



C2 Charter Halibut Recreational Quota Entity Funding Mechanism - Final Action Review

April 2022

Action Memo

Council Staff: Sarah Marrinan
Other Presenters: Kurt Iverson (NMFS)
Action Required:

1. Review analysis
2. Receive staff presentation on the analysis including Charter Halibut Management Committee recommendations
3. Possibly determine final action

BACKGROUND

At this meeting, the Council is considering final action for options to establish a Federal fee collection program for charter vessel operators to fund the Recreational Quota Entity (RQE). The Council's preliminary preferred alternative (PPA) is to establish a **Charter Halibut Stamp** program. Under the PPA Federal regulations would require charter operators to purchase a Charter Halibut Stamp for each guided angler, for each day that the charter angler is on a charter vessel that intends to harvest halibut operating in IPHC Regulatory Areas 2C and 3A. Federal regulations would require this fee be paid by charter halibut operators; therefore, NMFS would oversee and/or administer whatever type of fee program that would be developed.

Federal Authority

Changes to Federal law are necessary for NMFS to implement a Federal requirement for charter operators to pay fees and for those fees to be made available to fund the RQE. Accordingly, following the Council's direction, this analysis is based on the assumption that those requisite changes to the law will eventually occur. As of this writing, both the US House of Representatives and the Senate have passed legislation that would authorize NMFS to implement an RQE funding mechanism. A conference committee will at review the respective House and Senate versions of the bills to resolve any differences. If agreement is reached, the conferees may report a final bill out of committee and send it to the Office of the President for signing.

While NMFS would be the primary fee collection agency for whatever type of program was developed, the current House and Senate bills are written in a manner that appears to allow more flexibility than designating NMFS as the sole administrator of the program. NMFS recently sought guidance from the General Counsel of the Department of Commerce to determine the extent of NMFS's fee authority under the proposed law. For example, it may be possible for NMFS to authorize other agencies, or perhaps the RQE itself, to carry out the fee collection, subject to rules that NMFS would develop and enforce. In February 2022, NMFS received confirmation that such arrangements would be allowable under the language of the two RQE funding bills currently before Congress.

This broader consideration of the possible roles of the fee collection still falls within the language of the Council's PPA; however, the manner in which a Charter Halibut Stamp is implemented could have important impacts on the roles and responsibilities of the fee collection program, and where the burden of the tasks and associated program costs would be.

Final Action Decision-Making

The nature of the action alternative does not require the Council to determine all technical details of an RQE fee collection in order to recommend a final action alternative. Primarily, the Council should provide enough policy guidance for NMFS to understand the type of program it is interested in pursuing. Additionally, the Council may wish to express its intent for some of the practical elements of creating a functional fee collection program and how those elements could impact charter operators, anglers, and participating governmental agencies and taxpayers.

The Council may identify specific policy elements of the fee collection program that it deems are of particular importance. For example, the Council could recommend and justify the fee that would be collected and the specific type of entity who would be responsible for paying the fee. It may consider a public process to revise the fee should factors associated with the fee justification change.

There are many other details of the program that are possible and practical to determine outside of the Council process during the rule-making stage or by the entity that designs and implements the program. For example, the design elements of an electronic stamp, the opportunities for refunds on purchased stamps, or the information necessary to collect for enforcement of the stamp requirement could all be developed outside of the Council's direct input. Nevertheless, as with the Council's motion for the Observer Program restructuring, the Council may request to see a draft of the proposed regulations prior to their submission to the Secretary of Commerce to further determine if the chosen elements of the Charter Halibut Stamp program meet the intention of the Council and stakeholders, if it so chooses.

If the Council identifies a preferred alternative in April 2022, it will likely be predicated on proposed legislative text which has not yet been signed into law. Thus, if this language is amended or does not pass, it may be necessary for the Council to reconsider its recommendation.

Charter Halibut Management Committee Report

The Charter Halibut Management Committee meet following the Council's October Initial Review of RQE funding mechanism discussion paper on Oct 26-27, 2021. The second day of this Charter Halibut Management Committee was dedicated to reviewing the Initial Review Analysis on RQE funding and providing recommendations to the Council. Appendix 1 to the Analysis for Final Action provides the Charter Halibut Management Committee report and recommendations. The Charter Halibut Management Committee report provides recommendations in the form of a motion as well as summaries on the discussion of 1) important program attributes, 2) perspectives on alternative mechanisms, 3) enforcement costs, and 4) additional discussion and rationale to support the Committee's motion on the charter halibut stamp mechanism.

The recommendations from the Charter Halibut Management Committee are also incorporated into the relevant sections of the analysis. Rather than a stand-alone committee report, the Committee's recommendations and rationale will be woven into the Council staff presentation for C2. This does not preclude the Council from making different decisions, but provides additional context for consideration at the point when these program attributes are discussed.