

February 2007 Council motions on Halibut Charter Moratorium

MOTION 1 (approved 11-0):

The Council approves initial review of the moratorium analysis, for final action in March 2007 with the following changes:

Add at the end of the current problem statement: *The moratorium is to provide an interim measure of stability in the guided sport halibut sector during the step-wise process toward a long-term solution. In doing so, however, the Council is also concerned with maintaining access to the halibut charter fishery by small, rural, coastal communities. To address this, the Council is considering establishing a separate program to allow these communities to enter the halibut charter fishery.*

Issue 2 is modified to read: *If a business owner qualifies for a permit in both areas based on the history from a single vessel, he would be issued a separate permit for both areas. Only one permit could be used on any given trip.*

Issue 5: Include a sub-option for disallowing transfers of issued permits for individual vessels that qualified at trip levels less than 10, 15, or 20 trips as reported in the ADF&G logbook.

Issue 7: Include a sub-option on the maximum number of clients a vessel is endorsed to carry. Area 2C: 6, 10, or 15. Area 3A: 10, 15, 20, or 25.

Issue 10: Include a sub-option of 15 for minimum trips to qualify a vessel.

Issue 12:

- Include an option requiring use of the requested CQE permit in the community represented by the CQE. Use shall be defined as originating and/or terminating the permit trip in the represented community.
- Delete the words “and the year prior to implementation” from the first sentence
- Add a provision that would require the CQE to identify the recipient of the permit prior to issuance.
- Delete: “must be used in the first full season after receiving the permit or it will not be renewed.”
- Add 7 as an option for the use cap on CQE requested permits for Area 3A.

The Council also requests staff work with the SSC to address significant issues raised in their minutes.

MOTION 2 (approved 11-0):

The Council adopts the following as its preliminary preferred alternative:

Alternative 2. Implement a moratorium on entry into the charter halibut fisheries in Areas 2C and 3A using a control date of December 9, 2005.

Features of the proposed moratorium (limited entry) program:¹

Issue 1. Permits² may be held by U.S. citizens or U.S. businesses with 75 percent U.S. ownership of the business. Businesses³ may receive multiple permits due to charter halibut activity by vessels reported by the businesses in ADF&G logbooks. Initial permit recipients may be “grandfathered” below the U.S. ownership level and above proposed use caps until any change in ownership of the business occurs.⁴

Issue 2. Permit would be designated for Area 2C and/or Area 3A. If a business owner qualifies for a permit in both areas based on the history from a single vessel, he would be issued a separate permit for both areas. Only one permit could be used on any given trip.

Issue 3. Permit would be issued to an ADF&G licensed fishing guide business owner.

Issue 4. Permit applicant would be required to sign an affidavit attesting that all legal requirements were met.⁵

Issue 5. Transfers of permits (permanent) would be allowed up to use caps.

Issue 6. Leasing of permits would not be allowed.⁶

Issue 7. Permit Endorsement for Number of Clients on Board

Highest number on any trip in 2004 or 2005, but:

Area 3A: Minimum endorsement is 4, maximum endorsement is 20

Area 2C: Minimum endorsement is 4, maximum endorsement is 8

Suboption 2: Permit holders can be issued a permit endorsement for the number of clients on board equal to the highest number on any trip in 2004 or 2005. Permits above the cap are grandfathered at that level until a permanent transfer⁷ of the permit occurs; the permit is then subject to the cap on client endorsements in Suboption 1.

¹ Military (Morale, Welfare, and Recreational) boats are not required to meet the qualification requirements of the program, but harvests still count against the GHL.

² Through initial issuance and transfers.

³ A business means a business licensed by the State of Alaska as a sport fish guide operator.

⁴ Transferred permits would not be grandfathered below the US ownership cap, even upon sale of a business, but would be grandfathered above the use cap upon sale of the entire business (see Issue 11).

⁵ The only tangible evidence is the ADF&G logbook, which requires meeting all State legal requirements.

⁶ Halibut charter permit holders may only use their permit onboard a vessel that is identified on an ADF&G saltwater logbook assigned to the person holding the permit. If the permit holder wishes to use the permit on a different vessel, they must obtain an ADF&G logbook for the new vessel before the permit may be used on that vessel. The permit number must be recorded on the logbook for each trip.

⁷ A permanent transfer is defined as either a transfer of the permit through NMFS RAM Division to an unrelated entity or when persons are added to an existing entity. Removing a person from a corporation or partnership would not be considered a permanent transfer.

Issue 8. Permits may be stacked up to use caps.⁸

Issue 9. Evidence of participation is ADF&G saltwater logbook entry with bottomfish statistical area, rods, or boat hours.

Issue 10. Qualification period

Option 10.1. Each licensed guide business owner(s) who reported a minimum of [10 or 15] bottomfish logbook trips during 2004 or 2005 and year prior to implementation⁹ would be issued a permit(s) based on the number of trips summed for all vessels in his best year of the qualification period, unless an unavoidable circumstance¹⁰ occurred. A business would be limited to the number of permits equal to the highest number of vessels used in any one year during the qualifying period.

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

Issue 11. Use caps, with grandfather¹¹ provision. The AFA 10% ownership rule for affiliation¹² will be applied to determine the number of permits associated with an entity under the use cap.

Option 2. 5 permits

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

A Community Quota Entity (CQE), representing a community in which 10 or fewer active¹³ charter businesses terminated trips in the community in each of the years 2004 and 2005 may request limited entry permits.

Area 2C – use cap of 4 or 5 requested permits per eligible community.

Area 3A – use cap of 4, 5, 7, or 10 requested permits per eligible community.

Overall use caps for CQEs are 2 times those selected for the CQE requested permit use cap for each area. Different use caps may be selected for CQEs representing communities in Area 2C and 3A.

Provisions for CQE requested permits:

- Designated for the area in which the community represented by the CQE is located
- Endorsed for 6 clients
- Not allowed to be sold (i.e., transferred)
- Under reporting requirements, the CQE must identify the recipient of the permit prior to issuance.
- The requested CQE permit must be used in the community represented by the CQE (the trip must originate or terminate in the CQE community).

⁸ A business can use, for example, two licenses (each endorsed for 6 clients) on one vessel.

⁹ “Year prior to implementation” could also mean two years prior to implementation, depending on the starting date of the application period for permits; e.g., the threshold would also need to be met in either 2007 or 2008, for implementation in 2009.

¹⁰ Acceptable circumstances will be adjudicated on a case by case basis through the NMFS Appeals Division, but includes medical emergencies, military exemptions, constructive losses. An individual who was assigned to active military duty during 2004 or 2005 and who qualifies as “active” during the year prior to implementation⁷ and who demonstrated an intent to participate in the charter fishery in Area 2C or 3A.(prior to the qualifying period) shall be eligible for a moratorium permit.

¹¹ A business whose permit is endorsed in excess of the use cap maintains that exemption for those permits that remain in its control after other permits are sold, but those sold permits lose that grandfather status in perpetuity. Grandfathered permits that are sold in total when a business owner sells his entire business/fleet maintain that grandfathered status. Grandfathered status refers to permits, not to vessels.

¹² Any entity in which 10 percent or more of the interest is owned or controlled by another individual or entity shall be considered to be the same entity as the other individual or entity.

¹³ “Active” is defined as it is under Issue 10 (e.g., either 10 or 15 bottomfish trips).