



United States Department of the Interior

NATIONAL PARK SERVICE

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AGENDA D-1(a)
Supplemental
JUNE 2013



IN REPLY REFER TO:
C38

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Chris Oliver, Executive Director
North Pacific Fishery Management Council
605 West 4th, Suite 306
Anchorage, AK 99501-2252

Subject: Federal Definition of Sport Fishing Guide Services (D-1) for June, 2013 Council Meeting

Dear Executive Director Oliver,

Thank you for the opportunity to review and comment on the January 28, 2013 Interagency Staff Discussion Paper regarding "Regulatory Definitions of Charter Halibut Fishing" and the February 10 Council Motion on "D-1: Federal Definition of Sport Fishing Guide Services."

The fundamental purpose of national parks is to "conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations." The National Park Service authorizes commercial services including charter fishing businesses to provide visitor services within park units. Charter businesses allow visitors otherwise unable or unwilling to access the park on their own to experience their national park. Recreational fishing occurs in Glacier Bay National Park under federal and non-conflicting state regulations.

The existing Federal regulatory definition for "sport fishing guide services" allows charter guides and "self-guided" business operators without a Charter Halibut Limited Access permit to legally assist and direct clients when not onboard the same vessel with the client. As highlighted in the Discussion Paper, regulations defining "sport fishing guide services" are important for tracking and managing halibut harvest in Area 2C because charter anglers are subject to more restrictive daily bag limits than unguided anglers. Current regulatory definitions allow business practices to sidestep bag limit requirements intended to reduce charter fishery halibut harvest. The no action alternative would continue to allocate some presumed small but poorly known component of guided angler harvest to the unguided sector. This is a problem because this component of harvest can't be quantified or tracked as guided harvest and subsequently under estimates guided harvest. We therefore support the Council's

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approach under Alternative 2 (all options and sub-options) to revise and clarify the Federal definition of sport fishing guide services as detailed in the February 10 motion.

We support the need for unambiguous, standardized definitions of federal and state regulatory terms for charter halibut fishing. The terms "sport fishing guide services," "assistance," and "compensation" require clear and thoughtful definition enabling effective enforcement in the field. We support the suggestion in the Discussion Paper and February 10 Council Motion (Alternative 2, Option 1) to modify the definition for sport fishing guide services by striking the "onboard vessel" requirement. Especially since "assistance" (consisting of explicit training and instruction) can occur anywhere and anytime.

We also support the Council's proposed definition of "compensation," as suggested under Alternative 2 in the February 10, 2013 motion, in alignment with the proposed State of Alaska definition, if the proposed state definition can be amended to replace "actual" daily expenses with "reasonable" daily expenses. We also agree that to define "assistance" within the definition of sport fishing guide services should include examples of assistance such as "providing a GPS unit (or annotated chart) containing coordinates for halibut fishing locations" as suggested under the February 2013 Council motion. The Council may wish to consider that "handheld" might best be omitted from the example since this could more narrowly and unnecessarily restrict the definition (see Alternative 2, Option 3, Sub-option 1 in the 02/10/13 Council Motion).

We appreciate the Council and NOAA's effort, guidance, and leadership on this issue and urge timely resolution to refine the regulatory language that will lead to the best management of the halibut resource. Thank you for the opportunity for review and comment.

Sincerely,



Susan L. Boudreau
Superintendent

Definition of "self guided" charter fishing

Subject: Definition of "self guided" charter fishing

From: Colleen Stansbury <codlips@gmail.com>

Date: 5/28/2013 9:28 AM

To: NPFMC <npfmc.comments@noaa.gov>

To: the North Pacific Fishery Management Council

May 28, 2013

Comments for the June NPFMC 2013 meeting. Agenda Item "Miscellaneous Issues, (a) Discussion paper on the definition of a Fishing Guide."

From: Colleen Stansbury

P O Box 145

Gustavus, Alaska 99826

codlips@gmail.com

F/V La Bamba del Mar

I write today as a 40 year Southeast Alaska resident, commercial, sport and subsistence fisher and halibut IFQ holder for most of these years. Because of this involvement, I have a historical and personal perspective of halibut fishing, resource and management strategies over this time.

From this experience I urge the Council to manage this fishery for the benefit of the of resource, NOT local economies or individual investments. Local economies and private investments will come and go, but the resource should be managed in perpetuity.

In your deliberations regarding the definition of "guided fishing" please consider these observations:

Charter fishing in Alaska did not exist on any significant level twenty years ago. This industry has grown without restriction or regulation until very recently, despite warnings and efforts by many groups to avoid disastrous outcomes for the resource. I am a commercial fisher, the IFQ system closely regulates us, and my personal quota in 2C has been diminished by 70% in the past 5 years. I do not complain, most commercial fishers do not complain. We know that management of the fishery is a necessary component of a healthy resource. This close regulation of commercial halibut harvest has not been reflected in the "guided" sport fishery however. In large part the attempts by agencies to slow or reduce harvest levels by this user group has been thwarted by well funded lobbying effort and "loosely" written regulation. This must be addressed without delay.

At a public meeting here in Gustavus by NOAA enforcement officials demonstrated in an astonishing manor the impotence of the current regulation. These well meaning officials found themselves in the embarrassing position of explaining how to legally circumvent the law while in the process of answering questions of a well prepared audience of charter guides. The result of this poorly written regulation has been a burgeoning "self guided" charter group. Many guides in our area have now begun a "self guided" component of their business, as a way of doubling their clients catch potential.

In the Icy Strait/Cross Sound corridor the "Doc Warner" type of "self guided" or lightly guided fishing industry poses a significant impact on the local halibut resource. No matter how the NPFMC decides to define "guided vs self guided" I urge you to address the following four issues, in order to protect the resource.

1. Recognize that the "self guided" fishery is a thriving industry which requires clear, manageable regulation,

Definition of "self guided" charter fishing

not unlike commercial and guided groups.

2. Determine the significance of harvest incurred by this group. Mandate accurate logs and reporting mechanisms, as is required by other user groups.

3. Include the catch numbers of the "self guided" group into the guided levels, separating the "self guided" harvest from the true sport catch.

4. Regulating the "self guided" group in the same manner as the guided fishery will effectively put an end to any incentive to "cheat" the system, and will impose greater safeguards for halibut stocks and all user groups.

I appreciate the efforts of the NPFMC to manage this fishery in a reasonable and equitable manner. However the halibut resource is distressed and now is the time for clear and decisive action by the Council.

Thank you for your consideration of these comments.

Colleen Stansbury
codlips@gmail.com

Types of Self-Guided and other such operations in the halibut charter industry

Sources: From conversations with local people, personal observations by members of our active group, charter and self-guided companies' websites, and from an excellent source whose confidentiality I prefer to maintain but will reveal if necessary.

In Sept. 2012 I sent the both the Council and its staff a list of 8 permutations of "self-guided" and other means of evading the charter regulations. That list appears below, with three more versions added. A large number of these came from an excellent source whose name I've omitted to protect confidentiality but I can provide his name if necessary.

a. Larger boats, often captained by people who have charter CHPs, towing or off-loading skiffs so that clients can fish nearby as "unguided." Someone here observed one such skiff that had neither a motor nor oars. Clients were taken to a good area for halibut, told how to fish, and assisted in every way, likely reboarding the mother boat after landing their halibut. And the fish would be dressed and packed by the operator or his staff.

b. Charter lodges sending out young guys without CHPs or guide licenses, theoretically unpaid, on the boats to help clients with fishing and boat operation. The benefit to the young guys (some underage) is that they are building up vessel time for getting 6-pac boat operator permits. These young men probably work in the fish processing or other parts of the lodge's operation.

c. Clients taking out larger boats that are usually used in guided operations. The word is that one of the operators here had to replace eight anchors this summer due to inexperienced people using his boat. One of these clients landed a 482 lb. halibut in the mouth of Glacier Bay. It would have been the world record but for "handing the rod around," which disqualified it.

d. The long-standing Doc Warners Lodge in Excursion Inlet (60 clients per week) and a smaller one, Salmon Run Lodge send out three or four clients per skiff as "self-guided" fishermen. Doc Warner's skiffs are 16 or 18 ft. Lunds. They have laminated charts showing good halibut areas and a GPS showing halibut spots. A minder boat, one for every so many skiffs, travels around among them giving help with gear and boats and advice about where to fish.

e. An existing fishing lodge in Elfin Cove, Northern Star Lodge, was recently bought, reportedly with financing from Doc Warner, and is operated by his daughter and son-in-law. Northern Star offers only self-guided fishing beginning in the 2010 or 2011 season. They have new 22 ft. boats with 150 hp engines. Instruction and information is provided for clients in the evenings. I'm guessing that Doc Warner refers some of the more experienced and aggressive of his

clients to Northern Star. In a blog on the internet a prospective and a past client were communicating about this operation, one giving the other advice about where to fish and commenting that a recent sting against another lodge in Elfin Cove was causing Northern Star to be careful to stay inside the lines of the rules.

f. Also in Elfin Cove, Eagle Charters, target of that successful law enforcement sting in, I think, 2010, now has two (I think), self-guided boats. I saw one of their boats with "Self Guided" lettered along its side. (Incidentally, I passed through Elfin Cove in July 2011 and counted 25 fish boxes on the airplane float waiting for the Ward Air float planes. My husband passed through a week later and saw a much bigger pile of fish boxes on the airplane float, which was going partly under water and people were being asked to stay off until the boxes were loaded onto an aircraft. This was in a year when charter halibut regulations limited clients to one fish a day, 37" or less.)

g. Taking people fishing but only charging for their lodging. This is being done by someone here who did not qualify for a CHP but was already operating a fishing lodge with guided fishing. When coming in to the dock this year, he told the creel census person 'These are just my friends'. Questions were asked about whether this was legal at the meeting conducted by NMFS enforcement personnel in Gustavus in the spring of 2011. They wavered a bit but implied that it may be legal. At that point another charter operator commented 'I'm told I can charge two times as much for lodging and zero for fishing and it's legal'.

h. Dude fishing model (like dude ranching). Someone has a commercial fishing permit and takes people out on his boat as "crew." Highliner Lodge in Pelican does that with both commercial troll gear for salmon and longline gear for halibut. Its website tells how they divide up the halibut between clients and captain. Captain probably has IFQs and if all the catch is within his quota, and if fish tickets are made out for all the catch, and clients get commercial fishing licenses, maybe it's ok. None of those elements are mentioned on the websites.

i. Charter captains fishing under private sport fishing rules before the season and storing the fish in the lodge's freezer. Later these would be used to help fill client's fish boxes.

j. An acquaintance operating out of Hoonah (lives in Juneau) told me that he takes clients out for whale watching and catch-and-release halibut fishing. He has no halibut charter limited entry permit.

k. Some charter captains holding permits for both Areas 2C and 3A are said to be claiming to fish in 3A (and thus able to take 2 halibut of any size) when they are actually fishing on the 2C side of the Cape Spencer line. The operators would be out of Gustavus, Elfin Cove or Pelican, so getting to 3A involves distance and often difficult waters for small boats. This information comes from commercial trollers in the area.

Subject: Comment on D1a, Definition of a Fishing Guide

From: "Greg Streveler" <greg.streveler@starband.net>

Date: 5/28/2013 2:08 PM

To: "NPFMC Council" <npfmc.comments@noaa.gov>

Dear Council Members:

Comment on Revising Federal Definition of Sport Fishing Guide Services, Agenda Item D1a for NPFMC meeting June, 2013'
Judy Brakel, Box 94, Gustavus, Alaska 99826, phone 907-697-2287,
judybrakel@gmail.com

Estimate of the number of businesses and amount of halibut affected In the Initial Regulatory Impact Review, charter logbooks were examined to determine how many businesses are operating "self-guided" models that would be affected by more careful definitions of sport fishing guide services. The method was examination of logbooks to see how many regularly reported catches of more than two halibut per day by individual clients. A great way to avoid finding cases! The inevitable conclusion was that very few businesses are involved. On pages 16 and 17 are mention of some types of cases that would not show up in that logbook examination, but the text proceeds to treat the total number of relevant cases as minimal and hence not highly important. The one conclusion that is probably correct is that most cases found in Area 2C, because in 2C the non-charter sport fishing regulations for halibut are more restrictive than the charter regulations.

In the Icy Strait, Cross Sound and Glacier Bay area there are many such "self-guided" operations. The National Park Service wrote to you pointing out that several such operate in Glacier Bay National Park waters. In Elfin Cove a former guided charter lodge, Northern Star, is now operated entirely as "self-guided" with powerful new boats, after it was bought by the daughter & son-in-law of Doc Warner. (Doc Warner has operated a 60-client per week "self-guided" lodge in Excursion Inlet for years.) I know of two such operations in Chatham Strait. One of these is Whalers Cove near Angoon, a large and long-established guided sport fishing lodge that began advertising self-guided boats in 2012 and strongly features them for the 2013 season (see their website), explaining the regulatory advantages and saying that you can go out with a guide on the first day of your week to learn the ropes, then go by yourself on succeeding days, radioing the guide if you need advice or help. I am attaching a list I sent to the Council earlier describing variations that have been observed in this business model in the hope that seeing some of the varieties will help you in devising regulations. It should be noted that in Sitka apparently few operations of this kind have been seen, at least as of 2012. However, a genuine search on the water and talking with local people will certainly turn up many of these operations around Area 2C. I could name at least 12 such operations.

Changing the definition of guiding so that the guide need not be aboard the vessel Page 22 of the Initial Regulatory Impact Review discusses effects of changing the regulatory definition of "guided" so that the guide is not necessarily aboard the vessel on which the fishing takes place. The implication is that this could actually liberalize the charter regulations. That would be a terrible result. Can't you simply make those practices illegal? Having worked for many years for the Alaska Commercial Fisheries Entry Commission, where we negotiated many legal and regulatory minefields, I realize that this may not be so simple. However, I trust that with the help of staff, including legal advisors, you can devise workable solutions.

Defining assistance One problem seems to be that existing regulations define guiding "assistance" as being provided during the fishing trip. That may need to be expanded to include before and after services, otherwise off-vessel guiding "assistance" could be little but radio calls.

It should be possible to require that holders of limited entry CHPs not run these side businesses that evade the rules applying to charter clients, on pain of losing their CHPs. In the state limited entry program for the commercial fisheries we did not see holders of limited entry permits go out and set up a second business model that enabled them to operate both within and outside of their permits, with the second business not having to follow the regulations for commercial fishing. This is a shocking development in the charter industry, and is leading to cynicism about fishing regulations and regulators in our area. Some CHP holders who operate this second business model even act as respectable spokesmen for the charter industry before the NPFMC!

Defining Compensation Among the example of "compensation" dodges observed in the Icy Strait area are 1) sending young men who do not have CHPs out on the boats to help the "self-guided" clients, their compensation being building up sea time to qualify for 6-pack vessel operator permits; 2) theoretically charging people for lodging only, then taking them sport fishing as "friends" (this is done in Gustavus by a person who did not receive a CHP but had done some sport fish guiding and has a lodge and boat for that).

Catch-and-Release fishing? I know a boat operator without a CHP who told me he has clients do catch-and-release only halibut fishing. CHPs are supposed to be required only for keeping halibut, but now that the Council (urged by the IPHC) is moving to account for release mortality of halibut in the charter sport fishery, should such an operation be required to have a CHP? Or could that kind of operation be made illegal?

Counting "Self-guided" halibut catch as part of the Charter GHL or Catch Share At present there is an uncertain mix in the sport fishing statistics, both in the Statewide Harvest Survey and in the Charter Logbooks, of halibut taken by Charter and by Non-charter fishermen. The Initial Regulatory Impact Review indicates concern that some "self-guided" catch is being reported as "guided" catch. But I think that all of it should be counted as "guided" catch. I agree with a whale biologist in Gustavus who says she often sees these fake self-guided operations when she is out on the water. She wrote in her comment to the NPFMC in Sept. 2012: "If this infuriating and ridiculous loophole cannot be repaired, then the catch sharing regulations themselves need to incorporate this increased 'private' catch into the models that estimate the effects of the charter fishery, because it is a direct effect of the charter fishery." As another local person pointed out in this regard, "If you can't measure it you can't manage it." At the very least, you need to measure it. In our local Icy Strait/Cross Sound/Glacier Bay area "private" sport fish catch has ballooned despite the very small resident population, probably because much of it is really the "self-guided" commercial version.

Regulating for the health of the fish resource, not for the sake of business models Halibut stocks are in serious decline, as you know. The health of the stocks should be NPFMC's concern, instead of trying to avoid upsetting anyone's "business model." Commercial fishermen are accustomed to regulation, but many charter and "self-guided" operators seem to think that their business models and customer demand should be the controlling factors. As an early example, charter fishing was never closed when the GHL was reached, as would have been done in a commercial fishery, because it would upset already-booked trips.

Thank you for your attention, and please note that I attached a list of "self-guiding" and other dodges observed re halibut sport fishing in our area.

Yours truly,

Comment on D1a, Definition of a Fishing Guide

Judy Brakel
Gustavus, Alaska (see address under heading)

—Attachments:—

List of Types of Self-guided 5-13.doc

29.5 KB