes markup indicate revisions made to definitions by the 2010 final rule implementing the Area 2C and Area 3A charter halibut limited access program.

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

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

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

### Other relevant definitions

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

*Charter vessel operator*, for purposes of §300.65(d), means the person in control of the vessel during a charter vessel fishing trip.

*Crew member*, for purposes of §§300.65(d), and 300.67, means an assistant, deckhand, or similar person who works directly under the supervision of, and on the same vessel as, a charter vessel guide or operator of a vessel with one or more charter vessel anglers on board.

## APPENDIX 3b. Federal Definitions at 50 CFR Part 300: a reverse chronology

2010:

**Current Federal Definitions (as amended from 2009 regs by the 2010 charter halibut limited access program (75 FR 554; January 5, 2010))**

*Charter halibut permit* means a permit issued by the National Marine Fisheries Service pursuant to §300.67.

*("Charter vessel" definition removed)*

*Charter vessel angler*, for purposes of §§300.65(d), 300.66, and 300.67, means a person, paying or non-paying, using the services of a charter vessel guide. *(This differs from 2009 language only in the addition of the 300.66 and 300.67 references.)*

*Charter vessel fishing trip*, for purposes of §§300.65(d), 300.66, and 300.67, means the time period between the first deployment of fishing gear into the water from a vessel after any charter vessel angler is onboard and the offloading of one or more charter vessel anglers or any halibut from that vessel. *(This differs from 2009 language only in the addition of the 300.66 and 300.67 references.)*

*Charter vessel guide*, for purposes of §§300.65(d), 300.66 and 300.67, means a person who holds an annual sport guide license issued by the Alaska Department of Fish and Game, or a person who provides sport fishing guide services. *(This differs from 2009 language only in the addition of the 300.66 and 300.67 references.)*

*Charter vessel operator*, for purposes of §300.65(d), means the person in control of the vessel during a charter vessel fishing trip.

*Crew member*, for purposes of §§300.65(d), and 300.67, means an assistant, deckhand, or similar person who works directly under the supervision of, and on the same vessel as, a charter vessel guide or operator of a vessel with one or more charter vessel anglers on board. *(This differs from 2009 language by adding reference to 300.67 and adds the language "...or operator of a vessel with one or more charter vessel anglers on board.")*

*Sport fishing guide services*, for purposes of §§300.65(d) and 300.67, means assistance, for compensation, to a person who is sport fishing, to take or attempt to take fish by being onboard a vessel with such person during any part of a charter vessel fishing trip. Sport fishing guide services do not include services provided by a crew member. *(This differs from 2009 language only by adding reference to 300.67.)*

### **Rationale for removing "Charter vessel" from § 300.61:**

(p. 559) "The IPHC regulations at section 3 of the annual management measures include definitions of terms, some of which are related to this action, such as "charter vessel" and "sport fishing." This action removes a different definition of "charter vessel" from 50 CFR 300.61 that could have raised a conflict question. The definition of the term "charter vessel" at 50 CFR 300.61 resulted from a final rule published September 24, 2008 (73 FR 54932), for purposes of a prohibition against using a charter vessel for subsistence fishing for halibut. This action integrates the definition into the prohibition language to which it directly applies at 50 CFR 300.66(i) to clarify that the definition does not apply universally. The universal definition of "charter vessel" will continue to be that used by the IPHC and appearing in the annual management measures. Hence, no conflict is found between this action and the IPHC regulations concerning this definition."

**2009:**

**Regulatory text from 2C one-fish final rule (74 FR 21194; May 6, 2009)**

2. In § 300.61, add definitions in alphabetical order for "Area 3A," "Charter vessel angler," "Charter vessel fishing trip," "Charter vessel guide," "Charter vessel operator," "Crew member," and "Sport fishing guide services," and revise the definition for "Guideline harvest level (GHL)" to read as follows:

**§ 300.61 Definitions.**

\*\*\*\*\*

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

*Charter vessel fishing trip*, for purposes of § 300.65(d), means the time period between the first deployment of fishing gear into the water from a vessel after any charter vessel angler is onboard and the offloading of one or more charter vessel anglers or any halibut from that vessel. (*Differs from 2008 language which specified "charter vessel" instead of any vessel.*)

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

*Charter vessel operator*, for purposes of § 300.65(d), means the person in control of the vessel during a charter vessel fishing trip.

\*\*\*\*\*

*Crew member*, for purposes of § 300.65(d), means an assistant, deckhand, or similar person who works directly under the supervision of and on the same vessel as a charter vessel guide.

\*\*\*\*\*

*Sport fishing guide services*, for purposes of § 300.65(d), means assistance, for compensation, to a person who is sport fishing, to take or attempt to take fish by being onboard a vessel with such person during any part of a charter vessel fishing trip. Sport fishing guide services do not include services provided by a crew member. (*This differs from the 2008 language. It changes "...to take a fish by accompanying or directing such person who is sport fishing..." to "to take fish by being onboard a vessel with such person..."*)

\*\*\*\*\*

**Rationale from 2C one-fish proposed rule (73 FR 78276; December 22, 2008)**

(p. 78279) "A new definition is proposed in this action for charter vessel fishing trip which describes the period from the first deployment of fishing gear from a charter vessel until the offloading of any charter vessel angler or halibut. Also, an existing definition of charter vessel (at § 300.61) describes such a vessel as one used for hire in sport fishing for halibut, but not including a vessel without a hired operator. Hence, the effect of the proposed regulation would be the same as that intended by the Council, which is to prohibit retention of halibut caught by the guide, skipper, and crew on a charter vessel, but not to impose this restriction when no clients or charter vessel anglers are onboard. A vessel without clients or paying anglers onboard is, by definition, not a charter vessel. Therefore, guides, skippers, and crew would not be prevented from sport fishing for halibut for themselves when they are not on a charter vessel fishing trip."

**2008:**

**Definition of "charter vessel" revised through a rule modifying the subsistence halibut program (73 FR 54939; September 24, 2008).**

**§ 300.61 Definitions.**

\*\*\*\*\*

*Charter vessel*, for purposes of § 300.65, means a vessel that is registered, or that should be registered, as a sport fishing guide vessel with the Alaska Department of Fish and Game. (*Note that this definition was removed by the final rule for the limited access program in 2010*)

**Final rule (later rescinded) (73 FR 30504; May 28, 2008) for 1-fish in 2C, would have added definitions as follows:**

\* \* \* \* \*

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

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

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

*Charter vessel operator*, for purposes of § 300.65(d), means the person in control of the vessel during a Charter vessel fishing trip.

*Charter vessel services*, for purposes of § 300.65(d), means the use of a vessel by a charter vessel guide to provide assistance for compensation to a person who is sport fishing from that vessel.

\* \* \* \* \*

*Crew member*, for purposes of § 300.65(d), means an assistant, deckhand, or similar person who works directly under the supervision of and on the same vessel as a charter vessel guide.

\* \* \* \* \*

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

\* \* \* \* \*

*(Note that the final rule added several definitions that were not in the proposed rule.)*

**Rationale given in final rule for revising and adding new definitions:**

(p. 30521) "Three definitions are revised (charter vessel angler, charter vessel fishing trip, and charter vessel guide) (*although these weren't in the regulatory text yet, they were just proposed in the PR for this action*) and four definitions are added (charter vessel operator, charter vessel services, crew member, and sport fishing guide services) to clarify limitations and recordkeeping and reporting requirements. These revised and added definitions are derived from State of Alaska definitions used to define guided sport fishing activities and are intended to clarify who may and may not catch and retain halibut and who is responsible for recordkeeping and reporting requirements in § 300.65(d). The definition of charter vessel is not revised by this rule. However, the definition of charter vessel is currently proposed for revision in the proposed rule to revise the subsistence halibut program (April 14, 2008; 73 FR 20008). Currently, the definition of charter vessel is: "Charter vessel means a vessel used for hire in sport fishing for halibut, but not including a vessel without a hired operator." The new definition of charter vessel in the subsistence halibut program proposed rule is: "Charter vessel means a vessel registered as a sport fishing guide vessel with the Alaska Department of Fish and Game." (*This definition no longer exists in § 300.61*)

**2007:**

**The following definitions were proposed to be added in the one-fish proposed rule (72 FR 74257; December 31, 2007). Option B (one fish) was selected and the final rule was published in May 2008 (and later rescinded) (see links to those actions above).**

*Charter vessel angler* means a person, paying or nonpaying, using the services of a charter vessel guide.

*Charter vessel fishing trip* means the time period between the first deployment of fishing gear into the water from a charter vessel and offloading one or more charter vessel anglers or any halibut from the charter vessel.

*Charter vessel guide* means a person who has been issued an annual guide license by the Alaska Department of Fish and Game.

\* \* \* \* \*



No definitions were changed or added with the 2007 rule restricting charter anglers to 2 fish, 1 under 32" head-on length (72 FR 30714; June 4, 2007)

**2003:**

**Rule implementing GHL (68 FR 47265; August 8, 2003)**

When the GHL was implemented, the charter sector was referred to as the "*guided recreational fishery*." Following is text from the preamble of that rule discussing the use of this term.

(p. 47259) "This final rule also revises the regulatory language to better clarify the mechanism for reducing the GHLs if the stock abundance declines. This change does not modify the intent or effect of the language in the proposed rule but improves its readability and accuracy. The final rule also removes the definition of "guided recreational vessel" because existing regulations (at 50 CFR 300.61) define a "charter vessel" and an additional definition would be duplicative. This change does not modify the intent or effect of the language in the proposed rule. The term "guided recreational fishery" is used in the preamble to the proposed rule because that term has been used consistently throughout the analytical process. Retaining the term in this final rule assists the public by maintaining consistent terminology."

## **APPENDIX 3c. IPHC Pacific Halibut Fishery Regulations**

### 3. Definitions

\*\*\*

(c) "charter vessel" means a vessel used for hire in sport fishing for halibut, but not including a vessel without a hired operator;

\*\*\*

(g) "fishing" means the taking, harvesting, or catching of fish, or any activity that can reasonably be expected to result in the taking, harvesting, or catching of fish, including specifically the deployment of any amount or component part of setline gear anywhere in the maritime area;

\*\*\*

(j) "license" means a halibut fishing license issued by the Commission pursuant to section 4;

\*\*\*

(m) "operator," with respect to any vessel, means the owner and/or the master or other individual on board and in charge of that vessel;

\*\*\*

(r) "sport fishing" means all fishing other than (i) Commercial fishing, (ii) treaty Indian ceremonial and subsistence fishing as referred to in section 22, (iii) customary and traditional fishing as referred to in section 23 and defined in and regulated pursuant to NMFS regulations published in 50 CFR part 300, and (iv) Aboriginal groups fishing in British Columbia as referred to in section 24;

\*\*\*\*\*

## **APPENDIX 3d. State of Alaska Regulations**

Sec. 16.40.299. Definitions.

In AS 16.40.260 - 16.40.299,

(1) "sport fishing guide" means a person who is licensed to provide sport fishing guide services to persons who are engaged in sport fishing;

(2) "sport fishing guide services" means assistance, for compensation or with the intent to receive compensation, to a sport fisherman to take or to attempt to take fish by accompanying or physically directing the sport fisherman in sport fishing activities during any part of a sport fishing trip; "sport fishing guide services" does not include

(A) sport fishing services; or

(B) services provided by an assistant, deckhand, or similar person who works directly under the supervision of and on the same vessel as a sport fishing guide;

(3) "sport fishing services" means the indirect provision of assistance, for compensation or with the intent to receive compensation, to a person engaged in sport fishing in taking or attempting to take fish or shellfish by a business that employs a sport fishing guide to provide sport fishing guide services to the person during any portion of a sport fishing trip; "sport fishing services" does not include

(A) an activity for which a sport fishing guide license is required; or

(B) booking and other ancillary services provided by a tour broker or agent to a sport fishing services operator.

### **Additional State Guide Requirements**

Both sport fish guiding businesses and individual sport fishing guides must have separate licenses unless the owner of the business is also the guide.

In order to provide guided sport fishing trips to anglers for compensation in the State of Alaska you must have the following:

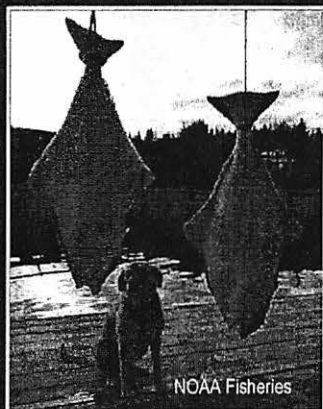
1. Sport Fishing Business Owner Operator's License issued by the Alaska Dept. of Fish and Game (ADF&G)
2. Business Insurance (applicable to the Business Owner)-liability or marine protection policy providing coverage of at least \$100,000 for each incident, and \$300,000 for incidents in a year covering all periods of time when the owner or owner's employees are providing sport fishing services to clients.
3. Sport Fishing Guide License issued by ADF&G
4. A valid State of Alaska Business License issued by the Dept. of Commerce and Economic Development
5. A current Alaska Sport Fish License (and a king salmon stamp if applicable).
6. A current U.S.C.G. Operator's license if operating a motorized vessel on navigable waters. Determination of navigable waters is made by the U.S. Coast Guard.
7. Be certified in first aid by the American Red Cross or a similar organization.
8. Be a resident of the United States, Canada, Mexico or a resident alien.
9. Vessel Registration (if guiding from vessel)

Science, Service, Stewardship



**NOAA  
FISHERIES  
(NMFS)**

**Charter Halibut  
Limited Access Program**



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 Restricted Access Management (RAM)

**Implementation Review for the  
Charter Halibut Limited Access Program and  
Charter Halibut Permits (CHPs)  
October 29, 2012**

**Purpose**

This document presents information related to implementation of the Charter Halibut Limited Access Program (CHLAP) for Areas 2C and 3A. This report uses data as of October 16, 2012. Transfers and initial issuance of permits to community quota entities (CQEs) and U.S. Military Morale, Welfare, and Recreation Program (MWRs) continue. The National Marine Fisheries Service (NMFS) implemented the Program under a final rule published in the Federal Register (75 FR 554, January 5, 2010) and under regulations at 50 CFR 300.67. Visit our website for permit and transfer updates and other program information for the CHLAP:

[alaskafisheries.noaa.gov/sustainablefisheries/halibut/sport.htm](http://alaskafisheries.noaa.gov/sustainablefisheries/halibut/sport.htm)

**Program Summary**

The CHLAP established new federal Charter Halibut Permits (CHPs) for operators in the charter halibut fishery in Regulatory Areas 2C (Southeast Alaska) and 3A (South Central Alaska). The Program also provides a limited number of permits issuable on request to nonprofit corporations representing specified rural communities and for the U.S. Military's Morale, Welfare and Recreation (MWR) programs for service members. Beginning February 1, 2011, all vessel operators in Areas 2C and 3A with charter anglers onboard must have an original, valid permit onboard during every charter vessel fishing trip on which Pacific halibut are caught and retained. CHPs are endorsed for the appropriate regulatory area and, except for military CHPs, the number of anglers that may catch and retain charter halibut on a trip.

**Eligibility Requirements**

The NOAA Fisheries, Alaska Region's Restricted Access Management Program (RAM) implemented the CHLAP at the recommendation of the North Pacific Fishery Management Council. To determine eligible applicants, RAM used data from the Official Charter Halibut Record (Official Record) that contains, with other information, the State of Alaska saltwater logbook data for 2004/05 groundfish trips and for 2008 (most recent year available) halibut trips.

**Application Period**

Except for special CHPs issued to CQEs and military CHPs, applicants must have applied for the new federal permits during the application period of February 4–April 5, 2010. There is no deadline for application for special permits.

## Application Overview

Prior to the application period, NMFS made initial eligibility determinations from the Official Record, and directly mailed application packages reflecting the number and nature of CHPs for which each individual or business was deemed eligible. Additional persons could apply, using application forms available on the Internet or from the Restricted Access Management (RAM) office.

The status and types of permits and numbers of permit holders changed daily during the implementation process. While NMFS received 810 applications by the end of the application process, 522 represented eligible applicants. NMFS received 288 applications that did not meet the eligibility requirements, including applications not filed by the application deadline. NMFS denied claims for all late and initially ineligible applicants; of those, 195 applicants appealed, exercising their due process rights.

### Permitholders, Permits, and Anglers

Initially RAM issued CHPs to persons who met all of the following eligibility criteria:

- ✓ submitted a timely application for a charter halibut permit,
- ✓ documented participation in the charter vessel fishery during both the qualifying and recent participation periods, and
- ✓ held a license issued by the Alaska Department of Fish & Game to operate specific types of guided sport fishing reported in the saltwater logbooks.

For “special permits,” of 32 communities, 22 formed required corporations (CQEs) and 19 requested CQE CHPs (612 anglers).

Table 1 shows the number of permits (by fishing area and type), permit holders, and anglers. Data will change over time with additional transfers and CQE and MWR permit issuance. All holders are counted, but each person is counted once per area even if he or she holds multiple permits. At least one MWR program permit holder earned “regular” CHPs in addition to requesting special MWR permits. Person counts are not additive across areas and types.

Fishing Area	Permit Type <sup>1</sup>	CHP Holders <sup>2</sup>	Active <sup>3</sup> Permits	Average CHPs per Holder	Anglers
2C	CHP	356	533	1.5	2,734
	CQE	11	44	4.0	264
	MWR	1	1	1.0	unlimited
3A	CHP	439	439	1.0	3,227
	CQE	9	63	7.0	378
	MWR	3	6	2.0	unlimited
Both Areas	CHP	795	972		5,961
	CQE	20	107		642
	MWR	3	7		unlimited

<sup>1</sup>CHP = regular permit with angler endorsements, CQE = community permits, and MWR = U.S. Military Morale, Welfare and Recreation Program permits.

<sup>2</sup>Within each permit type and area, CHP holders reflect all holders of all permits, but each holder is counted once, regardless of the number of CHPs held.

<sup>3</sup>Active permits are current and nonrevocable.

## Appeals

Applicants with claims contrary to the Official Record were notified in writing and given 30 days to provide supporting evidence. Following this evidentiary period, any claims that remained were formally denied in an Initial Administrative Determination (IAD) that included instructions and a 60-day deadline to file an appeal. The NOAA Fisheries, National Appeals Office (NAO) adjudicated all appeals. Under Program regulations, all claims of “unavoidable circumstances” in which participation in one of the two required periods was lacking could only be decided under appeal to the NAO.

RAM issued a nontransferable “interim” CHP endorsed for 4 anglers to each applicant who, under the Official Record, was not eligible for any CHP but who filed a timely appeal. This temporarily allowed ineligible applicants to participate in the fishery until their due process claim was adjudicated. Eligible applicants who appealed for any reason initially received all issuable licenses (even those not contested) as “interim” and “nontransferable” until all their claims were resolved. As appeals were completed, RAM either commuted interim CHPs to noninterim permits or revoked the interim permits, as appropriate.

As appeals were resolved, permit data changed. As of early September 2012, the NAO had completed decisions on all 195 appeals (24.1 percent of applications). This relatively high appeal rate resulted in large part because, by regulation, only an appeal could resolve “unavoidable circumstance” claims. Only CHP (and not CQE and MWR) applications resulted in appeals.

Table 2 shows the type of completed cases and reflects NAO data and “type” descriptions. Some cases were reconsidered but are only counted once. Appeals including more than one type of claim (reason for appeal) are shown only under the primary claim. However, some appellants did not clearly identify a claim, and, as a result, NAO categories overlap and are not mutually exclusive. For example, “Logbook data” claims could represent a claim about eligibility, transferability, anglers, area, and/or for additional permits.

Table 2 Appeal Case Disposition by Type					
Cases					
Primary Claim Type	Detail	Total Appeal Cases <sup>1,2</sup>	Claim Denial Affirmed	Claim Denial Vacated	Cases Dismissed
Eligibility Detail	Unavoidable Circumstance	77	40	37	0
	Successor-in-Interest	24	19	3	2
	Military Exemption	7	5	2	0
	Late Application/Appeal	21	13	0	8
	Estate	1	1	0	0
	Other basic eligibility	12	11	1	0
Total Eligibility Cases		142	89	43	10
Total “Logbook” Cases (any issue)		19	14	4	1
Total Transferability Cases		30	25	5	0
Total Angler Endorsement Cases		4	3	0	1
<b>Total Appeal Count<sup>1</sup></b>		<b>195</b>	<b>131</b>	<b>52</b>	<b>12</b>
<b>Percent of total appeal count<sup>2</sup></b>		<b>100%</b>	<b>67%</b>	<b>27%</b>	<b>6%</b>

Source: National Appeals Office (NAO)

<sup>1</sup>The Alaska Regional Administrator may reverse, modify, or remand a decision.

<sup>2</sup>NAO may issue a remand or stay.

**Interim CHPs**

Issued permits may be suspended, revoked, or modified. In dismissed cases and lost appeals, RAM revoked interim CHPs for which an applicant was determined ineligible. RAM reissued CHPs as needed in cases in which an initially ineligible applicant was determined to be eligible or after all of an initially eligible applicant's claims were resolved. As of September 2012, all appeal cases were completed. Thirty-seven interim CHP permit holders in Area 2C and 55 in Area 3A had permits revoked following an appeal and (as of October 16) had not reentered the program. These persons are included in Figure 1 counts, along with those 21 persons ineligible but who acquired CHPs by transfer (7 in area 2C and 14 in area 3A). In Figure 2 all holders of all permits were counted, but each person was counted only once per area.

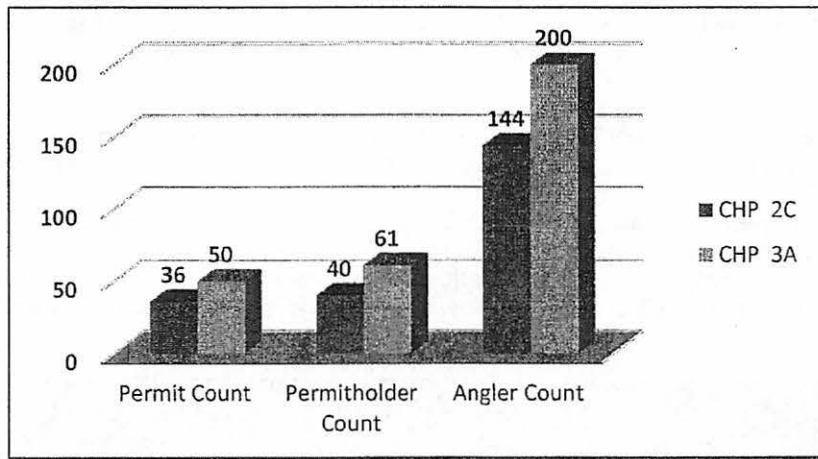


Figure 1. Number of Ineligible Persons whose CHPs Were Revoked after Appeal, by management area

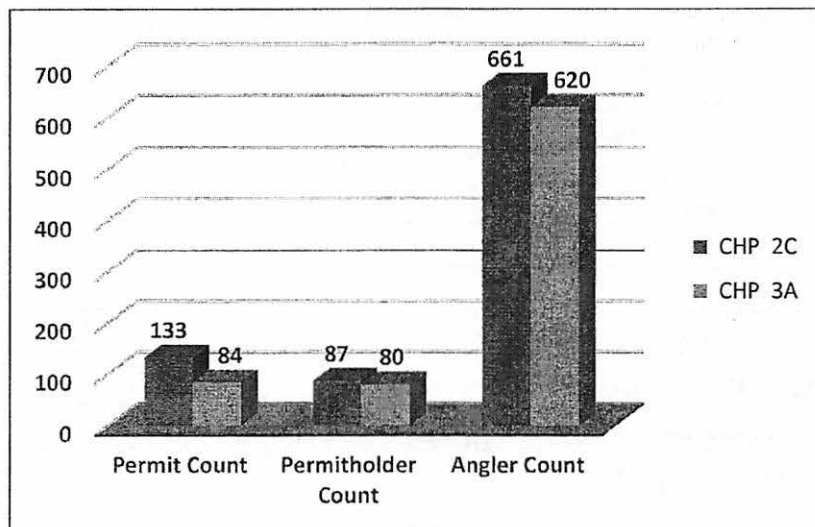


Figure 2. Number of Eligible Persons whose Interim CHPs Were Converted to Permanent CHPs after Appeal, by management area

### Permit Summary by Type and Transfer Status

During implementation, NMFS reissued many permits with an improved transferability status or an increase in the number of angler endorsements. Table 3 shows the numbers of permits by type, management area, and transferability status as of October 16, 2012. An MWR permit carries no angler endorsement. The Table includes the category "transferable," with numbers of permits, angler endorsements, and permit holders. Appendix 1 (page A-1) shows an extended version of Table 3 that includes additional detail based on CHP angler endorsements. Permit data will change over time with additional transfers and with new CQE and MWR permit issuance.

Permit Type <sup>1</sup>	Area	Transferable	Permits <sup>3</sup>	Angler Endorsements	Permit holders
CHP	2C	N	161	777	150
		Y	372	1,957	275
	3A	N	100	599	112
		Y	339	2,628	362
CQE	2C	N	44	264	11
	3A	N	63	378	9
MWR <sup>2</sup>	2C	N	1	no endorsement	1
	3A	N	6		3

<sup>1</sup>CHP = regular permit with angler endorsements, CQE = community permits, and MWR = U.S. Military Morale, Welfare, and Recreation Program permits

<sup>2</sup>Current permit information is updated daily on our [website](#).

### Transfers

By regulation, only some CHPs are transferable depending on the extent (number of eligible trips and number of vessels used) of an applicant's fishing history. Transfers of CHPs allow new fishery entrants and consolidation as permit holders leave the fishery and nontransfer CHPs are revoked. To prevent overconsolidation, permit holders are generally limited to five permits; a person holding a transferable CHP may transfer the permit to another person (individual or nonindividual entity) unless the transfer would cause the recipient to exceed the allowable limit. CHP limits are computed by examining CHP holdings of affiliated persons. An initial recipient of more than five permits cannot receive transfers of additional permits but may transfer all of the CHPs to one other person under special "grandfather" privileges (below). If an individual permit holder dies or a corporate permit holder dissolves or changes its ownership by adding one or more new owner(s) or partner(s), the 5-permit limit applies to the new entity. NMFS considers a successor-in-interest or a changed corporate structure to be a different entity from the one that was the initial recipient of the permit, and this may invalidate "excess" transferable CHPs held, require divestiture to a new person(s), and revocation of nontransferable CHPs held by the initial permit holder.

#### "Grandfather" Provision

A person(s) may receive more than 5 CHPs by transfer *only if* all of the following conditions are met:

- holders of more than five permits transfer all of the transferable permits initially issued to them to the same recipient.
- permit holders transfer all business assets along with the permits of the charter fishing business, such as vessels, lodges, and fishing equipment.
- Persons applying to receive more than five permits do not hold any permits at the time of the proposed transfer.

A *person* may be an individual or a corporation. An individual receiving a CHP by transfer must be a U.S. citizen; a transfer to a corporate entity will be approved only if it is a U.S. business with at least 75 percent U.S.-citizen ownership of the business. Issuance of CHPs to non-U.S. citizens is not authorized by section 773c(c) of the Halibut Act. CQE and MWR permits may not be transferred.

Table 4 provides a CHP transfer summary that includes area, type (whether entire business was sold), angler endorsements, transaction prices and number of transactions, and numbers of permits, sellers, and buyers as of October 16, 2012. Transfer data are updated daily on our [summary of CHP transfers web page](#).



**Table 4**  
**CHP Transfers by Area, Type (whether entire business was sold), Transaction Prices, and Numbers of Transactions<sup>1</sup>, Permits, Transferors<sup>2</sup>, and Transferees<sup>2</sup>**  
**as of October 16, 2012**

Year	Area	Entire Business Sold	Angler Endorsement	Min Transaction Price <sup>3</sup>	Max Transaction Price <sup>3</sup>	Median Transaction Price <sup>3</sup>	Average Transaction Price <sup>3</sup>	Transaction Count	Permit Count	Sellers Count	Buyers Count
2011	2C	N	5 Anglers	25,000	60,000	33,500	35,214	7	7	4	7
		N	6 Anglers	10,000	66,000	31,000	32,031	20	18	19	16
	3A	N	4 Anglers	9,000	50,000	43,000	37,625	7	7	7	7
		N	6 Anglers	36,000	80,000	61,000	62,063	29	29	29	25
		N	>6 Anglers	20,000	90,000	65,250	60,119	8	7	8	8
2012	2C	N	5 Anglers	20,000	30,000	26,500	25,750	4	4	4	4
		N	6 Anglers	28,000	36,000	30,000	31,800	5	5	5	5
	3A	N	4 Anglers	35,000	45,000	35,000	38,545	5	4	4	4
		N	6 Anglers	25,000	65,000	43,000	45,407	9	9	9	8
		N	>6 Anglers	44,000	1,000,000	75,000	340,100	3	3	3	3

<sup>1</sup>Transactions with a price of zero are excluded from the table.

<sup>2</sup>Confidential data (rows with fewer than 3 transferors or transferees) are excluded from the table.

<sup>3</sup>Reported prices may include some business assets when "Entire Business Sold" = "N."

Table 5, a summary of one-time and multiple CHP transfers, does not include community and military permits because they are nontransferable.

**Table 5**  
**Summary of the Number of CHPs Transferred One or More Times**  
**as of October 16, 2012**

Areas	Number of Permits Transferred Once	Number of Permits Transferred More than Once	Total Permits Transferred
2C	39	8	47
3A	58	6	64
<b>Total Number of Permits Transferred</b>	<b>97</b>	<b>14</b>	<b>111</b>



### Charter-Commercial "Crossovers"

Some CHP holders also hold quota shares (QS) and participate in commercial halibut fisheries. Table 6 shows current CHP holders and the number and percentage of the total that also hold halibut QS. Table 7 shows holders of all permit types and the number holding halibut QS (percentage). Data are subject to change.

Table 6 CHP <sup>1</sup> -Only Holders and Those Holding Halibut QS (Percent) as of October 16, 2012			
Area	Permitholders with only CHPs	Permitholders with QS in Same Area	Permitholders with QS in either 2C or 3A
2C	358	20 (5.6%)	23 (6.4%)
3A	440	21 (4.8%)	22 (5.0%)

<sup>1</sup>CHP = regular permit with angler endorsements

Table 7 Holders of All Permit Types <sup>1</sup> and Halibut QS Holders (Percent) as of October 16, 2012			
Area	Permitholders with CHPs, CQEs, MWRs <sup>1</sup>	Permitholders with QS in Same Area	Permitholders with QS in either 2C or 3A
2C	368	20 (5.4%)	23 (6.3%)
3A	450	22 (4.9%)	23 (5.1%)

<sup>1</sup>CHP = regular permit with angler endorsements, CQE = community permits, and MWR = U.S. Military Morale, Welfare, and Recreation Program permits

Appendix 1: Numbers of Anglers, Permits, and Permitholders by Area and Permit Transferability and Angler Endorsement

Table A1. Numbers of Anglers, Permits, and Permitholders by Area and Permit Transferability as of October 16, 2012

Type	Area	Transferable	Angler Count	Permit Count	Permitholder Count
CHP	2C	N	4	86	74
CHP	2C	N	5	27	34
CHP	2C	N	6	46	55
CHP	2C	N	9	1	2
CHP	2C	N	13	1	5
CHP	2C	Y	4	90	60
CHP	2C	Y	5	112	101
CHP	2C	Y	6	160	166
CHP	2C	Y	7	5	5
CHP	2C	Y	8	4	5
CHP	2C	Y	10	1	1
CQE	2C	N	6	44	11
MWR <sup>1</sup>	2C	N	n/a	1	1
CHP	3A	N	4	24	31
CHP	3A	N	5	18	25
CHP	3A	N	6	46	51
CHP	3A	N	7	2	3
CHP	3A	N	8	1	2
CHP	3A	N	9	1	1
CHP	3A	N	10	3	2
CHP	3A	N	11	1	1
CHP	3A	N	15	2	5
CHP	3A	N	17	1	3
CHP	3A	N	18	1	1

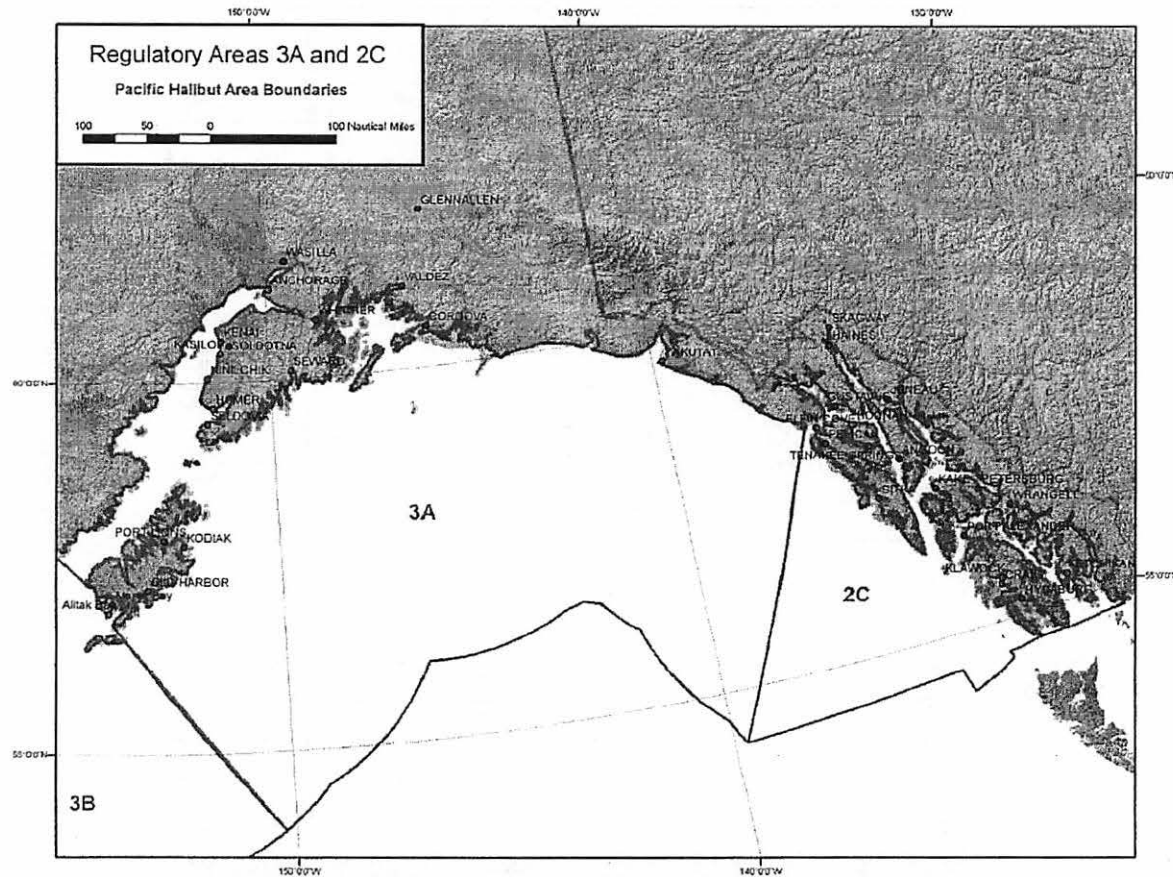
Continued

Table A1. (Continued)

Type	Area	Transferable	Angler Count	Permit Count	Permitholder Count
CHP	3A	Y	4	18	23
CHP	3A	Y	5	27	35
CHP	3A	Y	6	210	248
CHP	3A	Y	7	21	30
CHP	3A	Y	8	8	13
CHP	3A	Y	9	2	3
CHP	3A	Y	10	2	3
CHP	3A	Y	11	2	3
CHP	3A	Y	12	6	10
CHP	3A	Y	13	4	5
CHP	3A	Y	14	2	3
CHP	3A	Y	15	2	2
CHP	3A	Y	16	10	15
CHP	3A	Y	17	4	4
CHP	3A	Y	18	4	5
CHP	3A	Y	19	2	3
CHP	3A	Y	20	2	3
CHP	3A	Y	21	2	5
CHP	3A	Y	22	2	3
CHP	3A	Y	23	2	3
CHP	3A	Y	24	1	1
CHP	3A	Y	25	3	4
CHP	3A	Y	28	1	3
CHP	3A	Y	33	1	1
CHP	3A	Y	38	1	3
CQE	3A	N	6	63	9
MWR	3A	N	n/a <sup>1</sup>	6	3

<sup>1</sup>MWR permits have no angler endorsements.

**Appendix 2: Communities Eligible for Community CHPs by IPHC Area**



Map Source: NMFS

- Area 2C:** ANGOON • COFFMAN COVE • CRAIG • EDNA BAY • ELFIN COVE • GLACIER BAY (Outer Coast) • GUSTAVUS • HOLLIS • HOONAH • HYDABURG • JUNEAU • KAKE • KASAAN • KETCHIKAN • KLAWOCK • METLAKATLA • MEYERS CHUCK • PELICAN • PETERSBURG • POINT BAKER • PORT ALEXANDER • PORT PROTECTION • SITKA • TENAKEE SPRINGS • THORNE BAY • WHALE PASS • WRANGELL
- Area 3A:** AKHIOK • CHENEGA BAY • HALIBUT COVE • KARLUK • LARSEN BAY • NANWALEK • OLD HARBOR • OUZINKIE • PORT GRAHAM • PORT LYONS • SELDOVIA • TATITLEK • TYONEK • YAKUTAT

### Appendix 3: Program Timeline

The timeline shows efforts by the North Pacific Fishery Management Council (Council), NOAA Fisheries, the Alaska Department of Fish and Game (ADF&G), The International Pacific Halibut Commission, and the Secretary of Commerce (Secretary) to develop a new limited access program in Alaska.

- 2012 In September, implementation was completed when NMFS finished the final appeals.
- 2011 On February 1, 2011, CHPs were required on all guided charter vessels in areas 2C and 3A.
- 2010 NMFS issued a final rule (75 FR 554, January 5, 2010), effective February 4, 2010, to create the Charter Halibut Limited Access Program for charter vessels in the guided sport fishery for Pacific halibut in international Pacific Halibut Commission regulatory areas 2C and 3A. RAM accepted applications from February 4 through April 5, 2010.
- 2009 NMFS published a proposed rule (74 FR 18178, April 21, 2009) to implement the Charter Halibut Limited Access Program and initiate public comment.
- 2007 Council adopted its preferred limited access alternative and submitted it to the Secretary for implementation.
- 2006 In April, Council initiated analysis on the limited access program.  
In February, Council forwarded GHLC Committee recommendations for a limited access program to its Charter Stakeholder Committee.  
NMFS published December 9, 2005, control date in Federal Register (71 FR 6442, February 8, 2006).

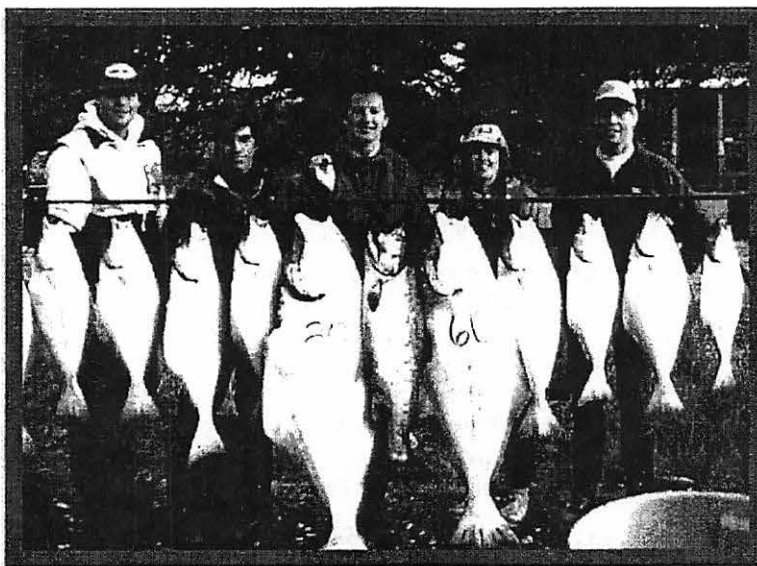


Photo courtesy of Jane DiCosimo

## Contacts and Acknowledgments

For more detailed information regarding the Charter Halibut Limited Access Program, please refer to the NOAA Fisheries website:

[alaskafisheries.noaa.gov/sustainablefisheries/halibut/sport.htm](http://alaskafisheries.noaa.gov/sustainablefisheries/halibut/sport.htm)

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For questions about Charter Halibut Permits or the application process, please contact:

NOAA Fisheries (NMFS), Restricted Access Management

1-800-304-4846 (option 2) or call the Juneau local number: 907-586-7202

Email: [ram.alaska@noaa.gov](mailto:ram.alaska@noaa.gov)

Website: [alaskafisheries.noaa.gov](http://alaskafisheries.noaa.gov)

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For questions about regulations, please contact:

NOAA Fisheries (NMFS), Sustainable Fisheries Division

1-800-304-4846 (option 3) or call Juneau's local number at 907-586-7228

Website: [alaskafisheries.noaa.gov](http://alaskafisheries.noaa.gov)

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North Pacific Fishery Management Council (Council)

907-271-2809

Website: [fakr.noaa.gov/npfmc](http://fakr.noaa.gov/npfmc)

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International Pacific Halibut Commission

206-634-1838

Fax: 206-632-2983

2320 West Commodore Way #300

Seattle, WA 98199-128

Website: [iphc.int/](http://iphc.int/)

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For harvest information, please contact:

Alaska Department of Fish and Game

Division of Sport Fish

Region I

Email: [sf1web@fishgame.state.ak.us](mailto:sf1web@fishgame.state.ak.us)

907-465-4270

Local Website: [sf.adfg.state.ak.us](http://sf.adfg.state.ak.us)

1255 W. 8th Street

P.O. Box 115525 Juneau, AK 99811-5526,

907-465-4180; Fax 907-465-2772

NOAA's National Marine Fisheries Service appreciates the dedication of its partners over the past years and their ability to work closely with the agency in persistent and plentiful efforts to preserve and sustain Alaska's multi-use halibut resource and to elevate the value and development of Alaska's fisheries and fishing communities. NOAA successfully implemented the Charter Halibut Limited Access Program by partnerships with the North Pacific Fishery Management Council, the Alaska Department of Fish and Game, the International Pacific Halibut Commission, and stakeholders.

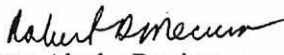
**UNITED STATES DEPARTMENT OF COMMERCE**  
**National Oceanic and Atmospheric Administration**

National Marine Fisheries Service  
P.O. Box 21668  
Juneau, Alaska 99802-1668

AGENDA D-1  
Supplemental  
FEBRUARY 2013

February 25, 2009

MEMORANDUM FOR: James W. Balsiger, Ph.D.  
Acting Assistant Administrator for Fisheries

FROM: Robert D. Mecum   
Acting Administrator, Alaska Region

SUBJECT: Clearance of a Proposed Rule to Implement a Limited Access System for Charter Vessels in the Guided Sport Fishery for Halibut in Southeast Alaska and the Central Gulf of Alaska—DECISION MEMORANDUM

I request that you make determinations about the **CONTROVERSIAL** proposed rule and transmit it to the NOAA General Counsel and the Department of Commerce General Counsel for clearance to publish in the Federal Register.

#### BACKGROUND

The International Pacific Halibut Commission (IPHC) and NMFS manage fishing for Pacific halibut through regulations established under authority of the Northern Pacific Halibut Act of 1982 (Halibut Act). The IPHC promulgates regulations governing the Pacific halibut fishery under the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the North Pacific Ocean and Bering Sea (Convention). The Halibut Act, at § 773c(a) and (b), provides the Secretary of Commerce (Secretary) with general responsibility to carry out the Convention and the Halibut Act. In adopting regulations that may be necessary to carry out the purposes and objectives of the Convention and the Halibut Act, the Secretary is directed to consult with the secretary of the department in which the U.S. Coast Guard is operating.

The Halibut Act at, § 773c(c), also provides the North Pacific Fishery Management Council (Council) with authority to develop regulations, including limited access regulations, that are in addition to, and not in conflict with, approved IPHC regulations. Such Council-developed regulations may be implemented by NMFS only after approval by the Secretary. The Council has exercised this authority most notably in the development of its Individual Fishing Quota (IFQ) Program and subsistence halibut fishery management measures. The Council also has been developing a regulatory program to manage the guided sport charter vessel fishery for halibut. On March 31, 2007, the Council adopted a motion to recommend the subject action to the Secretary as a step in the development of that regulatory program.





This action proposes regulations that would limit the entry of charter vessels into the guided sport fishery for Pacific halibut in waters of IPHC Regulatory Areas 2C (Southeast Alaska) and 3A (Central Gulf of Alaska). For purposes of this action, a charter vessel is a vessel used for hire in sport fishing for halibut, but does not include a vessel without a hired operator. The proposed action would not apply to an unguided or independent angler. If approved, any person operating a charter vessel engaged in halibut fishing in Area 2C or Area 3A would be required to have on board the vessel a charter halibut permit designated for the area in which the vessel was operating.

A charter halibut permit would be issued to a guided sport fishing business based on its participation in Area 2C or Area 3A during the qualifying period and recent participation period. A charter halibut permit would be either transferrable or not transferrable based on certain minimum participation criteria. Each permit would be endorsed for a specific regulatory area (2C or 3A) and would have an angler endorsement. The regulatory area endorsement would restrict a charter vessel to catch and retain halibut only within the area of its endorsement. The angler endorsement would restrict a charter vessel to the number of charter vessel anglers that may catch and retain halibut only to the number for which it is endorsed. Two special permits—a community charter halibut permit and a military charter halibut permit—also are proposed. A summary of the basic features of this proposed limited access system is attached.

We anticipate this action will be controversial because management of the charter vessel fishery for halibut historically has been contentious. The charter vessel halibut fishery has never been restricted by a limited access system. Such a system may be perceived as constraining sport access to the halibut resource. The Council attempted to integrate the charter vessel fishery into the existing IFQ Program for the commercial fishery in 2001, but the action was defeated in 2005. Council action in 2007 to reduce the halibut harvest in this sector by restricting the daily catch limit of charter vessel anglers was challenged in court and overturned in 2008. Hence, we are anticipating a large amount of public comment on this proposed rule.

In its review of this proposed rule, NOAA General Counsel expressed concern regarding our intent to have this action apply only to charter operations that have the charter vessel guide on board the vessel. This may result in charter operators shifting their business model to unguided fishing boat rentals. Although this may in fact occur, I believe that this policy issue needs to be addressed through the Council process and in consultation with the State of Alaska before we consider broadening the scope of the regulations to encompass any sectors other than charter operations with a guide on board. Although State of Alaska regulations regarding sport fishing guide services can be interpreted to apply more broadly than our intent with the proposed rule, I do not expect this difference to lead to substantial confusion for the sport fishing community because the federal rules would clearly apply only to charter operations with a guide on board. Additionally, NMFS has not analyzed the effects of broadening the proposed rule to apply to various types of indirectly assisted recreational fishing operations. Our preliminary research into this issue suggests that it may be complex and controversial to define which types of entities could be affected by a broader regulation. This supports exploring the matter further through the Council process rather than introducing it to the public via this proposed rule.

**RECOMMENDATIONS**

I have determined that this proposed rule is consistent with the Halibut Act and other applicable law, subject to further consideration after public comment.

I recommend that you sign the attached clearance memorandum to the NOAA General Counsel, and sign the attached clearance memorandum to the Chief Counsel for Regulation, Department of Commerce.

1. I concur. \_\_\_\_\_  
Date

2. I do not concur. \_\_\_\_\_  
Date

Attachments: Summary of proposed action; Determinations

Attachment

**Summary of Proposed Charter Vessel Limited Access System**

The North Pacific Fishery Management Council's recommendation for a moratorium on the sport charter vessel fishery for halibut as proposed would have the following features.

- A charter halibut permit would be required for a person to operate a charter vessel with one or more charter vessel anglers who catch and retain halibut in IPHC regulatory areas 2C or 3A.
- Charter halibut permits would be issued to a person (e.g., individual, corporation, or partnership) to which the Alaska Department of Fish and Game (ADF&G) issued a business owner license that authorized the qualifying charter vessel fishing trips. Permits would be issued to businesses and not to vessels.

Basic qualifications:

- Fishing trips that occurred in two periods—the qualifying period and the recent participation period—would demonstrate participation. The qualifying period would be 2004 and 2005; participation would be required in only one of the two years. The recent participation period would depend on the most recent year prior to implementation for which ADF&G can provide complete charter vessel logbook data.
- For a non-transferable charter halibut permit, a minimum of five fishing trips during any one year (2004 or 2005) of the qualifying period and five fishing trips during the recent participation period would be necessary. The fishing trips would have to have been reported to the State of Alaska in a Saltwater Charter Logbook.
- For a transferable charter halibut permit, a minimum of fifteen fishing trips during any one year (2004 or 2005) of the qualifying period and five fishing trips during the recent participation period would be necessary. The fishing trips would have to have been reported to the State of Alaska in a Saltwater Charter Logbook.
- The number of charter halibut permits issued to a person would be the lesser of (a) the total number of logbook fishing trips made during the qualifying period divided by five, and rounded down to a whole number; or (b) the number of vessels that made those logbook fishing trips.
- Each charter halibut permit would be valid only for a specific area (2C or 3A) and would be endorsed for a maximum number of charter vessel anglers who could catch and retain halibut on a vessel operating under the charter halibut permit.
- Special charter halibut permits would be available for (a) specified rural communities that have developing charter vessel businesses, and (b) vessels operating under a Morale, Welfare and Recreation Program of the United States Armed Services.

## DETERMINATIONS

### NORTHERN PACIFIC HALIBUT ACT OF 1982

Regulations governing the U.S. fisheries for Pacific halibut are developed by the International Pacific Halibut Commission (IPHC), the Pacific Fishery Management Council, the North Pacific Fishery Management Council (Council), and the Secretary of Commerce. Section 5 of the Northern Pacific Halibut Act of 1982 (Halibut Act, 16 U.S.C. 773c) allows the Regional Council having authority for a particular geographical area to develop regulations governing the allocation and catch of halibut in U.S. Convention waters as long as those regulations do not conflict with IPHC regulations. This proposed action is consistent with the Council's authority to allocate halibut catches among fishery participants in the waters in and off Alaska.

### NATIONAL ENVIRONMENTAL POLICY ACT

An EA has been prepared that describes the impact on the human environment that would result from implementation of this action. Based on the EA, RIR, IRFA under the RFA, and review of the NEPA criteria for significant effects (40 CFR Part 1508.27) and NMFS criteria for significance (NAO 216-6 Section 6.02), no significant effect on the quality of the human environment is anticipated from this action.

### COASTAL ZONE MANAGEMENT ACT (CZMA)

NMFS determined that this action is consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program of the State of Alaska. This determination was submitted on February 25, 2009, for review by the responsible State agency under section 307 of the Coastal Zone Management Act.

### REGULATORY FLEXIBILITY ACT (RFA)

An initial regulatory flexibility analysis (IRFA) was prepared, as required by section 603 of the RFA, as part of the regulatory impact review. The IRFA describes the impact this proposed rule, if adopted, would have on small entities. Each of the statutory requirements of section 603 (b) and (c) has been addressed and is summarized in the Classification section of the attached proposed rule.

### PAPERWORK REDUCTION ACT (PRA)

This proposed rule contains collection-of-information requirements that are subject to review and approval by the Office of Management and Budget (OMB) under the PRA. These requirements have been submitted to OMB under Control Number 0648-new.

## ENDANGERED SPECIES ACT

I have determined that fishing activities pursuant to this rule will not affect endangered or threatened species or critical habitat in any manner not considered in prior consultations on this fishery. This action is not expected to have an impact or affect endangered or threatened species or critical habitat since there will be no significant changes in fishing practices.

## MARINE MAMMAL PROTECTION ACT

I have determined that fishing activities conducted under this rule will have no adverse impact on marine mammals. This action is not expected to have an impact on direct incidental takings of marine mammal species because the action will result in no significant changes in fishing practices and no change in the amount of fish harvested by charter vessel anglers is expected.

## EXECUTIVE ORDER 12866 (E.O. 12866)

Pursuant to the procedures established to implement section 6 of E.O. 12866, the Office of Management and Budget has determined that this rule is not significant.

## EXECUTIVE ORDER 13132 (E.O. 13132)

This rule does not contain policies with federalism implications under E.O. 13132.

## ESSENTIAL FISH HABITAT (EFH)

This action applies to vessels fishing with sport fishing gear in areas that have been identified as halibut habitat by the IPHC and EFH for groundfish species managed under the Council's Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area. This action would not affect the overall halibut harvest or the amount of gear deployed. This rule, in the context of the Pacific halibut fishery as a whole, does not have an adverse impact on EFH; therefore, an EFH consultation is not required.

## INFORMATION QUALITY ACT

Pursuant to Section 515 of Public Law 106-554 (the Information Quality Act), this information has undergone a pre-dissemination review by the Alaska Region, Division of Sustainable Fisheries, completed on December 4, 2008. The signed Pre-dissemination Review and Documentation Form is on file in that office and a copy of the form is included with this package.