

**Environmental Assessment/Regulatory Impact Review/  
Final Regulatory Flexibility Analysis for a Regulatory Amendment to  
Limit Entry in the Halibut Charter Fisheries in IPHC Regulatory Areas 2C  
and 3A**

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**Abstract:** This analysis examines two alternatives to limit entry into the Pacific halibut guided sport (charter) fisheries in International Pacific Halibut Commission Regulatory Areas 2C and 3A in the Gulf of Alaska. One alternative would take no action. The second alternative (the Council preferred alternative) would implement a moratorium on entry into the charter sector, as of December 9, 2005. It is intended as an interim step in the Council's long range plan to limit charter halibut harvests. Permits would be issued to licensed fishing guide business owners based on minimum threshold levels of participation and a subset of eligible communities based on maximum threshold levels of charter halibut participation in those communities. Both types of entities would be subject to a limit on the number of permits they could hold and use (use caps) and all permits would be subject to a halibut client endorsement. A higher participation threshold is required to receive a transferable permit.

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## **ABBREVIATIONS & ACRONYMS**

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



## EXECUTIVE SUMMARY

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### Update to the analysis – November 2009

The original analysis was completed before the Council knew which year would be the recency year. Thus, while the analysis could allude qualitatively to the impact of the recency year, 2008, its quantitative analysis of the estimated numbers of businesses, permits, and endorsements, could only be based on the information available for the known qualification years 2004 and 2005.

A new section Section 2.8 has been added to the RIR portion of this analysis. Section 2.8 is a revised and updated version of Section 2.7, supplementing that analysis by taking account of the additional impact of the recency period of 2008 and of the details of NMFS's proposed implementation, as described in the proposed rule (74 *FR* 18178; April 21, 2009). Detailed logbook data for the 2008 season became available to NMFS in late May 2009 and are used here.

Based on logbook data from 2004, 2005, and 2008, NMFS estimates that 231 businesses will qualify to receive permits in Area 2C and 296 businesses will qualify to receive permits in Areas 3A.

Qualifying businesses in Area 2C will receive an estimated 502 permits. Three hundred and forty-seven (347) or 69 percent will be transferable, and 155 or 31 percent will not be transferable. Qualifying businesses in Area 3A will receive an estimated 418 permits. Three hundred and nineteen (319) or 76 percent of these will be transferable, and 99 or 24 percent will not be transferable.

Permits received by a business will be endorsed to carry a number of anglers equal to the largest number of anglers carried by the business in a single trip in 2004 or 2005. A total of 3,028 endorsements will be issued to permit holders in Area 2C; 2,152 of these will be attached to transferable permits. Permits in Area 2C will be given endorsements ranging between four anglers and fourteen anglers. A total of 3,577 endorsements will be issued to permit holders in Area 3A; 2,834 of these will be attached to transferable permits. Permits in Area 3A will be given endorsements ranging between four anglers and 38 anglers.

One hundred and seventy-three (173) of the businesses that operated in Area 2C in 2008 will not qualify for permits. These businesses account for an estimated 43 percent of the businesses active in Area 2C in 2008. One hundred and fifteen (115) of these made five or more trips in Area 2C in 2008. One hundred and fifty-four (154) of the businesses that operated in Area 3A in 2008 will not qualify for permits. These businesses account for an estimated 34 percent of the businesses active in Area 3A in 2008. One hundred and eleven (111) of these made five or more trips in Area 3A in 2008.

One measure of fleet capacity is its ability to produce vessel-trips (independent trips by vessels). In the short-run (before non-transferable permits expire), permits in Area 2C would have to be used to support an average of 52 vessel-trips to reach the aggregate number of trips supplied in 2008. In the long run (after all non-transferable permits expire) these permits would have to support an average of 75 vessel-trips. Active vessels averaged 36 trips in 2008.

In the short-run, each of the 418 permits in Area 3A would have to support an average of 56 vessel-trips to reach the aggregate number of trips supplied in 2008. In the long run, each would have had to support an average of 73 vessel-trips. Active vessels averaged 38 trips in 2008.

An alternative measure of fleet capacity is its ability to produce angler-trips (independent trips by anglers). In Area 2C, if party sizes were equal to average party sizes in 2008, each permit would have to support 52 vessel-trips in the short run, or 75 vessel-trips in the long-run to produce the number of angler-trips estimated to have taken place in 2008. In Area 3A, under the same conditions, each permit would have to support 56 vessel-trips in the short-run, and 73 vessel-trips in the long-run to produce the number of angler-trips estimated to have taken place in 2008. Endorsement levels in both Areas would permit vessels to carry more anglers than they averaged in 2008; if average party size increased, the number of vessel-trips required to provide 2008 angler-trip levels would decrease.

Since the current halibut guided fishing season is about 100 days long, since permits may be used to support more than one trip a day, and since additional permits may be issued to community quota entities (see below), the fleet is likely to be able to produce these numbers of vessel-trips, and to meet at least some potential demand increases.

A qualitative analysis suggests that the industry would be able to meet existing levels of demand, or at least some potential increases in demand, at existing incremental cost and price levels, or with small changes in these. Permits may be used more intensively to increase the supply of angler-trips by increasing the average size of fishing parties, or by increasing the number of vessel-trips supported by the permits. Increases in party size may lead to increased costs to businesses if they must reduce average trip prices to fill boats and fully utilize their endorsed capacity. However, operations should be able to increase the number of vessel-trips supported by each permit at costs very similar to those observed for vessel-trips under the status quo. Permits are not tied to vessels, and may be used on multiple vessels and for multiple trips during the course of a single day.

Community Quota Entities (CQEs) were originally developed by the Council to help rural communities become more involved in commercial fisheries for halibut and sablefish. The present action allows CQEs representing 18 communities in Area 2C and 14 in Area 3A to request community halibut permits. CQEs in Area 2C may request up to four permits per community, while CQEs in Area 3A may request up to seven. All permits are endorsed for six anglers. These permits may only be used for trips that begin or end in a community represented by the CQE. Thus, if all eligible communities form CQE groups, and all CQE groups take full advantage of this provision (and this may not happen), an additional 72 community halibut permits may be issued in Area 2C and an additional 98 permits may be issued in Area 3A. Since 502 transferable and non-transferable permits (not including the CQE permits) would be issued in Area 2C, this provision may allow an increase of 14 percent in the number of permits in Area 2C. Since 418 permits would be issued in Area 3A, the additional 98 community halibut permits may allow an increase of 23 percent in the number of permits in Area 3A.

### FRFA

A FRFA was prepared that describes the economic impact that this action has on small entities. The FRFA for this action explains the need for, and objectives of, the rule, summarizes the public comments on the initial regulatory flexibility analysis and agency responses, describes and estimates the number of small entities to which the rule will apply, describes projected reporting, recordkeeping and other compliance requirements of the rule, and describes the steps the agency has taken to minimize the significant economic impact on small entities, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

The need for and objectives of this action; a summary of the comments and responses; a description of the action, its purpose, and its legal basis; and a statement of the factual, policy, and legal reasons for

selecting the alternative embodied in this action are described elsewhere in this executive summary and are not repeated here.

The proposed rule was published in the Federal Register on April 21, 2009 (74 FR 18178). An Initial Regulatory Flexibility Analysis (IRFA) was prepared and described in the classification section of the preamble to the rule. The public comment period ended on June 5, 2009. NMFS received 166 communications containing 157 separate comments. Economic comments and responses from the final rule are included as a part of the FRFA.

Two classes of entities are directly regulated by this action: (1) guided charter businesses active in IPHC Areas 2C and 3A, and (2) CQE-qualified communities and CQE groups formed by those communities in Areas 2C and 3A. Almost all of the guided charter businesses are believed to be small entities. This conclusion is based on a Small Business Administration (SBA) threshold of \$7.0 million in gross revenues on an annual basis for facilities offering recreational services, including guided fishing services (NAICS 713990). The largest of these entities, which are lodges, may be considered large entities under SBA standards, but that cannot be confirmed. The 32 communities in Area 2C and 3A directly regulated as part of this action would be considered small entities under the SBA definitions because they have populations under 50,000 persons.

Under this action, NMFS will issue permits to an estimated 231 businesses in Area 2C and to 296 businesses in Area 3A. In Area 2C, 173 of the guided businesses that show evidence of bottomfish fishing in 2008 will not qualify to receive an Area 2C guided charter permit under the limited entry program. In Area 3A, 154 of the guided businesses that show evidence of bottomfish fishing in 2008 will not qualify to receive an Area 3A guided charter permit.

Businesses that do not qualify, either do not meet activity thresholds during the qualifying period (2004–2005), or do, but do not meet the 2008 thresholds in the recency provisions of the Council’s motion.

This action seeks to help 32 small, remote communities in Areas 2C and 3A develop charter businesses by mitigating the economic barrier associated with purchasing a charter halibut permit and creating a number of non-transferable permits that can be held only by the non-profit entity representing the eligible community.

Under this action, 18 qualifying Area 2C communities are eligible to each receive up to four community halibut charter permits per community; 14 Area 3A communities are eligible to each receive up to seven community halibut charter permits per community. Guided halibut fishing trips made with these permits must either begin or end within the boundaries of the eligible community designated on the permit. In addition, each of these community CQE programs will be able to buy additional transferable permits equal in number to its allocation of community halibut charter permits. This authority to acquire by transfer additional transferable charter halibut permits makes it possible for CQEs representing eligible communities to hold a maximum of eight permits per community in Area 2C or a maximum of 14 permits per community in Area 3A. These potential permit numbers are higher than the excessive share limit imposed on other entities (a five-permit limit unless initially allocated more).

Of the directly regulated entities, only currently active guided charter operations that will not receive a permit to continue to participate in this fishery will suffer significant adverse economic impacts. These operations must enter the market for transferable charter halibut permits to remain active in the charter halibut fishery.

The Council and Secretary considered a no-action alternative, but this was rejected because it would not accomplish the objectives of this action, which are to stabilize the businesses in this fishery by controlling

entry, while providing opportunities for rural community development. The Council considered an option that only required a single landing in 2008 to meet the recency requirement. This action was originally taken to stabilize the businesses in this fishery with respect to active participants in 2004 and 2005. The recency requirement was adopted because the Council was aware that implementation would take several years, and it wanted to limit qualifying businesses to those active during the “stabilization” period that were still active close to the time the program was to be implemented. An activity threshold similar to that used in the “stabilization” period was thus adopted for the “recency” period.

Permit applications must be submitted prior to the start of the program. The application will require information about the business applying for the permit, including the ownership structure of the business (U.S. citizenship documentation for individuals) and information on the charter activities of the business. After submitting the initial permit application, additional applications will be required only for transfer of permits. NMFS will require additional reports when the structure of the business holding the permit changes or the permit is transferred. The initial application for a charter permit could take an estimated two hours to complete, depending on the amount of additional information the applicant needs to provide. The application for transfer of a charter permit is estimated to take two hours to complete, based on previous experience with the groundfish License Limitation Program.

Persons applying for a community charter permit or a military charter halibut permit must submit applications for these special permits. In addition, CQEs representing communities eligible to receive community charter halibut permits will be required to identify the person that will use the permit. The application for a community charter halibut permit or a military charter halibut permit is estimated to take two hours to complete. In all cases, basic reading and writing skills are required to complete the application forms.

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

The Council and NMFS have taken several steps to minimize the burden on directly regulated small entities. The Council published information about the control date frequently during its deliberations. The Council adopted this control date at its December 2005 meeting. In April 2006, it received a recommendation from its Charter Halibut Stakeholder Committee that it initiate an analysis of an entry moratorium using the December 9, 2005, control date. At its April 2006 meeting it requested staff to prepare an analysis of moratorium options based on the December 9, 2005, control date. The Council received a discussion paper from staff, based on this control date in December 2006. It adopted a preliminary preferred alternative based on this control date in February 2007, and it recommended a limited access system that included this control date in April 2007. Newsletters for each of these Council meetings contained stories on the Council action and mentioned this control date. NMFS published a notice in the Federal Register in February 2006 stating that the Council had adopted this control date (71 FR 6442, February 8, 2006) and the Council devoted a paragraph to this notice in its February 2006 newsletter.

This action creates a class of non-transferable permits to ease the transition from an open access fishery for a large class of businesses participating at relatively low levels of activity. Thus, any business that reported more than five logbook trips in the qualifying and in the recent participation period, but that had no vessel with at least 15 trips in one of the two years, 2004 or 2005, and in 2008, will receive non-transferable permits. These permits will allow that operation to continue its activity until the operator leaves the fishery, at which time they will expire. Thus, a transitional mechanism is provided for many operations that otherwise would have been forced to withdraw from the fishery immediately.

The Council and NMFS created transferable permits to allow the market to reallocate permits among recipients. This makes it possible for businesses that were active in 2008 but not during the qualifying period to continue their activity by purchasing permits.

The Council has created a class of community halibut charter permits. These will be issued without charge to qualifying communities. If qualified communities in Area 2C take full advantage of this program, an additional 72 permits may be issued for guided charter vessels. If qualified communities in Area 3A take full advantage, an additional 98 permits may be available. These permits were created to provide development opportunities for rural communities, but they should offer opportunities for businesses that do not receive transferable or non-transferable permits, and that are willing to enter a joint venture with a qualified community to utilize these permits.

The Council and Secretary considered a no-action alternative, but this was rejected because it would not accomplish the objective of this action, which is to stabilize the businesses in this fishery by controlling entry, while providing opportunities for rural community development.

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### Original executive summary – this has not been revised to reflect the additional November 2009 analysis

The Council is recommending implementing a moratorium on new entry for halibut charter operators in IPHC Areas 2C and 3A. If implemented, halibut guide business operators would be required to hold a permit for each vessel they use to provide their charter clients with halibut fishing trips. The permits would be issued based on historic participation in the halibut charter fishery and endorsed for the IPHC area they may fish and the maximum number of clients they may carry. A higher participation threshold is required to receive a transferable permit; a lower participation threshold is required to receive a non-transferable permit. The majority of permits would be transferable to persons meeting the U.S. ownership requirements that are under the maximum permit use cap. Eligible GOA Amendment 66 communities, through a Community Quota Entity (CQE) representing their community, could apply for a limited number of permits at no cost, if they meet criteria for limited participation in the halibut charter fishery. The purpose of issuing permits to this subset of small GOA communities, not located on the road system, is to provide them the opportunity to derive economic benefits from the halibut charter industry.

### Problem Statement

The Pacific halibut resource is fully utilized and harvest by the charter sector is demonstrating steady growth. To provide long term stability of the charter sector and lessen the need for regulatory adjustments, which destabilize the sector, the Council is embarking on development of a new management framework. In the interim, to address allocation issues between the charter and commercial sectors, the former is operating under a guideline harvest level (GHL). Harvest data since 2004 indicate that the GHLs in Area 2C have been exceeded, and are near guideline levels established for Area 3A. This has resulted in a renewed effort to find a long-term solution. To that end, the Council formed a stakeholder committee of affected charter and commercial user groups to consider management options and formulate recommendations for Council consideration in developing a management plan for the charter sector. Some of the options previously considered include limiting entry or awarding quota share based on past participation in the fishery. To address the potential rush of new entrants into the charter fishery, the Council is considering establishing a moratorium on the charter sector. 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.

### Alternatives Considered

Two primary alternatives were proposed for consideration, with several options included within Alternative 2. Alternative 1 is the no action alternative; Alternative 2 would implement a moratorium on entry into the halibut charter sector in Areas 2C and 3A. In February 2007, the Council selected Alternative 2 as its preliminary preferred alternative, which included Issues 1 – 12.<sup>1</sup> In March 2007, the Council also selected Alternative 2 as its final preferred alternative, with some changes from the preliminary preferred alternative. The Council's final preferred alternative and its associated options are identified later in this executive summary.

#### **Alternative 1.** No action

**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:<sup>2</sup>**

- Issue 1.** Permits<sup>3</sup> may be held by U.S. citizens or U.S. businesses with 75 percent U.S. ownership of the business. Businesses<sup>4</sup> may receive multiple permits due to charter halibut activity by vessels reported by the businesses in ADF&G logbooks. Initial permit recipients may be “grandfathered” below the U.S. ownership level and above proposed use caps until any change in ownership of the business occurs.<sup>5</sup>
- Issue 2.** Permit would be designated for Area 2C or Area 3A. If a business owner qualifies for a permit in both areas based on the history from a single vessel, he/she 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.<sup>6</sup>
- Issue 5.** Transfers of permits (permanent) would be allowed up to use caps.  
Suboption 1: Prohibit 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.

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<sup>1</sup>For details on the preliminary preferred alternative, see the *Public Review Draft of the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis for a Regulatory Amendment to Limit Entry in the Halibut Charter Fisheries in IPHC Regulatory Areas 2C and 3A*, March 9, 2007.

<sup>2</sup>Military (Morale, Welfare, and Recreational) boats are not required to meet the qualification requirements of the program, but harvests still count against the GHL.

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

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

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

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

**Issue 6. Leasing of permits would not be allowed.<sup>7</sup>****Issue 7. Permit Endorsement for Number of Clients on Board**

Highest number on any trip in 2004 or 2005, but not less than 4.

Suboption 1: Area 2C: cap maximum endorsements at 6, 8, 10, or 15

Area 3A: cap maximum endorsements at 10, 15, 20, or 25

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 transfer<sup>8</sup> of the permit occurs; the permit is then subject to the cap on client endorsements in Suboption 1.

**Issue 8. Permits may be stacked up to use caps.<sup>9</sup>****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 1, 5, 10, 15, or 20 bottomfish logbook trips during 2004 or 2005 and year prior to implementation<sup>10</sup> would be issued a permit(s) based on the number of trips summed for all vessels in his best year of the qualification period, unless an unavoidable circumstance<sup>11</sup> occurred. A business would be limited to the number of permits equal to the highest number of vessels used in any one year during the qualifying period.

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

Option 10.2: Each licensed guide business owner(s) who reported a minimum of 1, 5, 10, 15, or 20 bottomfish logbook trips during 2004 or 2005 and year prior to implementation<sup>7</sup> would be issued a permit(s) for each vessel based on the number of trips in his best year during the qualification period, unless an unavoidable circumstance<sup>8</sup> occurred. Trips by vessels operated by a licensed guide business owner that do not individually meet qualification criteria may be

<sup>7</sup> 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.

<sup>8</sup> 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.

<sup>9</sup> For example, a business can stack two licenses (each endorsed for 6 halibut clients) on one vessel for a total halibut client endorsement of 12.

<sup>10</sup> “Year prior to implementation” could potentially mean two years prior to implementation, depending on the starting date of the application period for permits. Meaning, the participation threshold would also need to be met in either 2007 or 2008, for implementation in 2009.

<sup>11</sup> Acceptable circumstances will be adjudicated on a case by case basis through the NOAA Office of Administrative Appeals, and includes medical emergencies, military exemptions, and constructive losses. The military exemption refers to an individual who was assigned to active military duty during 2004 or 2005, who qualifies as “active” during the year prior to implementation, and who demonstrated an intent to participate in the charter fishery in Area 2C or 3A (prior to the qualifying period).

combined to meet the criteria. A business would be limited to the number of permits equal to the highest number of vessels used in any one year during the qualifying period.

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

**Issue 11. Use caps, with grandfather<sup>12</sup> provision.** The AFA 10% ownership rule for affiliation<sup>13</sup> will be applied to determine the number of permits associated with an entity under the use cap.

- Option 1. 1 permit
- Option 2. 5 permits
- Option 3. 10 permits

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

A Community Quota Entity (CQE), representing a community in which [5 or fewer or 10 or fewer] active<sup>14</sup> 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 3, 4, 5, or 7 requested permits per eligible community.

Area 3A – use cap of 4, 5, 7, 10, or 15 requested permits per eligible community.

Overall use caps for CQEs (different use caps may be selected for CQEs representing communities in Area 2C and 3A):

Option 1: 1, 3, or 5 times those selected for permits holders under Issue 11.

Option 2: 2 times those selected for the CQE requested permit use cap for each area.

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).

### Description of Alternative 1

Status quo in the halibut charter fishery is constructed from all of the current regulations. The GHL for the charter halibut fishery sets a target charter harvest level of 1.432 M lb net weight in Area 2C, and 3.65 M lb net weight in Area 3A. Removal estimates for Area 2C were 1.95 M lbs, and 3A 3.69 M lbs in 2005. Landings in 2005 were 36% and 1% over the 2C and 3A GHLs, respectively. Other management measures currently in place include a two fish bag limit, 2-hook gear limit, guide registration requirements, limits on captain and crew harvests (they were prohibited from retaining halibut during part

<sup>12</sup> A business that owns/controls permits in excess of the use cap maintains the grandfather status for those permits that remain in its control after other permits are sold, but the sold permits lose the grandfather status in perpetuity. Grandfathered permits that are sold in total when a business owner sells his entire business/fleet maintain that grandfathered status. Grandfathered status refers to permits, not to vessels.

<sup>13</sup> Any entity in which 10 percent or more of the interest is owned or controlled by another individual or entity shall be considered to be the same entity as the other individual or entity.

<sup>14</sup> “Active” is defined as it is under Issue 10 (e.g., at least 1, 5, 10, 15, or 20 bottomfish trips).



of 2006 in Area 2C), and other State and Federal management and safety requirements.<sup>15</sup> Based on recent harvest amounts, the GHL has not constrained charter catches to their target level. In 2007, the Area 3A charter halibut harvest was below the GHL for that area.

Continuing the status quo would allow the amount of halibut caught and retained on charter vessels to increase. The number of clients who take charter trips is a primary factor in determining the number of halibut retained. Clients decide whether to take a trip after considering the price of the trip, their income, the cost of other available activities that could substitute for a charter trip, and preferences for charter trips relative to other activities. Since the number of people in Alaska during the summer months has increased (both residents and non-residents) in recent years, it is likely that the demand<sup>16</sup> for charter trips will continue to increase.

If charter harvests increase, the amount of halibut available to the Area 2C and 3A commercial halibut IFQ fisheries would be expected to decline when the CEY is constant or declining. Whether the decrease in the amount of halibut available to the IFQ fishery decreases their revenue depends on the elasticities of demand. Recent studies have found that the ex-vessel price of halibut is not very responsive to changes in quantity. In terms of total revenue, decreases in the quantity harvested will not be offset by increases in price. Members of the commercial IFQ fleet continue to express concerns about the impact that a declining share of the fishery will have on their businesses, both in terms of Area 2C and 3A quota share (QS) value and profitability. Quota share values and ex-vessel prices could increase slightly in other IPHC areas as the Area 2C and 3A harvests decline. Post-harvest surplus will also decline with less halibut from in and off Alaska present in the market.

Continuing the status quo will likely continue the patterns of net benefit changes derived from the fishery by commercial charter operations and the clients that take trips in the future. Charter operators will make normal profits and the aggregate compensating variation derived across all clients will increase. Entry and exit in the fishery will redistribute regional economic impacts, but are not expected to change total net benefits. A competitive market will continue to determine the price of trips. Those charter operators willing to supply their services at the market-determined price will provide trips, and clients willing to accept the prevailing market price will take trips.

### Description of Alternative 2

The proposed moratorium is intended to stabilize the number of charter vessels that operate in the 2C and 3A markets, while the Council considers if a more comprehensive effort limitation program is necessary. The effect of the moratorium is to limit the number of vessels to those “active” during the two time periods identified as being “required for qualification.” The proposed moratorium, by itself, will not fully control fishing effort, because the permitted fleet may react by increasing the annual number of trips per vessel, or by taking more clients per trip on average.

A large segment of the current charter fleet operators and commercial IFQ fishermen support implementing some form of moratorium. The Council is also considering whether more comprehensive limited entry actions are needed in a follow-up amendment. Participants in the commercial IFQ fishery, as a whole, appear to be proponents of implementing stronger effort controls under future actions. Recreational fishermen and persons newly entering (or wishing to enter) the charter fishery, often oppose

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<sup>15</sup> Note that NMFS issued a proposed rule on April 6, 2007, that would restrict the harvest of halibut by persons fishing on a guided sport charter vessel in Area 2C. If approved, this rule would require that one halibut (within the two fish bag limit) be no more than 32 inches in length. See 72 FR 17071. The rule is expected to be effective by June 2007.

<sup>16</sup> If other factors such as income and preferences to take charter trips are unchanged.

or are less supportive of the moratorium and future actions. Winners in future allocation decisions are likely the persons that hold permits allocated under this action.

### Impact of Alternative 2

**Permits.** The proposed moratorium would allow permits to only be held by U.S. citizens, or by U.S. businesses with at least 75 percent U.S. ownership. Currently there is no U.S. ownership requirement for businesses operating halibut charter businesses. Requiring at least 75 percent U.S. ownership will help ensure that producer surplus generated from the halibut charter fishery will, by-in-large, accrue to U.S. citizens. The only exception to this rule is that initial permit recipient businesses may be “grandfathered” below the U.S. ownership level. Any transfers will need to be made to businesses meeting the U.S. ownership requirements. This rule will insure that, over time, the percentage of the halibut charter industry owned by U.S. citizens will increase, if some permits are initially allocated under the grandfather provision to persons not meeting the U.S. ownership requirement.

The action also allows businesses to receive multiple permits, if they submitted ADF&G logbooks for more than one qualifying vessel. Allowing businesses to be initially allocated multiple permits will allow those businesses to continue their historic participation patterns.

**Permit would be designated for Area 2C 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 each area. Only one permit could be used on any given trip. Only a couple of vessels potentially qualify for a permit in both areas, based on the history of a single vessel. Designating the IPHC area where a permit may be used will restrict movement of permits from one IPHC area to another and maintain the number of permits that may operate in a given area. In the near term, limiting moratorium permits to a specific IPHC area is not expected to have a substantial impact on charter businesses or guided anglers. If conditions change in the fishery and clients want to take more trips in an area, the restrictions could impact the availability and price of trips. The action will not constrain effort in specific ports. Movement of permits into specific ports could increase competition at that port. Increased competition for clients could benefit guided anglers through lower prices, but increased fishing effort could impact catch rates in both the commercial and charter sectors, if localized depletion of halibut results from effort increases.

**Permit would be issued to an ADF&G licensed fishing guide business owner.** The initial allocation of transferable fishing privileges is typically one of the most scrutinized and contentious aspects of a limited entry program’s design. Recipients of the initial allocation, in cases in which the privilege is gifted or a small fee is charged, are considered the winners of the allocation process. Those that do not qualify for the initial allocation are considered the losers. The initial allocation is important, because subsequent purchasers of the privilege would be required to pay the market price (when freely transferable); that price represents an increase in profits to initial recipients, because they were not required to pay for the fishing privilege initially.

There are at least four different methods that could be used to initially allocate moratorium permits. The first method would be to allocate permits based on historic participation in the fishery. The time it takes to develop a limited entry program through the Council process creates opportunities for persons to enter the fishery or increase their historic participation to obtain permits. This rent-seeking behavior results in economically wasteful activities (Criddle, 2006). Trends in the number of businesses and vessels participating in the 2C and 3A charter fishery seem to reflect that notion.

A lottery could also be used to initially issue permits. Lotteries typically issue the permit to a person at no charge and have been used to allocate recreational hunting and fishing licenses in the U.S. If a lottery was used to allocate charter permits at no charge, the economic impacts for the winners and losers would be

similar to those under allocations based on historic participation, although the distribution of impacts would likely be very different.

Auctions have been discussed as a method to create an efficient initial allocation (Morgan, 1995) and as a mechanism for the government to better control the use of the public resource, while providing financial return to public owners of the resource (Macinko, 2002). From an economic perspective, auctions could provide an efficient method of allocating fishing privileges, because they allocate permits to those persons who place the greatest value on them (ignoring the income effect). Auctions could determine the market value of the permits and allow the Council and NMFS to determine the number of permits they want to issue, auctioning only that number. Auctions that sell to the highest bidder would generate the greatest revenue for the government, but other types of auctions could also be developed that allow the government to meet the needs of persons without the financial resources to successfully bid (Macinko, 2002). Currently, the MSA does not give Councils the authority to auction limited entry permits (permits that do not allocate a percentage of the TAC) to the highest bidder.<sup>17</sup>

The final method would have the government sell permits for a fixed price. Setting the sale price is problematic. Setting the price too high could prevent persons from buying sufficient permits to supply the demand for charter services. Too low a price, and excess demand, including speculative investments, with dissipation of rents, could induce persons to engage in undesirable behavior from the standpoint of a stable charter fishery. As with auctions, NMFS currently does not have the authority to sell permits.

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

**Permit applicant would be required to sign an affidavit** attesting that all legal requirements were met. The goal is to encourage permit applicants to provide true and accurate information on their permit application. Additional requirements to qualify for a permit are discussed under the recordkeeping and enforcement section of this amendment. Any additional recordkeeping and reporting requirements will increase the cost of doing business for the charter operators. However, the additional costs associated with signing an affidavit should be minimal. NMFS will also incur costs associated with developing, distributing, and verifying information submitted on the affidavit. Those costs are also expected to be relatively small.

**Transfers of permits** (permanent) would be allowed up to use caps. An option was also considered under Alternative 2 to make a subset of the permits non-transferable (Table E-1), based on a minimum trip threshold for each qualifying vessel. Transferability facilitates the development of a market in which permits are traded. After the initial allocation of permits, market forces would determine access to the fishery. Newcomers would buy permits to enter the fishery, and retirees would be paid to leave. Competition in the market for permits ensures that those most willing or able to buy permits would eventually acquire them. For an industry such as the for-hire charter sector that is characterized by a high turnover rate, transferability of permits assumes particular importance. It would allow the more efficient operators to remain (or enter the fishery), while the less efficient ones would be compensated for leaving the fishery.

Because of the structure of the halibut charter fishery, limiting the use of non-transferable permits by persons other than the owner will be difficult. Allowing others to use the permit (see the permit leasing

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<sup>17</sup>Personal comm., NOAA GC, John Lepore, 2/20/07.

section) could, at least temporarily, increase effort associated with non-transferable permits. However, at such time as these permits are no longer held<sup>18</sup> by the original owner, they will be removed from the fishery. The reduction in permits will decrease the fleet's capacity to carry clients and would further limit potential increases in charter catch.

Permit prices should, in equilibrium, reflect the discounted present value of "expected" profits generated from permit use. Public testimony at recent Council meetings indicated that charter operators anticipate that permits will initially sell for about \$5,000. Until a competitive market for those permits is established, the actual price will be unknown. The value of permits that allow a person to carry more clients is expected to sell for a higher price than a permit endorsed for fewer clients. Likewise, permits in one area may differ in price from those in another area, owing to a number of factors (e.g., relative condition of the halibut resource in the area, access by clients, type-frequency-duration of trips demanded by clients in that area). The difference in permit prices should reflect the change in "expected" profits that can be generated by different permits.

**Table E-1 Number of businesses estimated to be issued transferable and/or non-transferable permits**

Min. # of businesses	Permit type(s)	Option 10.1					Option 10.2				
		1 Trip	5 Trips	10 Trips	15 Trips	20 Trips	1 Trip	5 Trips	10 Trips	15 Trips	20 Trips
10	Both	68	65	62	45	39	68	39	18	13	8
	Transferable only	668	671	674	627	573	668	697	718	659	603
	Non-trans. only	224	112	14	5	1	224	111	14	4	1
10 Total		960	848	750	677	613	960	847	750	676	612
15	Both	83	80	79	62	54	83	57	41	23	15
	Transferable only	587	590	591	608	556	587	613	629	647	594
	Non-trans. only	290	178	80	7	3	290	177	80	6	3
15 Total		960	848	750	677	613	960	847	750	676	612
20	Both	84	81	81	72	64	84	62	51	38	21
	Transferable only	516	519	519	528	536	516	538	549	562	578
	Non-trans. only	360	248	150	77	13	360	247	150	76	13
20 Total		960	848	750	677	613	960	847	750	676	612

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

Note: This table shows the maximum number of permits that could be issued based on 2004 and 2005 data; however, note that to receive a permit the business must also qualify in the year prior to implementation (e.g., 2007 or 2008).

**Leasing of permits** (annual) would not be allowed. Prohibitions on leasing stem from a desire to keep persons from holding permits for the sole purpose of generating absentee income, rather than from active participation. Tracking whether halibut charter moratorium permits are being leased may be difficult without a provision such as owner-on-board. Those requirements are not practical, because of the normal structure of the halibut charter fishery (e.g., multiple vessels operated by a charter business, multiple trips per day, seven-day per week operation in peak seasons).

Business arrangements used in the fishery may make it difficult to determine with certainty whether permits are being leased to a captain for a year, or if the captain is working as an employee of the owner. Given the structure of business arrangements within the halibut charter industry, enforcing a prohibition on permit leases may be difficult without additional requirements. The Council included some restrictions under this issue with the intent of deterring leasing: halibut charter permit holders may only use their

<sup>18</sup> Transfers include giving the permit away (including to family or friends), settlement of an estate, and when persons are added to the ownership structure of the business entity holding the permit.

permit onboard a vessel that is identified on an ADF&G logbook that is assigned to the person holding the permit. If the permit holder wishes to use the permit on a different vessel, they first must obtain an ADF&G logbook for the new vessel. The permit number must be recorded on the logbook for each trip.

**Permit endorsement for number of halibut clients** on board would be set equal to the highest number of clients on any trip in 2004 or 2005, but not fewer than four. Options to cap the number of halibut clients at a fixed number were also considered for each area. Another option was considered to allow permit holders to be grandfathered above the cap, until such time that a permanent transfer of the permit occurs. Upon transfer, the permit would be subject to the fixed cap on the number of clients. The intent of this provision is to limit effort increases by restricting the number of clients a vessel may carry.

In Area 2C, only 6 rods are currently allowed to be fished at any given time on halibut charter vessels, but more than 6 clients may be on the vessel, if the vessel is permitted to carry them. ADF&G staff notes that some vessels carry more than 6 clients when only six lines are fished at one time. Limiting the number of clients that a vessel may carry could reduce revenues for owners that base their business plan on carrying more than 6 clients, but allowing only 6 to fish at one time. **Error! Reference source not found.** provides a summary of the number of clients that each permit would allow to fish.

**Table E-2 Estimated number of clients endorsed to fish by permit**

IPHC Area	Maximum Clients	Option 10.1					Option 10.2				
		1 Trip	5 Trips	10 Trips	15 Trips	20 Trips	1 Trip	5 Trips	10 Trips	15 Trips	20 Trips
2C	4	319	266	225	197	173	319	245	193	164	143
	5	187	176	163	150	140	187	172	158	147	137
	6	233	228	214	201	183	233	225	209	196	178
	7+	22	19	17	14	13	22	19	18	14	13
2C Total		761	689	619	562	509	761	661	578	521	471
3A	4	144	107	84	63	47	144	98	75	59	41
	5	68	64	56	48	43	68	60	51	42	37
	6	346	337	321	306	293	346	335	316	299	281
	7+	104	103	100	98	98	104	103	99	97	96
3A Total		662	611	561	515	481	662	596	541	497	455

Source: ADF&G saltwater logbooks, 2004 and 2005.

Wilen (2006) has indicated that in sport charters there are likely too many boats, taking trips at less than full capacity. This practice could result in too much effort being expended finding and catching fish. The result is that trip prices are higher than they would need to be, if trips were taken at full capacity. Client anglers must then pay higher trip prices to cover those costs. The reduced “efficiency”, resulting from limiting the number of clients that may be carried, is borne through increased trip prices for consumers. Some consumers may enjoy fishing with fewer people on the boat. Therefore, operators that are limited to carrying fewer than 6 clients, may market their trips to people that like (and are willing to pay for the privilege of ) fishing with fewer people.

**Permits may be stacked up to the use caps.** Permits may be stacked or unstacked at any time. Assigning more than one permit to a vessel increases the number of clients the vessel may carry. The number of clients the vessel may carry is equal to the aggregate number of clients endorsed on the permits assigned to the vessel. The ability to stack permits provides operators the freedom to increase the number of clients carried on one vessel (but not to exceed to U.S. Coast Guard limits). Unstacking permits allows operators to increase the number of vessels they operate, but vessels on average will carry fewer clients. There may be efficiency reasons to increase the number of clients a vessel may carry. Charter business operators operating at an economic disadvantage as a result of limits on the number of clients they may

carry could stack permits to spread the trip costs over more clients. Efficiency gains could benefit guided anglers and charter operators.

**Evidence of participation** during 2004 and 2005 is based on ADF&G saltwater logbook entry with bottomfish statistical area, rods, or boat hours. Because the initial allocation of permits is based on historic participation, a data set that contains participation history of the vessels and businesses in the charter fleet is needed. After considering all data sources available, the Council concluded the best source of participation data for the halibut charter fishery is ADF&G saltwater logbooks with bottomfish activity. While 2004 and 2005 ADF&G saltwater logbooks are not designed to allow halibut data to be separated from other bottomfish data, they represent the most complete and accurate data available for recent participation. Separate halibut data is provided in the ADF&G saltwater logbooks starting in 2006; thus, the Council recommended using halibut logbook data for evidence of participation in the ‘year prior to implementation’, **which would likely be 2007.**

**Qualification period** defines the participation requirements for a permit. The Council considered two options. Both options are based on the catch history of vessels operating in the saltwater bottomfish<sup>19</sup> fishery as reported in ADF&G saltwater logbooks. Both options require a minimum number of trips during 2004 or 2005, and in the year prior to implementation of the program. The minimum trip requirements considered are 1, 5, 10, 15, or 20 trips. The two options differ in how the number of trips is calculated for businesses with multiple vessels that individually do not meet the minimum trip requirement. Option 10.1 allows all the trips by vessels for which the business submitted logbooks to be included in the number of trips calculation; while Option 10.2 separates the trips of vessels that qualify based on their own activity and those that do not. This calculation would award permits for vessels that individually meet the minimum number of trips and for vessels that collectively meet the minimum requirement.

**Option 10.1:** Each licensed guide business owner(s) who reported a minimum of 1, 5, 10, 15, or 20 bottomfish logbook trips during 2004 or 2005, and (halibut trips) in the year prior to implementation would be issued a permit(s) based on the number of trips summed for all vessels in his best year of the qualification period, unless an unavoidable circumstance occurred. A business would be limited to the number of permits equal to the highest number of vessels used in any one year during the qualifying period.<sup>20</sup>

**Option 10.2:** Each licensed guide business owner(s) who reported a minimum of 1, 5, 10, 15, or 20 bottomfish logbook trips during 2004 or 2005 and (halibut trips) in the year prior to implementation would be issued a permit(s) for each vessel based on the number of trips in his best year during the qualification period, unless an unavoidable circumstance occurred. Trips by vessels operated by a licensed guide business owner that do not individually meet qualification criteria may be combined to meet the criteria. A business would be limited to the number of permits equal to the highest number of vessels used in any one year during the qualifying period.<sup>21</sup>

Table E-3 provides an estimate of the maximum number of permits that would be issued to qualified businesses under the two options. Information is also presented for the number of unique logbooks that were submitted in 2005 and the number of businesses that submitted those logbooks, such that the number

<sup>19</sup> Halibut activity will be required in the year prior to implementation.

<sup>20</sup> Example: A business owner operated 3 vessels with 6, 10, and 8 trips, respectively (summed trips = 24) in his best qualifying 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).

<sup>21</sup> Example: Under a 5-trip threshold, a vessel with 10 trips generates 1 permit; second and third vessels with 3 trips combined earn 1 permit by combining their trips.

of permits estimated to be issued to businesses under each of the options can be compared to 2005 participation. The maximum number of permits a business may be issued is equal to the maximum number of logbooks that were submitted in a year (2004 or 2005) by the business.

**Table E-3 Estimate of maximum number of permits that would be issued and the number of businesses receiving the permits**

Minimum Number of Trips Required to Qualify	Option 10.1		Option 10.2	
	Permits	Businesses	Permits	Businesses
	AREA 2C			
2005 Participation	654	381		
1 or More Trips	761	446	761	446
5 or More Trips	689	380	661	380
10 or More Trips	619	327	578	327
15 or More Trips	562	291	521	291
20 or More Trips	509	255	471	255
	AREA 3A			
2005 Participation	567	450		
1 or More Trips	662	520	662	520
5 or More Trips	611	471	596	471
10 or More Trips	561	426	541	426
15 or More Trips	515	388	497	388
20 or More Trips	481	360	455	360

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

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

In Area 2C during 2005, a total of 381 businesses submitted entries from 654 different logbooks. In Area 3A, 450 businesses submitted reports from 567 logbooks. Based on the qualification criterion being considered by the Council, between 471 (at 20 or more trips) and 761 (at 1 or more trips) permits could be issued in Area 2C. Between 455 (at 20 or more trips) and 662 (at 1 or more trips) permits could be issued in Area 3A. These estimates do not take into account the minimum trip requirement in the year prior to implementation of the program, because those data are unavailable. Thus, these estimates represent the maximum number of permits that would be issued.

More permits would be issued under the 1 or 5 trip alternatives than logbook entries submitted in 2005. Fewer permits would be issued under the 10, 15, and 20 trip requirements. Because the table does not take into account participation in the year prior to implementation, it is possible that a requirement of 5 or more trips could reduce the number of permits below 2005 participation levels. However, it is unlikely that the 1-trip requirement would reduce the number of permits to that level.

The number of businesses does not change under the two options at comparable trip level requirements. More permits are issued under Option 10.1 because all the trips for the business are summed to determine which vessels qualify. Under Option 10.2 only the vessels that do not qualify with their own history may combine their trips to qualify. The additional number of permits issued in Area 2C under Option 10.1 is 28, 41, 41, and 38 at the 5, 10, 15, and 20-trip level, respectively. In Area 3A, the change is smaller. It ranges from 15 at the 5-trip level up to 26 at the 20-trip level.

Under a one-trip requirement for a permit, the difference in the number of permits allocated permits versus fished in 2005 is about 100. A one-trip requirement would allow capacity (in terms of vessels and client trips) to expand over historic levels. A five-trip requirement would allow up to 35 more vessels to operate in Area 2C and 44 more vessels in Area 3A than operated in 2005. A 10-trip, 15-trip, or 20-trip requirement would reduce the number of vessels that could operate in Area 2C and Area 3A below 2005 levels. A 10-trip requirement results in a decrease of 35 to 76 vessels in Area 2C and 6 to 26 vessels in Area 3A compared to 2005 levels; a 15-trip requirement decreases the number of vessels by 92 to 133 in



Area 2C and 52 to 70 vessels in Area 3A compared to 2005 levels. A 20-trip requirement in Area 2C decreases the number of vessels by approximately 145 to 183, depending on the option selected. In Area 3A, the decrease is 86 to 112 vessels, depending on the option selected. A decrease in the number of vessels does not mean the total number of clients would decline. For example, in 2004, the average Area 2C halibut charter carried 3.5 paying clients. In Area 3A, the average halibut charter carried 5.16 clients. Given the number of clients endorsed for permits in those areas, it appears that more clients could be carried at the 10-trip requirement than fished in 2005 (assuming Coast Guard certification of additional passengers on vessels of this fleet).

The average number of clients that each qualified vessel would need to carry to reach 2005 participation levels ranges from 27 to 57, depending on the option selected. If a vessel carries an average of 4 clients per trip (a conservative assumption), each qualified vessel would need to take 7 to 15 trips per year to carry the number of clients that took charters in 2005. Since the charter season lasts approximately 100 days, a sufficient number of vessels appear to qualify to meet current client demand. However, there are specific times of the year when client demand for trips exceeds supply, at the prevailing trip price.

Information that is currently available does not allow a formal study of the economic impacts that the charter sector has on regions or communities to be conducted. Information on charter operator's expenditures in the various communities and the products purchased, expenditures by clients as a result of taking the charter trip, and the dollars that flow to the community in terms wages and profits would be required. Collecting that information is outside the scope of this analysis.

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

Because the halibut resource is fully utilized, increases in charter harvests decrease the amount of halibut available to the commercial IFQ fishery, *ceteris paribus*. Communities that are dependent on the commercial IFQ fishery could be worse off if the charter fishery increased harvests, *ceteris paribus*, but the actual impacts cannot be quantified.

Changes in the number of qualified vessels that ended a trip in a specified community seem to indicate that a 20-trip requirement would impact Area 2C more heavily, than Area 3A. Juneau, Petersburg, Sitka, and Ketchikan would realize substantial reductions in the number of permits landing in their community when compared to the 1-trip option. Many of these same communities are also active in the commercial IFQ fishery. However, because the overall amount of halibut taken by the charter fleet in Area 2C is not expected to decline, these communities could lose jobs and revenues from both the commercial and charter sectors as a result of implementing a more restrictive moratorium.

**Use caps** are considered at the 1, 5, and 10 permit levels. A grandfather provision would allow businesses to operate at historic levels. The American Fisheries Act (AFA) 10 percent ownership rule for affiliation will be applied to determine the number of permits associated with an entity under the use cap.

Use caps limit the number of moratorium permits that may be held or used by an eligible halibut charter operator. Use caps may not be exceeded unless the entity subject to the use cap is specifically allowed to exceed a cap according to the criteria established by the grandfather provision. The caps apply to both the number of permits that a person may hold (own, lease, or control through a business arrangement) or use because NMFS will not issue permits in excess of those allowed to be used.

**Table E-4 Number of businesses grandfathered at various use caps**

shows the maximum number of businesses that would be grandfathered under each of the use cap options considered. These grandfathered businesses would not be allowed to purchase additional permits until they are below the use cap. Restricting these owners from buying permits could reduce the permit price, by eliminating efficient businesses from the market. It could also mitigate consolidation of permits that could result in market control. As the number of trips required increases, the number of entities that would be grandfathered tends to decrease.

**Table E-4 Number of businesses grandfathered at various use caps**

Number of Businesses Grandfathered	Option 10.1		Option 10.2	
	2C	3A	2C	3A
	1 Trip			
Option 1 (2+ Permits)	116	85	116	85
Option 2 (6+ Permits)	16	2	16	2
Option 3 (11+ Permits)	5	0	5	0
	5 Trips			
Option 1 (2+ Permits)	112	84	101	78
Option 2 (6+ Permits)	16	2	15	2
Option 3 (11+ Permits)	5	0	5	0
	10 Trips			
Option 1 (2+ Permits)	100	80	84	73
Option 2 (6+ Permits)	16	2	13	2
Option 3 (11+ Permits)	4	0	5	0
	15 Trips			
Option 1 (2+ Permits)	89	75	75	68
Option 2 (6+ Permits)	15	2	12	2
Option 3 (11+ Permits)	3	0	1	0
	20 Trips			
Option 1 (2+ Permits)	81	73	69	63
Option 2 (6+ Permits)	14	2	11	1
Option 3 (11+ Permits)	2	0	1	0

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

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

The 10 percent ownership rule was used in the AFA to define an entity. The AFA definition states that 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. The AFA definition will also be used to determine the permits associated with an entity under the use cap. NMFS will need to collect information to determine the ownership structure of businesses. Businesses will also be required to notify NMFS any time their ownership structure changes. This information will be held by NMFS as confidential information and not released to the general public.

It is assumed that most persons gaining permits through transfer are efficient charter operators. Constraining the most efficient operators' use of permits is expected to reduce producer surplus of charter businesses. Consumer surplus could also be reduced if these operators could have provided trips that generate more client utility than other businesses, *ceteris paribus*. However, the Magnuson Stevens Act directs Councils to ensure that entities do not control an excessive share of a fishery. A cost of ensuring that no one entity controls an excessive share of the fishery is the potential of reduced net benefits.

**Community provisions** are addressed under Issue 12. Issue 12 specifically provides for an opportunity for small, rural community participation in the halibut charter limited entry program. Communities in Area 2C and 3A that meet the criteria selected would be eligible to request a specified number of (non-transferable) halibut charter limited entry permits from NMFS at no cost, similar to businesses that initially qualify to receive a permit under the general program. The eligibility criteria are designed with the intent of narrowing the eligible communities to those that do not already have a specified minimum level of participation in the halibut charter fisheries in 2004 or 2005.

Recognizing that substantial growth in the charter industry has been limited to relatively few larger, more accessible communities in Area 2C and 3A, businesses in these communities would likely receive the majority of limited entry permits allocated under the proposed moratorium program. The community provisions under Issue 12 are intended to remove a new economic barrier (cost of the halibut charter permit) for small, isolated communities with undeveloped or under-developed charter industries to participate in the halibut charter industry.

The beneficiary of the community provisions (i.e., holder of the charter halibut permit) is the Community Quota Entity (CQE) representing an eligible community. A CQE is a non-profit entity originally established under GOA Amendment 66, formed by the community in order to participate in the commercial halibut and sablefish IFQ program. An eligible community must form a CQE under the provisions of GOA Amendment 66, and have it approved by NMFS in order to request halibut charter permits under this program. In effect, the CQE would be issued the permit and would designate a skipper with a USCG license to take clients halibut charter fishing, similar to any other business. Permits requested by CQEs would be subject to additional restrictions that vary from those of other permit holders, the primary of which is that the permit must be used in the community represented by the CQE (the trip must originate or terminate in the CQE community).

Under the range of options considered in Issue 12, depending on the eligibility criteria selected, a range of 13–19 Area 2C communities and 10–14 Area 3A communities could qualify to receive halibut charter permits, for a total of 23–33 communities. (Note that these communities must also form CQEs to participate, 17 of which have been formed in Area 2C and Area 3A combined as of January 2008.) The limits (use caps) considered for the number of requested permits, result in a maximum of 39 – 133 new permits that could be issued to CQEs in Area 2C and 40 – 210 new permits in Area 3A. Note that creating new permits for use by entities representing small, rural communities is somewhat at cross-purposes with the primary problem being addressed through this action. However, while the Council problem statement focuses on limiting new entry into the charter fishery, part of the problem statement notes that the Council is concerned with maintaining access to the halibut charter fishery by small, rural, coastal communities.

### Council preferred alternative

On March 31, 2007, the Council identified Alternative 2 as its final preferred alternative. The Council's preferred alternative states that each licensed guide business owner who reported a minimum of 5 bottomfish trips during 2004 or 2005, and a minimum of 5 halibut trips in the year prior to implementation (**likely 2007**) would be issued a permit(s) based on the number of trips summed for all vessels in his/her best year of the qualification period. This results in issuing an estimated maximum of 689 permits to 380 businesses in Area 2C and 611 permits to 471 businesses in Area 3A. The permits would be issued based on bottomfish statistical area, rods, or boat hour activity reported in ADF&G saltwater logbooks.<sup>22</sup> Leasing would not be allowed, but it is recognized that enforcement of the leasing prohibition may not be possible, and could result in increased usage of a permit. Vessels that qualified at

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<sup>22</sup>Actual halibut statistical area, rods, or boat hours as reported in the ADF&G logbooks would be used to demonstrate participation in the year prior to implementation. Only bottomfish data is available to document 2004 and 2005 participation.

trip levels of 15 and above would earn a transferable permit for that business owner; permits issued based on trip levels below 15 trips would be non-transferable. This provision results in an estimated 29% of the permits issued in Area 2C, and 21% of the permits issued in Area 3A, being non-transferable. This equates to 25% of the permits in both areas combined as non-transferable.

Permits may be owned by persons, or by U.S. businesses meeting a 75 percent U.S. ownership requirement, with businesses under the requirement being grandfathered at the time of initial allocation. Requiring U.S. ownership will help ensure that the normal profits earned by the fleet will stay in the U.S. economy.

Permits would be endorsed with the maximum number of halibut clients that could be taken on a charter trip. The halibut client endorsement for each permit would be determined based on the maximum number of clients the qualifying vessel carried on any one halibut charter trip in 2004 or 2005, and a permit could be endorsed for a minimum of 4 clients. In Area 2C, an estimated 19 permits would be issued to carry 7 or more halibut clients, with the range of clients endorsed on all permits being from 4 to 13. In Area 3A, 103 permits are projected to be endorsed for 7 or more clients, with the range of client endorsements being from 4 to 38. Permits issued under the military hardship provision would receive a halibut client endorsement of 6 clients. Note that the client endorsement limits the number of *halibut clients* on board; it does not govern the number of people on board, in total.

A use cap of 5 permits is recommended for each area, as part of the preferred alternative, meaning no entity (using the 10 percent affiliation rule) would be allowed to control or use more than 5 permits in each area, unless they were issued more than 5 permits at the time of initial allocation under the grandfather provision. Implementing a use cap helps ensure that no one entity controls an excessive share of the permits. Preliminary data show that 15 to 16 entities would be over the use cap in Area 2C at initial issuance, and 2 entities would be over the cap in Area 3A. Additional ownership data must be collected by NMFS before actual calculations of the number of entities over the cap, using the 10 percent rule, can be provided. Persons grandfathered in above the cap would be allowed to sell all of their permits, as a package, along with the halibut charter business. Stacking of permits, up to the use cap, would be allowed. The purpose stacking permits would be to increase the number of clients that may be carried on a halibut charter vessel, within limits set by the USCG.

The Council's preferred alternative under Issue 12 would allow 18 communities in Area 2C, and 14 communities in Area 3A, to request a limited number of halibut charter permits from NMFS at no cost, through a Community Quota Entity (CQE). These permits would be non-transferable, subject to a halibut client endorsement of six, designated for the area (2C or 3A) in which the community is located, and must be used in the eligible community. The limit (use cap) on the number of permits that each CQE could request from NMFS under the preferred alternative would be 4 permits per eligible Area 2C community and 7 permits per eligible Area 3A community. Thus, if 18 Area 2C communities qualify and form CQEs, the maximum number of new permits that could be created for CQEs representing eligible Area 2C communities is 72. In Area 3A, in which 14 communities qualify, the maximum number of new permits that could be created is 98.

Under the Council's preferred alternative in the general program, 689 permits are estimated to be issued in Area 2C and 611 permits in Area 3A. Thus, the pool of Area 2C permits could be increased by a maximum of 10% by the community provision, with those additional permits issued to CQEs. The pool of Area 3A permits could be increased by a maximum of 16%.<sup>23</sup> Use caps on the total number of permits each CQE could hold (whether requested or purchased permits) were also approved. The Council selected

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<sup>23</sup> Assumes all eligible communities in Area 2C and 3A form a CQE, have it approved by NMFS, and request the maximum number of permits allowed.

an overall use cap of two times the use cap selected for the requested CQE permits in each area, meaning each eligible Area 2C community could request up to 4 permits from NMFS at no cost and purchase up to an additional 4 permits, for a total of 8 permits. Each Area 3A community could request up to 7 permits from NMFS at no cost and purchase up to an additional 7 permits, for a total of 14 permits. This use cap would apply to all 35 GOA Amendment 66 communities, meaning the 3 Amendment 66 communities that do not qualify to receive new permits at no cost would be subject to the same overall use cap (on purchased permits) as those that do qualify for gifted permits.

The purpose of the proposed moratorium program is to provide an interim measure of stability in the guided sport sector in the step-wise process towards a long-term solution of the allocation of halibut among commercial and charter users. Limiting new entry into the fishery by requiring a moratorium permit should provide some stability for the sector. Identifying participation with a moratorium permit should provide a solid foundation on which to build future management programs. While increased harvests by the guided sport sector are driving the long-term solutions being considered by the Council in other amendment packages, the moratorium is not expected to limit charter harvests. The fleet will have room to expand from the current level of harvest by more fully utilizing the qualified vessels and increasing the average number of clients carried (moving the average closer to the endorsement cap). Through these measures alone, the fleet could increase the number of clients they carry (and the amount of halibut catch, if the mean catch per angler is constant) by a minimum of about 2 times their current levels. If the number of vessels and clients per trip constrain the fleet, they could increase the average number of trips per day through creative marketing or operational structures.

The Council's preferred moratorium structure (or any structure proposed) is expected to allow increased charter harvests over the next several years. Increases in charter harvests will lead to increased total compensating variation earned by charter clients. The fleet should continue to operate as competitors since a large number of fairly homogeneous operators with excess capacity will exist in the fleet. The competition for clients will mean that, over the long-term, charter operators will earn little or no producer surplus, *ceteris paribus*.

All other things being equal, the Area 2C and 3A harvests by the commercial IFQ fishery will decline. Because they operate in a fishery where they are not competing for catch, they will continue to earn some producer surplus, but the total amount will be reduced, due the relatively inelastic ex-vessel price of halibut. Because the anticipated revenue stream of IFQs will decline as a result of decreased catch share, the value of Area 2C and 3A QS will decline to reflect that reduction. To the limited extent that decreases in Area 2C and 3A catch increase ex-vessel halibut prices, the QS/CDQ values in Areas 3B through 4E should increase to reflect the larger net revenue stream. Post-harvest surplus (consumer surplus) will decline as consumers of commercially caught halibut find less halibut in the market, assuming the supply shortfall is not filled by other producers (e.g., Canada).

Changes in the net National benefit derived from increased charter harvests will depend on the difference between the compensating variation earned by charter clients and the post-harvest surpluses earned by consumers of commercially caught halibut. If the change in compensating variation is larger, net National benefits will increase by allowing additional charter harvests. If the change in post-harvest surplus is larger than the change in compensating variation, then net National benefits will decline with expanded charter catch shares.

Changing the locations of fishing expenditures will result in shifts in regional economic impacts. The change in regional economic impacts cannot be enumerated by considering only the charter or the commercial sector, since they tend to operate out of many of the same communities. Increasing the charter harvests is expected to increase the amount of client and charter business expenditures in the communities that attract the additional business. If the increased charter harvest results in decreased

commercial expenditures, the community may be better or worse off, depending on the relative magnitude of the respective sector expenditures. Regions or communities in which the commercial fleet takes fewer trips, or catches less fish, will likely realize reduced economic activity. The reduction in expenditures may reduce personal income and jobs in the community. Overall, the net National benefits are not expected to change as a result of shifts in regional economic impacts. Appendix 2 provides a general overview of the activity, by community, in the charter and commercial fisheries.

Creating additional permits to be held by CQEs would conflict with the goal to limit new effort in the charter halibut sector, and could potentially result in further negative impacts on the commercial halibut sector and the communities that traditionally benefit from the commercial fishery. Issuance of charter permits to CQEs may also have a direct adverse impact on existing charter operators and the communities from which they operate, given the excess capacity that would exist in this sector, even after an entry moratorium. In general, it is a policy decision by the Council to determine the appropriate number of permits created for use by CQEs, in order to balance the dual goals of limiting additional entry into the charter halibut sector, and reducing an economic barrier to future access to this industry for small, rural communities.

The market for charter permits could be adversely affected by the provision to allow CQEs to acquire and use charter permits, as charter operators seeking to enter the fishery may choose to apply for use of a permit through the community CQE, as an alternative to purchasing their own permit. While the pool of potential buyers in the open market for charter permits may be reduced, the number of permits available for sale would not be affected (CQE requested permits are not transferable), which may result in downward pressure on the price of permits for charter operations. This would affect both the existing charter sector (sellers) and new entrants into the fishery (buyers).

The existing charter sector could also be affected by competition from an influx of new or expanded charter operations through CQE permits, depending upon a number of considerations. As the CQE must use the permit in its member community, charter operators in other communities may not be substantially affected, even with the overall increase in competition. However, there may be some negative affects on existing charter operators in the Amendment 66 communities, as they realize increased competition within their community, by entrants who are effectively subsidized by the CQE (e.g., incur no or a subsidized cost to use the permits; avoid or substantially share economic risk with the CQE permit holder). In recognition of these issues, the eligibility criteria are, in part, intended to exclude Amendment 66 communities whose charter halibut market is already relatively developed.

Guided anglers may benefit from an overall increase in the supply of charter opportunities and the geographic diversity of charter operations available in rural areas through the CQE permits. An increased supply of permits may also result in downward pressure on the price of a charter trip for a guided angler, although the “trip”, itself, may be marketed (and valued) as a very different experience from the “standard” charter experience, given the remote character of many of the CQE qualifying communities.

The implementation of the community provision is intended to maintain access to the halibut charter fishery, and an associated fisheries-based economic structure, for specified small, rural communities. CQE-held charter permits may enable residents from these communities, or residents of other communities, to participate in a fishery from which they might otherwise be excluded, due to the cost and economic risk associated with purchasing a permit.

#### Implementation and enforcement issues

**Permit issuance.** To qualify for a halibut charter moratorium permit, a person must demonstrate a minimum number of chartered bottomfish trips, as reported in the ADF&G logbook, in 2004 or 2005, and

the year prior to implementation. For this reason, NMFS will need access to the person's historical logbook and business information, to determine the number of permits to be issued and associated client and area endorsements. Until recently, Alaska statute prevented direct access of ADF&G logbook or ADF&G business license information by NMFS or NOAA Office of Law Enforcement (OLE). In 2007, ADF&G sought and obtained a legislative change to the confidentiality statute that would facilitate Federal access to these sources of information.

Persons applying for a charter moratorium permit would be required to provide a complete application to NMFS during a designated application period, which could not be less than a 90-day period. Applicants who have made claims that are inconsistent with the logbook record will be provided an evidentiary period of 60 days. Upon expiration of the 60-day evidentiary period, an Initial Administrative Decision (IAD) that either grants or denies the applicant a moratorium permit will be issued by the Regional Administrator. An applicant may appeal the IAD through the NOAA Office of Administrative Appeals (OAA).

**Appeals.** Permit applicants that are denied a moratorium permit or transfer may appeal the IAD through the OAA. The preferred alternative (Alternative 2) would allow persons to obtain a permit through the appeals process, if they experienced situations involving "unavoidable circumstances" with explicit inclusion of medical emergencies, constructive losses, and military service. These hardships are difficult to define, and a discussion about the specific types of unavoidable circumstances is provided in Section 2.6.2. The Council's preferred alternatives notes that the criteria used for defining hardships in the groundfish LLP program should be used as guidance to NMFS in implementation (see Section 2.6.2).

The Council also indicated its preference for the issuance of interim (non-transferable) permits to an appellant, should the appellant submit a claim with some probable basis for success and provide legitimate documentation. Interim permits allow an appellant to operate a charter while an appeals case is being reviewed. The disadvantage to not issuing interim permits is that persons with justifiable hardship claims may not be able to operate during the appeals process, incurring potentially significant adverse impacts.

The number of unavoidable circumstance claims are typically linked to the level at which the minimum qualification criteria are set and the scope of unavoidable circumstances allowed by regulation. A more restrictive qualification criterion likely increases the number of persons that appeal, but allows fewer entrants into the moratorium program. The Council's preferred alternative includes a relatively low qualification threshold, which allows more persons and entities to participate under the moratorium.

**Business ownership information.** The preferred alternative (Alternative 2) specifies that all persons receiving a moratorium permit, either through initial qualification or transfer, would need to meet a 10 percent rule of affiliation that is similar to the one promulgated under the American Fisheries Act. Persons would need to annually disclose affiliation and ownership through an application and affidavit to NMFS. Enforcement of this provision would require NMFS to have the authority to suspend a permit until the business provides the necessary annual documentation. The application would require disclosure of the applicant's name, signature, business tax ID (to aid in enforcement), business mailing address, business telephone number, business e-mail, name of the managing company, ownership interests or affiliation with other businesses, and declaration of U.S. citizenship.

Persons applying for a permit at initial issuance or transferring a permit would need to complete a notarized application containing contact information and business ownership information, as well as signing an affidavit declaring U.S. citizenship, meeting the business ownership requirements, and attesting that the information on the application is true, accurate, and complete. NMFS will electronically track permit holders and insure permits are not transferred to a person in excess of the use caps.

**Leasing prohibition.** Private business arrangements are extremely difficult for NOAA OLE to monitor because documentation is often not available. A large amount of enforcement resources would be required to monitor, enforce, and, as appropriate, prosecute violations of a leasing prohibition. In many cases, a charter business may hire a captain to take clients fishing. Contracts with captains are business arrangements that can extend within a year, or over a number of years, and may be terminated at any time. These common business arrangements make it difficult to determine with certainty whether permits are being “leased” to a captain for a period of time, or if the captain is working as an employee of the owner. Section 2.6.3 provides a detailed description of the purpose for a leasing prohibition, and enforcement concerns associated with the no-leasing provision.

Given the problems associated with enforcing a prohibition on leasing, the Council included some provisions that are intended to deter leasing. Specifically, halibut charter permit holders may only use their permit onboard a vessel that is identified on an ADF&G logbook, assigned to the person holding the permit. If the permit holder wants to use the permit on a different vessel, he/she must obtain an ADF&G logbook for the new vessel before the permit may be used on that vessel. In addition, the permit number must be recorded on the proper logbook for each trip.

**Enforcement of client endorsement.** Several enforcement options were considered by NMFS, including limiting the number of clients onboard the vessel, line limits, and limiting the total number of halibut that may be harvested. Enforcement based on the number of harvested halibut is the preferred approach, because it provides a high level of accountability at sea, at the dock, and post season. In effect, the client endorsement would be linked to the collective daily bag limit associated with the number of charter anglers endorsed on the moratorium permit, or aboard the vessel; whichever provides for the fewest halibut. For the regulation to be enforceable, the number of harvested halibut on the vessel should not exceed the client endorsement through the “gifting” of skipper and crew fish. For this reason, retention of halibut by skipper and crew needs to be eliminated. The client endorsement would be enforced by limiting the total number of harvested halibut allowed on a vessel to the collective bag limit for the number of halibut charter clients onboard the vessel. For example, under a two fish bag limit and a permit endorsed for six halibut clients, a maximum of twelve halibut would be allowed on board for that logbook day.

**Administrative costs.** The moratorium program will increase administrative and enforcement costs for NMFS. These costs include the hiring of new staff, or the redirection of current staff resources. Redirection of staff resources would reduce the ability of the agency to administer current management programs and enforcement activities. To provide adequate enforcement coverage for the charter fishery, NOAA OLE would need to have an enforcement presence and administrative support for the following communities: Petersburg, Sitka, Juneau, Anchorage, Homer, and Seward. Thus, the cost estimates include annual costs for seven enforcement officers and one full-time attorney to prosecute permit violations. In addition to the enforcement costs, there are start-up and annual administrative costs associated with administering the program. In total, the Federal agency costs for implementing the program are estimated to be about \$1.23 million. Section 2.6.6 provides an assessment of the program costs.



## 1.0 ENVIRONMENTAL ASSESSMENT

This Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) assesses the potential biological, social, and economic impacts of implementing regulations to limit entry into the halibut charter fisheries in International Pacific Halibut Commission (IPHC) Regulatory Areas 2C and 3A. The National Environmental Policy Act (NEPA), Executive Order (E.O.) 12866, and the Regulatory Flexibility Act (RFA) mandate that certain issues be examined before a final decision is made. The action area is described in Section 1.2. The purpose and need is addressed in Section 1.3. Section 1.5 describes the alternatives considered for analysis. Section 1.6 describes the affected environment and Section 1.7 describes the potential environmental impacts. Section 1.9 discusses the cumulative effects of the proposed alternatives with other proposed actions that may affect these fisheries. The RIR and IRFA are contained in Chapters 2.0 and 3.0, respectively.

### 1.1 Background

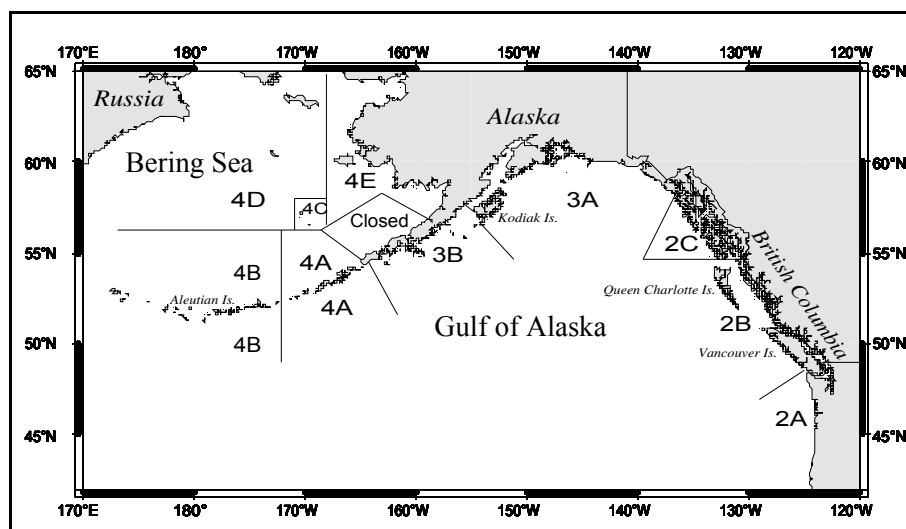
Federal agencies share management of Pacific halibut *Hippoglossus stenolepis*. The domestic fishery is managed by the IPHC as provided by the Convention Between the United States and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and the Bering Sea (Convention) and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

*“...develop regulations governing the United States portion of Convention waters, including limited access regulations, applicable to nationals or vessels of the United States, or both which are in addition to and not in conflict with regulations adopted by the Commission. Such regulations shall only be implemented with the approval of the Secretary, shall not discriminate between residents of different States, and shall be consistent with the limited entry criteria set forth in Section 303(b)(6) of the Magnuson Act. If it becomes necessary to allocate or assign halibut fishing privileges among various United States fishermen, such allocation shall be fair and equitable to all such fishermen, based upon the rights and obligation in existing Federal law, reasonably calculated to promote conservation, and carried in such manner that no particular individual, corporation, or other entity acquires an excessive share of the halibut fishing privileges...”*

In general, the language in the Magnuson-Stevens Fisheries Conservation and Management Act (MSA), the Halibut Act, and the Convention has been interpreted to assign responsibility to the Council on halibut management issues concerning allocations and limited entry. As reported by McCaughran and Hoag (1992), the Halibut Act granted authority to the Secretary of Commerce through the councils to allocate fishing privileges among US fishermen. The Councils did not become involved in halibut management until NOAA decided that the Commission should no longer consider regulations that relate to domestic allocation. An exchange of letters between NOAA and a Washington State congressman left the division in authority ambiguous. Therefore, an agreement among the IPHC, Pacific and North Pacific Councils, and NMFS decided that all conservation issues be carried out by the IPHC and that purely domestic allocation decisions be made by the Councils (McCaughran and Hoag 1992).

### 1.2 Action area

The action considered in the analysis would occur in IPHC regulatory Area 2C and Area 3A (see Figure 1). The proposed alternatives would be in place for the entire fishing season.



Source: IPHC.

**Figure 1 IPHC regulatory areas for the commercial halibut fishery**

### 1.3 Purpose and Need for the Action

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

Since 1993, the Council has investigated different methods to cap growth of charter halibut harvests in Areas 2C and 3A, where developed charter fisheries occur. Various types of limited entry programs have been considered by the Council in previous analyses (NPFMC 1997, 2001, 2003, 2005, 2006, and 2007), but were rejected primarily due to lack of adequate data for individual charter businesses and the Council's previous interest in managing these fisheries under a quota share program, another form of limited entry.<sup>24</sup> Alaska Department of Fish and Game (ADF&G) charter halibut logbook data were collected during 1998-2001. This data collection was discontinued due to an increasing discrepancy between the logbook reported harvest for Pacific halibut and Statewide Harvest Survey estimates, which were not observed for other fish species in Area 3A, and was somewhat lesser in magnitude for the Area 2C fisheries.<sup>25</sup> Charter halibut logbook data reporting requirements began again in 2006 under a revised data collection protocol.

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

<sup>24</sup> See Appendix 1 for a detailed history.

<sup>25</sup> September 21, 2001 memo from Allen Bingham to Kevin Duffy, ADF&G.

### **1.3.1 Problem Statement**

The Pacific halibut resource is fully utilized and harvest by the charter sector is demonstrating steady growth. To provide long-term stability of the charter sector and lessen the need for regulatory adjustments, which destabilize the sector, the Council is embarking on development of a new management framework. In the interim, to address allocation issues between the charter and commercial sectors, the former is operating under a guideline harvest level (GHL). Harvest data since 2004 indicate that the GHLs in Area 2C have been exceeded and are near levels established for Area 3A. This has resulted in a renewed effort to find a long-term solution. To that end, the Council formed a stakeholder committee of affected charter and commercial user groups to consider management options and formulate recommendations for Council consideration in developing a management plan for the charter sector. Some of the options previously considered include limiting entry or awarding quota share based on past participation in the fishery. To address the potential against the rush of new entrants into the charter fishery, the Council is considering establishing a moratorium on the charter sector. 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.

### **1.4 Related NEPA Documents**

The NEPA documents listed below include detailed information on the halibut fishery, groundfish fisheries with halibut bycatch, and on the natural resources, economic and social activities, and communities affected by those fisheries:

- Groundfish Programmatic Supplemental Environmental Impact Statement (PSEIS) (NMFS 2004)
- Essential Fish Habitat Environmental Impact Statement (EIS) (NMFS 2005b)
- The Harvest Specifications Environmental Impact Statement (EIS)(NMFS 2007)
- Guideline Harvest Level Environmental Assessment (EA, Council 2003)
- Draft EA for measures to reduce charter harvest in Area 2C to the GHL (Council 2007b)
- EA regulatory amendment to define subsistence halibut fishing in Convention Waters (Council 2003b)

### **1.5 Description of the Alternatives**

The Council adopted the following alternatives and options in June 2006, based on recommendations from its committees, staff, and the public. The Council revised the language of the options in response to a staff discussion paper on the options in December 2006. The final suite of alternatives was adopted by the Council in February 2007, and a preliminary preferred alternative was adopted for analysis at that time. The Council's final preferred alternative (Alternative 2) was adopted in March 2007, and is identified below.

#### **1.5.1 Alternative 1. No action**

The Council rejected an alternative to take no further action to control entry or access to the charter halibut fishery. The analysis includes a chronology that dates back to 1993 of past Council actions to regulate the charter halibut sector. Taking no action has proven to not be a reasonable alternative while the Council pursues its step by step path towards a long-term solution.

Publication of the December 9, 2005 control date for determining historical or traditional participation in the charter sport fishery for halibut does not commit the Council or Secretary to any particular

management regime or criteria for entry to the charter halibut fishery. Charter vessel operators are not guaranteed future participation in the charter halibut fishery regardless of their date of entry or intensity of participation in the fishery before or after the control date. The Council could have chosen a different control date or management regime that does not make use of such a date.

### **1.5.2 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 moratorium (limited entry) program:<sup>26</sup>**

- Issue 1. Permits<sup>27</sup> may be held by U.S. citizens or U.S. businesses** with 75 percent U.S. ownership of the business. Businesses<sup>28</sup> may receive multiple permits due to charter halibut activity by vessels reported by the businesses in ADF&G logbooks. Initial permit recipients may be “grandfathered” below the U.S. ownership level and above proposed use caps until any change in ownership of the business occurs.<sup>29</sup>
- Issue 2. Permit would be designated for Area 2C 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.<sup>30</sup>
- Issue 5. Transfers** of permits (permanent) would be allowed up to use caps.  
Suboption 1: Prohibit 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 6. Leasing** of permits would not be allowed.<sup>31</sup>
- Issue 7. Permit Endorsement for Number of Halibut Clients on Board**  
Highest number on any trip in 2004 or 2005, but not less than 4.  
Suboption 1: Area 2C: cap maximum endorsements at 6, 8, 10, or 15  
Area 3A: cap maximum endorsements at 10, 15, 20, or 25  
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 transfer<sup>32</sup> of the permit occurs; the permit is then subject to the cap on client endorsements in Suboption 1.

<sup>26</sup>Military (Morale, Welfare, and Recreational Program) boats are not required to meet the qualification requirements of the program, but harvests still count against the GHL.

<sup>27</sup>Through initial issuance and transfers.

<sup>28</sup>A business licensed by the State of Alaska as a sport fish guide operator.

<sup>29</sup>Transferred permits would not be grandfathered below the US ownership cap, even upon sale of a business, but would be grandfathered above the use cap upon sale of the entire business (see Issue 11).

<sup>30</sup>The only tangible evidence is the ADF&G logbook, which requires meeting all State legal requirements.

<sup>31</sup>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.

<sup>32</sup>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.<sup>33</sup>

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

**Issue 10. Qualification period**<sup>34</sup>

Option 10.1: Each licensed guide business owner(s) who reported a minimum of 1, 5, 10, 15, or 20 bottomfish logbook trips during 2004 or 2005 and year prior to implementation<sup>35</sup> would be issued a permit(s) based on the number of trips summed for all vessels in his best year of the qualification period, unless an unavoidable circumstance<sup>36</sup> occurred. A business would be limited to the number of permits equal to the highest number of vessels used in any one year during the qualifying period.

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

Option 10.2: Each licensed guide business owner(s) who reported a minimum of 1, 5, 10, 15, or 20 bottomfish logbook trips during 2004 or 2005 and year prior to implementation<sup>7</sup> would be issued a permit(s) for each vessel based on the number of trips in his best year during the qualification period, unless an unavoidable circumstance<sup>8</sup> occurred. Trips by vessels operated by a licensed guide business owner that do not individually meet qualification criteria may be combined to meet the criteria. A business would be limited to the number of permits equal to the highest number of vessels used in any one year during the qualifying period.

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

**Issue 11. Use caps**, with grandfather<sup>37</sup> provision. The AFA 10% ownership rule for affiliation<sup>38</sup> will be applied to determine the number of permits associated with an entity under the use cap.

- Option 1. 1 permit
- Option 2. 5 permits
- Option 3. 10 permits

<sup>33</sup>For example, a business can stack two licenses (each endorsed for 6 clients) on one vessel for a total client endorsement of 12.

<sup>34</sup> Military (Morale, Welfare, and Recreational) boats are not required to meet the qualification requirements of the program, but harvests still count against the GHL.

<sup>35</sup> “Year prior to implementation” could also mean two years prior to implementation, depending on the starting date of the application period for permits. Meaning, the participation threshold would also need to be met in either 2007 or 2008, for implementation in 2009.

<sup>36</sup> Acceptable circumstances will be adjudicated on a case by case basis through the National Marine Fisheries Appeals Division, but includes medical emergencies, military exemptions, constructive losses. The military exemption refers to an individual who was assigned to active military duty during 2004 or 2005 and who qualifies as “active” during the year prior to implementation, and who demonstrated an intent to participate in the charter fishery in Area 2C or 3A (prior to the qualifying period).

<sup>37</sup> A business that owns/controls permits in excess of the use cap maintains the grandfather status for those permits that remain in its control after other permits are sold, but the sold permits lose the grandfather status in perpetuity. Grandfathered permits that are sold in total when a business owner sells his entire business/fleet maintain that grandfathered status. Grandfathered status refers to permits, not to vessels.

<sup>38</sup> Any entity in which 10 percent or more of the interest is owned or controlled by another individual or entity shall be considered to be the same entity as the other individual or entity.

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

A Community Quota Entity (CQE), representing a community in which [5 or fewer or 10 or fewer] active<sup>39</sup> 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 3, 4, 5, or 7 requested permits per eligible community.

Area 3A – use cap of 4, 5, 7, 10, or 15 requested permits per eligible community.

Overall use caps for CQEs (different use caps may be selected for CQEs representing communities in Area 2C and 3A):

Option 1: 1, 3, or 5 times those selected for permits holders under Issue 11.

Option 2: 2 times those selected for the CQE requested permit use cap for each area.

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).

Alternative 2 contains a range of options under many of the elements of the proposed limited entry program, which was available for the Council to select as its preferred alternative. The wider range of options forms the basis for the EA, RIR, and IRFA. The Council's preferred alternative and rationale for its selection is provided below.

### **1.5.3 Summary of the Council's Preferred Alternative**

The Council selected Alternative 2 as its preferred alternative on March 31, 2007. As outlined above, Alternative 2 would implement a moratorium on entry into the charter halibut fisheries in Areas 2C and 3A using a control date of December 9, 2005. This section outlines the Council's preferred alternative, including specific options under Alternative 2, and provides the rationale for this action.

#### **Features of the proposed moratorium (limited entry) program:<sup>40</sup>**

**Issue 1. Permits<sup>41</sup> may be held by U.S. citizens or U.S. businesses** with 75 percent U.S. ownership of the business. Businesses<sup>42</sup> may receive multiple permits due to charter halibut activity by vessels reported by the businesses in ADF&G logbooks. Initial permit recipients may be "grandfathered" below the U.S. ownership level and above proposed use caps until any change in ownership of the business occurs.<sup>43</sup>

<sup>39</sup>"Active" is defined as it is under Issue 10 (e.g., at least 1, 5, 10, 15, or 20 bottomfish trips).

<sup>40</sup>Military (Morale, Welfare, and Recreational Program) boats are not required to meet the qualification requirements of the program, but harvests still count against the GHL.

<sup>41</sup>Through initial issuance and transfers.

<sup>42</sup>A business licensed by the State of Alaska as a sport fish guide operator.

<sup>43</sup>Transferred permits would not be grandfathered below the U.S. ownership cap, even upon sale of a business, but would be grandfathered above the use cap upon sale of the entire business (see Issue 11).

- Issue 2. Permit would be designated for Area 2C or Area 3A.** If a business owner qualifies for a permit in both areas based on the history from a single vessel, he/she 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.<sup>44</sup>
- Issue 5. Transfers** of permits (permanent) for vessels that qualified at trip levels of 15 and above in Area 2C and Area 3A would be allowed up to use caps. Permits issued below trip levels of 15 in Area 2C and Area 3A would be non-transferable.
- Issue 6. Leasing** of permits would not be allowed.<sup>45</sup>
- Issue 7. Permit Endorsement for Number of Halibut Clients on Board**  
Highest number on any trip in 2004 or 2005, with minimum endorsement of 4.  
Permits issued under the military hardship provision would receive a halibut client endorsement of 6.
- Issue 8. Permits** may be stacked up to use caps.<sup>46</sup>
- Issue 9. Evidence of participation** is ADF&G saltwater logbook entry with bottomfish statistical area, rods, or boat hours.<sup>47</sup>
- Issue 10. Qualification period**  
Option 10.1. Each licensed guide business owner(s) who reported a minimum of 5 bottomfish logbook trips during 2004 or 2005 and year prior to implementation<sup>48</sup> would be issued a permit(s) based on the number of trips summed for all vessels in his best year of the qualification period, unless an unavoidable circumstance<sup>49</sup> occurred. A business would be limited to the number of permits equal to the highest number of vessels used in any one year during the qualifying period.

*Example: a business owner operated 3 vessels with 3, 4, and 5 trips, respectively (summed trips = 12) in his best year. He would be issued 2 permits under a 5 trip minimum.*

<sup>44</sup>The only tangible evidence is the ADF&G logbook, which requires meeting all State legal requirements.

<sup>45</sup>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.

<sup>46</sup>For example, a business can stack two licenses (each endorsed for 6 clients) on one vessel for a total client endorsement of 12.

<sup>47</sup>Actual halibut statistical area, rods, or boat hours as reported in the ADF&G logbooks are required to demonstrate participation in the year prior to implementation.

<sup>48</sup>“Year prior to implementation” could potentially mean two years prior to implementation, depending on the starting date of the application period for permits. Meaning, the participation threshold would also need to be met in either 2007 or 2008, for implementation in 2009.

<sup>49</sup>Acceptable circumstances will be adjudicated on a case by case basis through the NOAA Office of Administrative Appeals, and includes medical emergencies, military exemptions, and constructive losses. These hardship provisions should be implemented using similar criteria used in the groundfish License Limitation Program. The military exemption refers to an individual who was assigned to active military duty during 2004 or 2005, who qualifies as “active” during the year prior to implementation, and who demonstrated an intent to participate in the charter fishery in Area 2C or 3A (prior to the qualifying period).

**Issue 11. Use caps**, with grandfather<sup>50</sup> provision. The AFA 10% ownership rule for affiliation<sup>51</sup> 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 active<sup>52</sup> 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 requested permits per eligible community.

Area 3A – use cap of 7 requested permits per eligible community.

Overall use caps<sup>53</sup> for all CQEs in a management area are 2 times those selected for the qualifying CQE requested permit use cap for each area. (*Staff note: result is overall use cap of 8 permits for each CQE in Area 2C and 14 permits for each CQE in Area 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., permanently 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).

In its selection of a preferred alternative, the Council confirmed that a stable, viable charter sector serves the best interests of both the charter sector and the public. The Council also factored in the economic effects of a limited charter sector on the commercial longline halibut fishery and those coastal communities that are most dependent on commercial and charter fisheries.

The preferred alternative meets the requirements of the Halibut Act and MSA Section 303(b)(6) for limited access programs. If adopted by the Secretary, it would establish a moratorium on entry into the charter halibut sector using a control date of December 9, 2005, and is intended to limit the number of halibut charter businesses that can operate in Areas 2C and 3A in the future. It is not intended to provide a comprehensive solution to the long-term allocation issue. Instead, it establishes a pool of eligible participants for any future allocation, compensated reallocation, and/or share-based program. It provides access to a finite marine resource by providing increased stability to the halibut charter sector as the Council focuses on its next steps to address and limit charter halibut removals.

The Council's decision to limit entry into the charter sector was intended to account for various business models that range from targeting halibut as the primary sportfishing target to those that include charter

<sup>50</sup> A business that owns/controls permits in excess of the use cap maintains the grandfather status for those permits that remain in its control after other permits are sold, but the sold permits lose the grandfather status in perpetuity. Grandfathered permits that are sold in total when a business owner sells his entire business/fleet maintain that grandfathered status. Grandfathered status refers to permits, not to vessels.

<sup>51</sup> Any entity in which 10 percent or more of the interest is owned or controlled by another individual or entity shall be considered to be the same entity as the other individual or entity.

<sup>52</sup> "Active" is defined as it is under Issue 10 (i.e., at least 5 bottomfish trips).

<sup>53</sup> The overall use cap refers to the limit on the number of permits a CQE can hold and use in total. This limit includes both purchased permits and permits requested and issued at no cost under Issue 12.



halibut fishing as a small component of an overall adventure package. It contains a participation requirement that each licensed fishing guide business owner must have reported a minimum of 5 bottomfish logbook trips during 2004 or 2005 and in the year prior to implementation (likely to be 2007 or 2008) in order to qualify for a moratorium permit. It uses historic (2004 - 2005) participation in the charter fishery as the principal qualification criteria to issue permits to those participants who are most dependent on this fishery. The requirement to participate in the year prior to implementation is intended to ensure that those historical participants are current participants when final regulations are published. The use of historic participation in the moratorium will minimize disruption to the communities that are most dependent on the charter fishery.

A business owner must meet the trip threshold selected in 2004 or 2005, and in the year prior to implementation. A business owner would be issued a permit(s) based on the number of trips summed for all vessels in his best year of the qualification period, and would be limited to the number of permits equal to the highest number of vessels used in any one year during the qualifying period. In addition, individual vessels must meet a higher threshold of at least 15 bottomfish trips in 2004 or 2005, and in the year prior to implementation, in order to receive a transferable permit; permits issued below this threshold would be non-transferable. As a result, an estimated 25% of the moratorium permits would be non-transferable using 2004 and 2005 logbook data. The two-tiered qualification criteria (for transferable versus non-transferable permits) in the preferred alternative balances a desire to allow more business owners to qualify for an initial permit with the parallel intent to limit the ability of the businesses with relatively low recent participation to sell their permits to a business that may have significantly greater participation (in terms of annual halibut trips) in the future, thereby limiting the potential for increased capacity in charter halibut harvests. The transferable and non-transferable threshold portions of the preferred alternative recognize both historic and recent participation and different levels of participation. These different thresholds for transferability, in part, recognize the different business models that are employed by charter business operators.

The preferred alternative includes a use cap of 5 permits to limit excessive permit consolidation and may also serve to encourage small or more localized operations in coastal communities. An individual business owner could not own or control more than 5 permits, unless it was grandfathered in at a higher level. It also includes a permit endorsement that would limit the number of halibut clients a vessel operating under that permit could have onboard. A permit's endorsement would be equal to the highest number of bottomfish clients on any trip in 2004 or 2005, with a minimum endorsement of 4. A business could also stack multiple permits on a single vessel, subject to the use cap. This provision was intended to allow individual businesses to expand their operations without increasing the total pool of permits allowed. Note that the permits that would be issued under this program do not limit a business in terms of the number of trips or angler days. Leasing of charter limited entry permits is not allowed.

The preferred alternative includes a military hardship provision for individuals, as supported by public testimony. This provision allows an individual who: (1) was assigned to active military duty during 2004 or 2005; (2) qualifies as an "active" charter business during the year prior to implementation; and (3) can demonstrate an intent to participate in the charter fishery in Area 2C or 3A (prior to the qualifying period), to be eligible to apply for a moratorium permit without having met the qualification requirements of the general program. Permits issued under the military hardship provision would receive a halibut client endorsement of 6.

The preferred alternative would also allow a specified set of small, rural (not located on the road system) Gulf of Alaska coastal communities with under-developed charter industries to request and receive a limited number of permits at no cost, in order to provide additional opportunity to develop charter halibut businesses. However, issuance of permits to communities is limited, to balance the attempt to control the growth of the overall charter fleet with additional opportunities to under-developed communities. These

permits would be non-transferable and held only by the Community Quota Entity representing the eligible community, in order to support halibut charter businesses operating out of those communities. The list of Area 2C and Area 3A eligible communities that would be eligible to receive limited entry permits through a CQE are listed below.

Area 2C: Angoon, Coffman Cove, Edna Bay, Hollis, Hoonah, Hydaburg, Kake, Kassan, Klawock, Metlakatla, Meyers Chuck, Pelican, Point Baker, Port Alexander, Port Protection, Tenakee, Thorne Bay, Whale Pass.

Area 3A: Akhiok, Chenega, Halibut Cove, Karluk, Larsen Bay, Nanwalek, Old Harbor, Ouzinkie, Port Graham, Port Lions, Seldovia, Tatitlek, Tyonek, Yakutat.

In the deliberations surrounding its decision, the Council cited the experience of Washington State, which implemented a moratorium on charter licenses in 1977 and consequently has a 30-year history under limited entry. Lessons learned under that system have aided the Council's understanding that the health of the charter industry is extremely important to the public. The charter sector represents their safest, most economical access to the recreational fisheries in marine waters, and Washington State has a healthy charter industry in spite of two major periods of decline in ocean productivity. The fisheries there underwent massive restructuring to address allocations for treaty Indian fishing rights, for instance, as well as to address changing social needs. Through these changes, the charter industry has remained stable and consistent. The Council delegate from the State of Washington affirmed that every charter business operator with whom he has spoken has reported that the only reason they are still in business is because of the moratorium on new entrants. It allowed them the opportunity to face numerous other external circumstances in a stable and predictable business environment. The State of Washington limited entry program has not constrained the public's ability to access the resource over the years. Years of poor resource abundance have resulted in restrictive allocations, but the charter sector has provided the fishing platforms for the public to access the resource.

The Council concluded that the preferred alternative, which provides a stable, predictable business environment for the operators, is the action that the consumer needs to be able to rely on charter operators that are well established, have the resources to put safe boats on the water and safe operators on those boats, and to operate in a manner that the consumer expects when they go charter fishing. Thus, the preferred alternative should serve the charter and commercial industries, as well as the interests of the guided halibut angler.

## **1.6 Affected Environment**

The NEPA documents listed below contain extensive information on the fishery management areas, marine resources, ecosystem, social and economic parameters of these fisheries, and the annual harvest specifications. Rather than duplicate an affected environment description here, readers are referred to those documents. All of these public documents are readily available in printed form or on the internet at links given in the references. Because this action is limited in area and scope, the description of the affected environment is incorporated by reference from the following documents:

Groundfish Programmatic EIS. The Alaska Groundfish Fisheries Final Programmatic Supplemental Environmental Impact Statement (PSEIS) evaluates the fishery management policies embedded in the GOA and BSAI groundfish FMPs against policy level alternatives and the setting of TACs, allowable biological catch (ABC), and overfishing level (OFL) at various levels (NMFS 2004). The PSEIS is available at <http://www.fakr.noaa.gov/sustainablefisheries/default.htm>. The following sections of this document are particularly relevant:

- Section 3.3 contains a description of the physical oceanographic environment for BSAI and GOA waters.
- Section 3.5.2 contains descriptions of prohibited species management, life history characteristics, trophic interactions, past and present effects analysis, comparative baseline and cumulative effects analysis.
- Section 3.5.3 contains descriptions of target groundfish species management, life history characteristics, trophic interactions, past and present effects analysis, comparative baseline and cumulative effects analysis.
- Section 3.9.2.4 contains socio-economic information on fishing sectors, including the hook and line sectors.

Harvest Specification EIS. The EIS analyzed the Council's harvest strategy for the GOA fisheries (NMFS 2007). The EIS included ecosystem considerations section of the Stock Assessment and Fishery Evaluation (SAFE) reports. The EIS also contains a detailed discussion of the prohibited species catch limits, which include a discussion on the management of halibut bycatch. <http://www.fakr.noaa.gov/analyses/specs/eis/default.htm>.

Essential Fish Habitat Identification and Conservation in Alaska EIS. (NMFS 2005b) This EIS reexamines the effects of fishing on EFH in waters off Alaska, presents a wider range of alternatives, and provides a thorough analysis of potential impacts on EFH caused by the groundfish fishery. The analysis provides a description of managed groundfish species, marine mammals, and the socioeconomic environment in the Central GOA trawl fishery. The analysis indicates that there are long-term effects of fishing on benthic habitat features off Alaska and acknowledges that considerable scientific uncertainty remains regarding the consequences of such habitat changes for the sustained productivity of managed species. The EIS is found at <http://www.fakr.noaa.gov/habitat/seis/efheis.htm>.

Steller Sea Lion Protection Measures Final Supplemental Environmental Impact Statement (SEIS). (NMFS 2001) The SEIS evaluates alternatives to mitigate potential adverse effects as a result of competition for fish between Steller sea lions under a no action alternative as well as other alternatives that would substantially reconfigure the GOA and BSAI groundfish fishery. Impacts are disclosed, both significantly positive and significantly negative as required by NEPA. A biological opinion prepared according to the Endangered Species Act is included for the preferred alternative. This document also describes the life history characteristics of Steller sea lions and potential interactions with the groundfish fishery. For more information see <http://www.fakr.noaa.gov/sustainablefisheries/seis/sslpm/default.htm>.

For those groundfish stocks where information is available, none are considered overfished or approaching an overfished condition and all are managed within the annual harvest specifications. The ABC, OFL, and TAC amounts for each target species or species group for 2006 is specified in the *Federal Register* (71 FR 10870, March 3, 2006). The status of each target species category, biomass estimates, and acceptable biological catch specifications are presented both in summary and in detail in the annual SAFE reports (Council 2005b). The SAFE report also updated the economic status of the groundfish fisheries off Alaska and presented the ecosystem considerations relevant to the GOA. This EA incorporates by reference stock status information in the SAFE reports (Council 2005).

The IPHC annually publishes a summary of current management, research, and harvest recommendations for its annually meeting. This document may be found on the IPHC's website at <http://www.iphc.washington.edu/halcom/default.htm>.

## 1.7 Potential effects on the environment

The approach to limit entry into the charter halibut sector in Area 2C and Area 3A is limited in scope and will not likely affect all environmental components within those areas. Table shows the three potentially affected components: groundfish, halibut stocks, and the socioeconomic environment. The potential effects of the alternatives on the resource are unlikely to be caused by increased harvest of groundfish species, incidental catch of groundfish species, and an increase in halibut mortality.

**Table 1 Resource components potentially affected by the proposed alternatives**

Alternatives	Potentially Affected Component								
	Non-halibut prohibited species	Physical	Benthic Comm.	Groundfish	Marine Mammals	Seabirds	Non specified Species	Halibut	Socio-economic
Alt 1	N	NA	NA	NA	NA	NA	NA	NA	NA
Alt 2	N	N	N	N	N	N	N	N	N

N = no impact beyond status quo anticipated by the action on the component.

Y = an impact beyond status quo is possible if the action is implemented.

NA = not applicable.

Negative impacts on non-halibut prohibited species, including salmon, are not expected because current ADF&G and Federal managers closely monitor stock health, allocation, and restrict harvests from all sectors to biological management goals. The alternatives would not significantly change the amount of these species harvested, fishing methodology, areas fished, seasons fished, or fishing intensity. Salmon is the primary prohibited species other than halibut targeted in the guided sport fishery. Information is not available to predict small changes in harvest patterns due to the alternatives, however, given the magnitude of the guided sport fishery, angler preferences, specialized gear to target halibut, and current regulations to control sport harvest, any increase in salmon removals is likely to be small and would be regulated within biological limits.

The socioeconomic environment also is not expected to be affected. A detailed discussion of potential socioeconomic impacts is provided in Chapter 2.0.

No effects are expected on the physical environment, benthic community, non-specified and forage species, marine mammals, and sea bird components of the environment. No effect is expected for these components because current fishing practices (e.g., season and gear types) harvest limits, or regulations protecting habitat and important breeding areas as described in previous NEPA documents would not be changed by any of the alternatives. No effects are expected for marine mammals because allowable harvest amounts for important prey species would not be changed. None of the alternatives would change TAC amounts, methods, season closure dates, or areas closed to fishing.

The significance ratings are: significantly beneficial, significantly adverse, insignificant, and unknown. Where sufficient information on direct and indirect effects is available, rating criteria are quantitative in nature. In other instances, where less information is available, the discussions and rating criteria are qualitative. In instances where criteria to determine an aspect of significance (significant adverse, insignificant, or significant beneficial) do not logically exist, no criteria are noted. These situations are termed “not applicable” in the criteria tables.

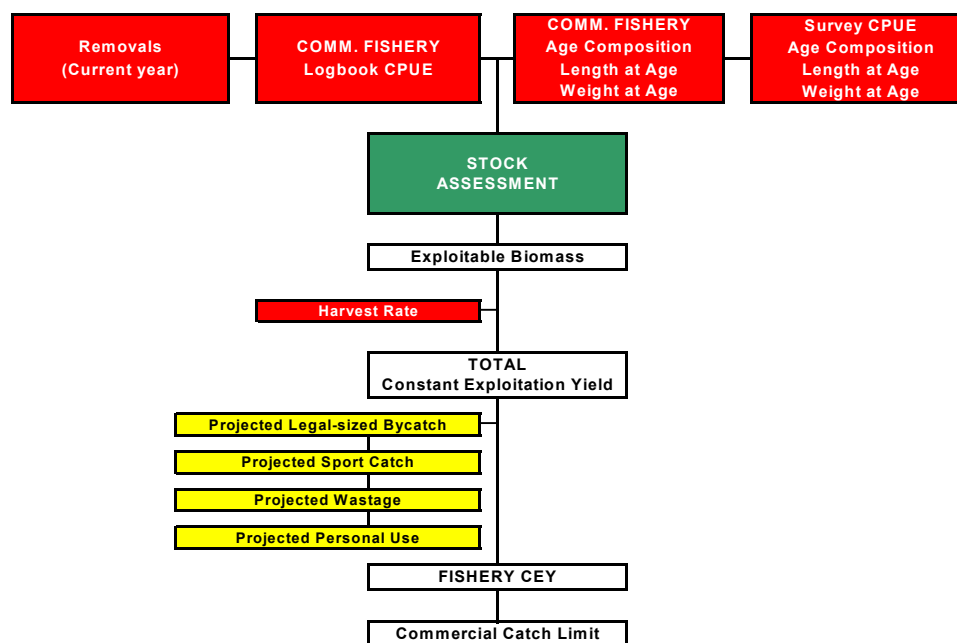
Differences between direct and indirect effects are primarily linked to the time and place of impact. Direct effects are caused by the action and occur at the same time and place. Indirect effects occur later in time and/or are further removed in distance from the direct effects (40 CFR 1508.27). For example, the direct effects of an alternative that lowers the harvest level of a target fish could include a beneficial impact to

the targeted stock of fish, a neutral impact on the ecosystem, and an adverse impact on net revenues to fishermen, while the indirect effects of that same alternative could include beneficial impacts on the ability of Steller sea lions to forage for prey, neutral impacts on incidental levels of PSC, and adverse impacts in the form of economic distribution effects, for example, reducing employment and tax revenues to coastal fishing communities.

### 1.7.1 Pacific Halibut

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

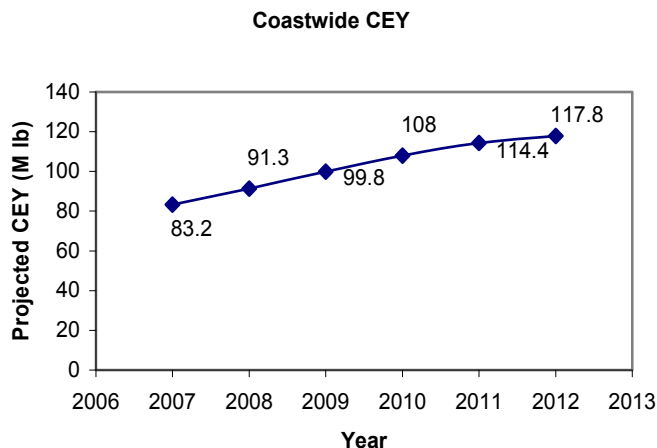
As described by Clark and Hare (2005), the annual exploitable biomass is estimated by fitting a stock assessment model using available data from the commercial fishery and scientific surveys in each area. Total CEY is calculated by applying a target harvest rate (22.5 percent in Area 2C in 2007) to the exploitable biomass estimate. The Fishery CEY is calculated by subtracting estimates of all unallocated removals (which include legal-sized bycatch, legal-sized wastage, personal use, and charter and non-guided catch) from the Total CEY (Figure 2). The IPHC uses harvest estimates from the previous year for all non-commercial categories except sport harvest because removal numbers are stable between years. Because charter harvest has continued to grow over the last decade, a projection method based on historical harvest levels is used to estimate harvest for the year in which commercial quota is established.



**Figure 2 The IPHC's stock assessment and catch limit setting process for Area 2C**

After the harvest deductions are made, the remainder comprises the Fishery CEY. The commercial catch limit is set based on the Fishery CEY. In setting the commercial catch limits, the IPHC considers area-specific harvest policy objectives and also applies its Slow Up/Fast Down<sup>54</sup> policy in setting the commercial halibut fishery catch limits. Thus, the commercial catch limits may be greater than or less than, and do not necessarily equal, the Fishery CEY. The commercial catch limit is currently only set for commercial fisheries for hook and line gear. The nature of this process means that changes in the charter harvest affect the commercial catch limits with a lag, and not immediately on a lb for lb basis.

Growing concerns about net migration from the western to the eastern Gulf of Alaska have led the staff to doubt the accuracy of the closed-area assessments that have been done for many years (Clark and Hare 2006). In 2006, IPHC staff changed the structure of its stock assessment model because of new scientific information that modified previous model assumptions about migration between regulatory areas. The new estimation technique considered tagging data and mortality rates which suggested that a fraction of halibut continue to migrate eastward beyond eight years of age. This discovery changed the traditional “closed-area” approach used by the IPHC. Clark and Hare (2006) reported that a comparison of total yield between the coastwide assessment with survey apportionment and a closed-area assessment produced very similar biomass estimates, but the distribution of yield among regulatory areas was much different. The coastwide assessment indicated more biomass was available in Areas 3B and 4 and less in Area 2 than the levels calculated using the closed area model. Figure 3 shows projected CEY on the basis of the 2006 coastwide stock assessment, a 20 percent coastwide target harvest rate, and the biomass distribution estimated from the 2004-2006 survey CPUE by area.



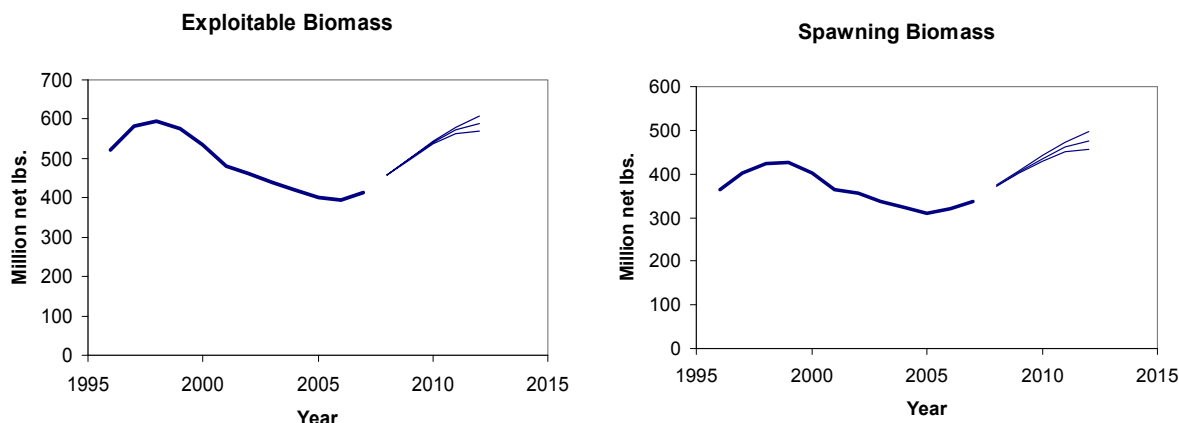
**Figure 3 Coastwide CEY projection through 2012 (IPHC 2007)**

Therefore, the IPHC adopted a 2007 commercial quota in Area 2C of 8.51 M lb, compared with 10.63 M lb in 2006. The 2007 commercial quota for Area 3A was set at 26.2 M lb, compared with 25.2 M lb in 2006. The IPHC believed that further examination of options for partitioning the coastwide biomass estimate for each area was warranted before it adopted the new approach. Thus, the IPHC relied on previous methodology as the basis for determining 2007 catch limits. Lower catch rates in the eastern portion of the stock prompted the IPHC to recommend more restrictive catch limits for Area 2C than the area model projection. Using an area-wide approach, yields are projected to increase in Area 2C (after being adjusted downward as a result of the new migration model) and decrease in Area 3A over the next

<sup>54</sup> The IPHC can recommend a Fishery CEY that are responsive to rapid changes in halibut abundance. For example, if the halibut stock is rapidly declining, the Commission may recommend a lower Fishery CEY incremented over several years to dampen the effects of the stock decline. Conversely, if the stock is in rapid increase, the Fishery CEY may be increased over number of years rather than one large increase.

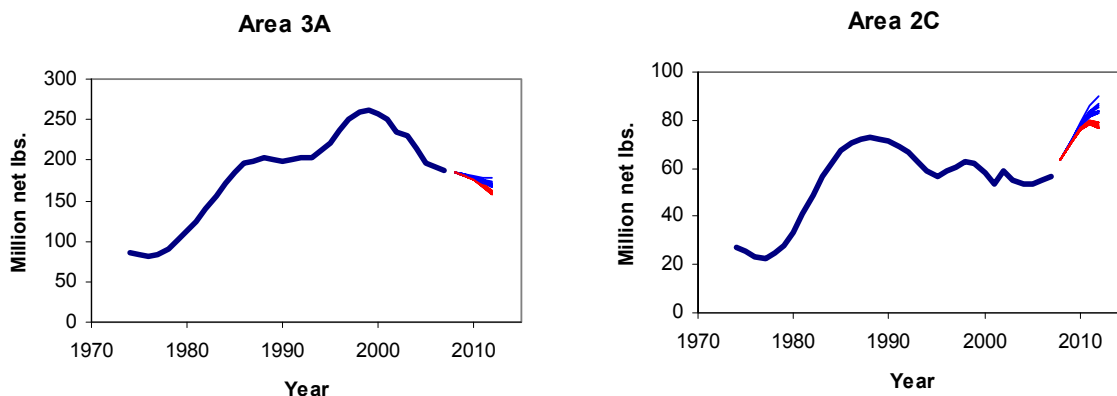
five years. The projections assume a constant harvest rate of 22.5% in Areas 2C and 3A. The coastwide assessment results are depicted in Figure 4. For comparison, assessment results for Area 2C and 3A are presented in Figure 5. While the area trends are probably accurate, the absolute biomass estimates are not (Clark, pers. comm.).

Additional information on halibut surveys, stock assessments, and research that were considered by the Council during its deliberation can be found in detail in the 2006 Report of Assessment and Research Activities (IPHC 2006). Further details on halibut management, production history, and life history are described in Section 3.7.2 of the Groundfish Programmatic SEIS (NMFS 1998a) and in this analysis.



**Figure 4 Coastwide exploitable and spawning biomass estimates of Pacific halibut**

Source: IPHC 2007



**Figure 5 Areas 2C and 3A exploitable biomass estimates of Pacific halibut**

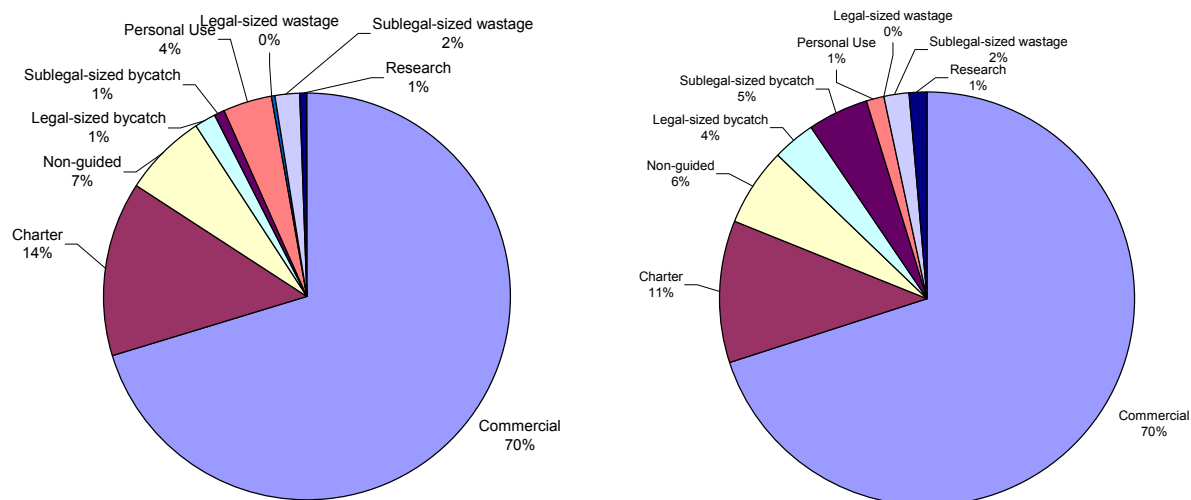
Source: IPHC 2007

**Fisheries.** The Pacific halibut resource is fully utilized. Three major cultural use traditions occur in Alaska for halibut: commercial, sport (guided and non-guided), and subsistence (Table 5). The 2006 removals of Pacific halibut in Areas 2C and 3A by sector are depicted in Figure 6 and listed in Table 6. The distinctions between sport and subsistence are clouded by differing legal and cultural interpretations by both resource managers and users, since rod and reel gear is legal in the subsistence fishery. The IPHC did not have a formal regulatory definition of subsistence prior to 2002; however, it did attempt to track subsistence harvest taken under a personal use category, leaving only sport harvests under the sportfishing

category. In 2002, the IPHC adopted regulatory language defining subsistence (“Customary and Traditional Fishing in Alaska”). Federal regulations now recognize and define a legal subsistence fishery for halibut in Alaska (70 FR 16742, April 1, 2005). Subsistence removals totaled 598,000 lb (net weight) and 429,000 lb in 2005 in Area 2C and 3A, respectively (Fall et al. 2006). Methods included public outreach, mailed household surveys, and community visits.

**Table 5**      **2006 removals of Pacific halibut in net weight**  
(thousands of pounds, preliminary)

Area	2C	3A
Commercial	10,374	24,908
Total Sport	3,033	6,088
Guided Sport	2,027	3,947
Non-guided Sport	1,004	2,141
Bycatch Mortality:		
Legal-sized fish	216	1,246
Sublegal-sized fish	125	1,693
Personal Use	598	429
Wastage:		
Legal-sized fish	21	50
Sublegal-sized fish	284	704
IPHC Research	95	473
<b>Total</b>	<b>14,746</b>	<b>35,591</b>



**Figure 6**      **Removals of Pacific halibut by sector in 2006**  
(Area 2C on left, Area 3A on right) Source: IPHC



**Table 6 Harvests of Pacific halibut in Areas 2C and 3A 1995- 2006 (M lb)**

AREA 2C	Commercial						Sport						Bycatch Mortality				Wastag		
	Year	Quota	Removals*	Change from '95	Price (\$/lb)	ex-vessel value (\$M)	Percent of total removals	Guided sport GHL	Guided sport removals	Change from '95	% comb. guided+ commer.	Unguided Sport	Change from '95	Legal sized fish	Sub-legal fish		Change from '95	Subsistence	Legal sized fish
	1995	9.00	7.77				78%		0.99		11%	0.77		0.36			0	0.05	0.08
	1996	9.00	8.87	14%			78%		1.19	20%	12%	0.94	23%	0.34		-6%	0	0.04	0.14
	1997	10.00	9.92	28%			79%		1.03	5%	9%	1.14	49%	0.26	0.10	-74%	0	0.04	0.14
	1998	10.50	10.20	31%			77%		1.58	61%	13%	0.92	20%	0.22	0.14	-78%	0.17	0.04	0.18
	1999	10.49	10.14	31%			80%		0.94	-5%	8%	0.90	18%	0.23	0.12	-49%	0.17	0.07	0.17
	2000	8.40	8.44	9%	\$2.72	\$22.96	74%		1.13	15%	12%	1.13	47%	0.23	0.12	-38%	0.17	0.04	0.13
	2001	8.78	8.40	8%	\$2.27	\$19.07	76%		1.20	22%	13%	0.72	-6%	0.22	0.12	-45%	0.17	0.04	0.16
	2002	8.50	8.60	11%	\$2.22	\$19.09	76%		1.28	29%	13%	0.81	6%	0.18	0.16	-49%	0.17	0.03	0.11
	2003	8.50	8.41	8%	\$2.97	\$24.98	72%		1.41	43%	14%	0.85	11%	0.17	0.17	-50%	0.628	0.03	0.10
	2004	10.50	10.30	33%	\$3.04	\$31.31	71%	1.43	1.75	77%	15%	1.19	55%	0.15	0.21	-41%	0.677	0.03	0.27
	2005	10.93	10.63	37%	\$3.17	\$33.70	73%	1.43	1.95	98%	16%	0.85	10%	0.14	0.2	-39%	0.598	0.03	0.23
	2006	10.63	10.47	35%	\$3.72	\$38.95	71%	1.43	2.03	106%	16%	1.00	31%	0.14	0.2	-28%	0.598	0.02	0.28
AREA 3A	Commercial						Sport						Bycatch Mortality				Wastag		
	Year	Quota	Removals*	Change from '95	Price (\$/lb)	ex-vessel value (\$M)	Percent of total removals	Guided sport GHL	Guided sport removals	Change from '95	% comb. guided+ commer.	Unguided Sport	Change from '95	Legal sized fish	Sub-legal sized		Change from '95	Subsistence	Legal sized fish
	1995	20.00	18.34				66%		2.85		13%	1.67		4.75			0.097	0.13	0.41
	1996	20.00	19.69	7%			73%		2.82	-1%	13%	1.92	15%	2.42		-49%	0.097	0.18	0.41
	1997	25.00	24.63	34%			73%		3.41	20%	12%	2.10	26%	1.15	1.58	-76%	0.097	0.07	0.67
	1998	26.00	25.70	40%			75%		2.98	5%	10%	1.72	3%	1.49	1.36	-69%	0.074	0.15	0.58
	1999	24.67	25.32	38%			77%		2.53	-11%	9%	1.70	2%	1.60	1.29	-66%	0.074	0.12	0.44
	2000	18.31	19.29	5%	\$2.55	\$49.19	69%		3.14	10%	14%	2.17	30%	1.21	1.51	-75%	0.074	0.06	0.42
	2001	21.89	21.54	17%	\$2.07	\$44.59	72%		3.13	10%	13%	1.54	-7%	1.70	1.40	-64%	0.074	0.07	0.39
	2002	22.63	23.13	26%	\$2.17	\$50.19	76%		2.72	-4%	11%	1.48	-11%	1.18	1.10	-75%	0.074	0.14	0.48
	2003	22.63	22.75	24%	\$2.88	\$65.52	71%		3.38	19%	13%	2.05	23%	1.36	1.43	-71%	0.28	0.07	0.62
	2004	25.06	25.05	37%	\$2.95	\$73.90	71%	3.65	3.67	29%	13%	1.94	16%	1.52	2.08	-68%	0.404	0.08	0.68
	2005	25.47	26.03	42%	\$3.09	\$80.43	72%	3.65	3.69	30%	12%	1.98	19%	1.32	1.81	-72%	0.429	0.16	0.57
	2006	25.20	25.38	38%	\$3.70	\$93.91	71%	3.65	3.95	39%	13%	2.14	29%	1.32	1.81	-72%	0.429	0.05	0.70

1) Guided, 1999-2006: ADF&G table dated Nov. 20, 2006 titled "Charter Halibut Harvests in IPHC Area 2C and 3A"

2) Unguided 1999-2004: Scott Meyer (ADF&G), worksheet titled "2C-3A\_HarvestTables.xls"

3) Unguided 2005-2006: ADF&G letter to IPHC dated Oct. 23, 2006

4) All other categories, 1999-2005: IPHC Bluebooks

5) All other categories, 2006: Gregg Williams, pers. Commun. IPHC Bluebooks

\* includes IPHC research fish

Sport fishing for halibut in Area 2C is an important recreational activity for resident and non-resident anglers. Sport harvests rapidly increased in the late 1980s to mid-1990s due to continued increases in targeted effort (Tersteeg and Jaenicke 2005). Fishing effort is mostly concentrated around Juneau, Ketchikan, Sitka, Wrangell, and Petersburg. However, substantial effort is also expended near remote fishing lodges and smaller communities throughout the region, such as Craig, Gustavus, and Yakutat (Jaenicke 2005). As reported by Meyer (2005), participation in the marine sport fisheries in Area 3A has more than doubled in 15 years. More than half of all angler effort in marine waters statewide occurred in Area 3A. A major portion of fishing effort is directed at halibut and state-managed groundfishes, including rockfishes, lingcod, and sharks. Sport harvest of halibut exceeds that of all other marine finfishes. Harvest in Area 3A increased from 40,000 fish in 1980 to 286,000 fish in 2000. The 2003 harvest of 278,000 halibut made up 69 percent (in number) of the statewide recreational harvest. The Cook Inlet fishery, based primarily in Homer, Ninilchik, Seldovia, and Anchor Point has accounted for 67 - 82 percent of Area 3A harvest since 1990.

As reported in IPHC (2005), Alaska sport harvest estimates are derived from a statewide postal survey in conjunction with creel surveys at points of landing. Estimates usually lag by one year and are derived from a combination of linear projections of halibut harvested in the previous five years, current average weights, and current in-season data. In summary, charter halibut harvests between 1995 and 2004 increased by more than 75 percent in Area 2C (from 986,000 to 1,750,000 lbs) and nearly 30 percent in Area 3A (from 2,845,000 to 3,668,000 lbs). Charter halibut harvests amounted to approximately 14 and 11 percent of total halibut removals in Areas 2C and 3A in 2006, compared with 7 and 9 percent in 1999.

Sport businesses and vessels in Areas 2C and 3A are depicted in Table 7 and Figure 7. Table 7 demonstrates the changes in number of licensed business, vessels, trips, charter halibut harvests, and angler participation over the last ten years. In Area 2C, the number and pounds of charter halibut more than doubled. While businesses remained about the same, the number of active vessels increased by 15 percent and halibut charter anglers increased by 21 percent. In Area 3A, the number and pounds of charter halibut increased by 50 and 29 percent, respectively. While businesses remained about the same, the number of active vessels increased by 13 percent and halibut charter anglers increased by 23 percent.

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

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

**Table 7 Charter halibut participation, effort, and harvest, 1995-2005**

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

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

\* an increasing number of sportfish lienses are sold over the internet

Sources:

- 1) Charter and Clients: ADF&G
- 2) Commercial: NMFS RAM Division

**Figure 7 Active charter businesses and vessels in Areas 2C and 3A**

Source: ADF&G

These “stair step” reductions were implemented because at the time of final action in 2000: (1) the status of the halibut stock was predicted to have been at its peak and declining; (2) the GHL formula allowed for a 25 percent increase in past harvests; and (3) the charter sector requested a fixed allocation to provide better predictability for planning bookings for the next summer’s fishing season. The overall intent was to maintain a stable charter fishery season of historic length, using area-specific measures to control harvests to the GHLs. The relative abundance between 2000 and 2005 is not estimated to have exceeded 15 percent (B. Leaman, pers. comm.); therefore, the GHLs have not been reduced.

### *Commercial removals*

The groundfish fishery management plans for the Bering Sea/Aleutian Islands and Gulf of Alaska designated Pacific halibut as a prohibited species to any new commercial development due to its historical usage by the longline (or setline) fishery. The commercial halibut fishing fleet is diverse, using various types of longline gear and strategies. An individual fishing quota program was implemented in 1995 (50 CFR 300.60 through 300.65). The IFQ program enabled an eligible vessel to fish any time between March 5 and November 15 in 2006. Total setline CEY (at a harvest rate of 22.5 percent for Areas 2C and 3A) for Alaska waters is estimated to be high, at just under 74 M lb, which indicates the halibut resource is very robust (IPHC 2005). In Area 2C, the fishery CEY has ranged from 8.5 M lb to 10.93 M lb during the last five years.

Halibut begin recruiting to commercial longline gear at approximately 60 cm in length, but the commercial minimum size limit is 32 inches (82 cm). The fishery ranges from shallow inshore waters to as deep as 275 meters along the continental shelf. The directed catch consists of individuals chiefly from 7 kg to 121 kg. The average size in the commercial catch in 1996 was between 9 kg and 20 kg depending on the area caught; the average age was 12 years (Forsberg, J., Unpub 1997).

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

The IFQ program has kept catches within harvest limits, reduced the amount of lost gear and wastage due to “ghost fishing,” and allowed the commercial fishery to operate during a long period which has had the ancillary affect of increasing safety. The annual amount of IFQ for the commercial hook and line fisheries is established annually by the Secretary of Commerce, based on recommendations from the IPHC.

Harvest from the commercial fishery is tracked by NMFS using a catch accounting system that deducts harvest from an IFQ holder’s account. This information is also used to enforce the total annual quota as well as individual IFQ accounts. Thus, since the IFQ program, annual harvest limits have not been exceeded by a significant margin. The IFQ program has an overage/underage provision that balances an IFQ holder’s account, year to year. This regulation results in a long-term balance of harvest at the catch limit and allows IFQ holders to move small amounts of halibut between years.

Halibut bycatch and wastage occurs in the groundfish and salmon fisheries operating in waters off Alaska. The effects of these fisheries on halibut are primarily managed by conservation measures developed and recommended by the Council over the entire history of the Federal Fishery Management Plans (FMPs) for the Bering Sea and Aleutian Island (BSAI) and Gulf of Alaska (GOA) and implemented by Federal regulation. These measures can be found at 50 CFR 679.21 and include catch limitations on a year round and seasonal basis. These management measures are discussed further in the following documents:

- Sections 3.6.1 and 3.6.2 of the GOA and BSAI FMPs (Council, 2005a and b) cover management of the bycatch of halibut in the groundfish fisheries. The FMPs are available at <http://www.fakr.noaa.gov/npfmc/default.htm>.
- Section 3.5 of the PSEIS (NMFS 2004) reviews the effects of the groundfish fishery on halibut. The PSEIS is available at <http://www.fakr.noaa.gov/sustainablefisheries/seis/intro.htm>.
- Charter 7 of the Alaska Groundfish Harvest Specification EIS (NMFS 2007) provides an overview of prohibition species catch management, including halibut bycatch.

The annual amount of halibut bycatch and wastage is treated as a hard cap in groundfish fisheries. Fisheries are often closed to directed fishing when halibut bycatch allotments are taken. As a result, fishing mortality has remained relatively constant; with the total amounts depending on the type of fisheries being prosecuted and total effort. In Area 2C, bycatch and wastage have accounted for approximately 4 percent of the total removals.

The catch limit for the commercial longline fishery in Area 2C is set once all other removals are deducted from the available yield. The increase in guided sport removals results in a reduction of the commercial sector harvest over an extended period of time. In a given year, non-commercial removals are not necessarily deducted on a pound for pound basis. For example, harvest quota for the commercial fishery set in 2007 includes historical sport harvest from 2006, but the 2007 sport harvest is unknown. Thus, an increase of sport harvest above the level predicted in 2006 is accounted for in future commercial quotas. Over the long-term, this overage is balanced, resulting in a loss of commercial quota share. This same relationship would occur if any other non-commercial removals increased rapidly (and unpredictably) from year to year. Of the non-commercial removals accounted for by the IPHC, the guided sport harvest has increased at a rapid rate, whereas other removals have remained relatively constant. The relationship between the guided sport and commercial sectors has resulted in consideration of numerous actions to control charter halibut removals, including the proposed action.

### *Sport fishing removals*

Sport fishing for halibut in Southeast Alaska is an important recreational activity for resident and non-resident anglers. Sport harvests rapidly increased in the late 1980s to mid-1990s as indicated by a continued increase in targeted effort (Tersteeg and Jaenicke 2005). A portion of the marine sport fishing effort is directed at halibut and state-managed groundfishes, including rockfishes, lingcod, and sharks. Fishing effort is mostly concentrated around Juneau, Ketchikan, Sitka, Wrangell, and Petersburg. However, substantial effort is reported near remote fishing lodges and smaller communities throughout the region, such as Craig, Gustavus, and Yakutat (Tersteeg and Jaenicke 2005). These remote communities offer charter and bareboat services. Bareboat services allow anglers to rent a vessel that is unguided. These anglers are generally provided with instruction from a lodge about good fishing locations and technique.

As reported in IPHC (2005), Alaska sport harvest estimates are derived from a statewide postal survey in conjunction with creel surveys at points of landing. Final estimates lag by one year and are derived from a combination of linear projections of halibut harvested in the previous five years, current average weights, and current in-season data. Charter halibut harvests between 1995 and 2005 nearly doubled in Area 2C

(from 986,000 to 1,950,000 lb) and account for approximately 13 percent of the average halibut removals during the last five years.

Regulations by both Federal and State agencies affect the halibut fishery. Federal sportfishing regulations are found at 50 CFR 300.62. The 2006 annual measures for halibut fisheries were published at 71 FR 10850, Part 24. The GHF regulations are published at 50 CFR 300.65.

Federal regulations require the following:

- The daily bag limit is two halibut with 4 in possession
- The sport fishing season February 1 – December 31
- No person shall fillet, mutilate, or otherwise disfigure a halibut in any manner that prevents the determination of minimum size or the number of fish caught while onboard the catcher vessel.
- No halibut caught for sport harvest shall be offered for sale, bartered, or traded.
- No halibut caught while sport fishing shall be possessed on board a vessel when other fish or shellfish aboard the said vessel for destined for commercial use, sale, trade, or barter.
- The operator of a charter vessel shall be liable for any violations of these regulations committed by a passenger aboard said vessel.

State of Alaska fishing seasons and reporting requirements for the charter fishery are listed below.

- Most anglers must have a current year's Alaska sport fishing license. There are three exceptions:
  - Resident and non-resident anglers younger than 16 do not need a sport fishing license.
  - Alaska resident anglers 60 and older must have a free ADF&G Permanent ID Card.
  - Alaska resident disabled veterans (50 percent or greater) must have a free ADF&G Disabled Veteran's Permanent ID Card.
- When a fish is landed and killed it becomes part of the bag limit of the person originally hooking it. Once you have attained your bag limit, you are not allowed to catch and keep halibut for anyone else on the vessel that same day.

US Coast Guard Licenses are described below.

A "6 pack" is a USCG License Operator Un-inspected Passenger Vessel less than 100 Gross Tons. A "Super-T" is a USCG License Operator Un-inspected Passenger Vessel. Six Pack and Super-T vessels are un-inspected vessels and required to operate with the same requirements as any recreational vessel of a similar size. Six pack vessels may have up to 6 passenger and 2 crew members on board for a total of 8 persons on board, when operating under the authority of the license. These vessels must be under 100 gross registered tons. Super-T vessels may have up to 12 passengers and 2 crew members for a total on board of 14 persons when operating under the authority of the license. These vessels must be greater than 100 gross tons but less than 200 gross tons.

A "Head Boat" is a USCG License Limited Tonnage Masters License. Head Boats are inspected vessels and required to meet Coast Guard inspection requirements for a passenger vessel less than 100 gross tons. The requirements for each vessel are unique and a Certificate of Inspection is issued which describes the number of passenger, crew, life saving and fire fighting equipment required as well as any special routes and conditions. The license is usually a Master 100 gross tons but the vessel may not be operated by an individual with a license of less tonnage than stated on the Certificate of Inspection.

All vessels may be operated by individuals with a greater tonnage license than stipulated on a Certificate of Inspection or CG issues license other than Operator Un-Inspected Passenger Vessel. For example a 6

pack charter operator may have a Master 100 Gross Ton vessel license and still be acceptable under the Coast Guard requirements.

### *Subsistence removals*

The distinctions between sport and subsistence are clouded by differing legal and cultural interpretations by both resource managers and users, although current gear restrictions may be used to post facto assign a user category to a landing. The IPHC did not have a formal regulatory definition of subsistence prior to 2002; however, it did attempt to track subsistence harvest taken under a personal use category, leaving only sport harvests under the sportfishing category. In 2002, the IPHC adopted regulatory language defining subsistence (“Customary and Traditional Fishing in Alaska”). Federal regulations now recognize and define a legal subsistence fishery for halibut in Alaska (70 FR 16742, April 1, 2005). Subsistence removals totaled 0.598 M lb (net weight) in 2005 (Fall et al. 2006). Subsistence harvest is tracked by ADF&G using survey respondent methods including public outreach, mailed household surveys, and community visits. Fall et al (2006) provides a detailed description of the survey methods and response rates. Subsistence/personal use harvest has remained relatively stable during the last three years (see Table 6). Subsistence fishery regulations are found at 50 CFR 300.60–300.66.

**Effect of alternatives:** Under Alternative 1 (no action), there would be no change to the management of the charter halibut fisheries in Areas 2C and 3A. Alternative 2 (preferred alternative) is considered one step in a long-term solution to address halibut resource allocation issues. It would identify a limited pool of eligible participants for future actions. These future actions are described in Section 1.9. The preferred alternative would not affect harvest levels, fishing practices of individuals participating in the charter halibut fishery, or the health of the halibut stock.

## **1.7.2 Groundfish**

In the charter fisheries, anglers may switch to target species other than halibut if halibut fishing is poor. The charter operator wants to satisfy the client and may do so by landing any species (Scott Meyer, pers. comm.). Thus, a regulatory constraint on halibut may influence the amount of other groundfish species caught in the charter fishery. The harvest of State-managed groundfish observed in the ADF&G port sampling program is usually inversely related to halibut harvest, but it is unknown if anglers switch target species when halibut fishing is poor or expend more effort to target other species. No in-depth analysis of these data has been done, and it may be impossible given the lack of information. It is likely that harvest of State-managed species will increase if the halibut stock declines in abundance.

The primary groundfish bycatch taken in the halibut charter fishery includes limited amounts of Pacific cod and rockfishes (primarily yelloweye and black), with lesser amounts of spiny dogfish, salmon shark, and lingcod. These species may be recorded in ADF&G data as having been caught on a halibut targeted trip, but they may become the target species during the trip because the halibut bag limit has been reached or fishing is poor. Some halibut trips may catch rockfish incidentally. State regulations require rockfish to be retained up to the bag limit; however, incidentally caught rockfish beyond an individual’s bag limit must be released. Assessment of these released rockfish and associated bycatch mortality is difficult. Identification of rockfish species that are similar in appearance is difficult and calculation of a mortality rate is dependent on the depth that rockfish was caught, handling and release techniques, etc.

The 2006 SAFE (NMFS 2006) reports that in February 2006, the State of Alaska Board of Fisheries (BOF) allocated the Southeast Outside Demersal Shelf Rockfish complex (DSR) between the sport fishery and commercial fishery in southeast Alaska. The DSR complex does not occur in Area 3A. The OFL was 640 mt, and the ABC and TAC were equal to 410 mt. The BOF allocated 84 percent of the TAC

to the commercial fishery and reserved the remaining 16 percent for sport fishermen. This produced a 66 mt BOF allocation for the sport fishery.

The SAFE report indicated that a directed DSR commercial fishery did not occur in 2006 because of concerns about exceeding the ABC and TAC. Commercial fishermen did have an incidental catch of 215 mt. The SAFE report indicated that in 2006 approximately 64 mt of DSR rockfish was harvested in the sport fishery, with 7 mt released. The sport fishery (guided and unguided) exceeded its BOF allocation by about 5.5 mt, while the commercial fishery took significantly less than its BOF allocation. Combined, the commercial and sport fisheries removed approximately 287 mt of DSR which was 70 percent of the 410 mt combined TAC, leaving 123 mt of the TAC unharvested. These estimates were presented as preliminary based on the best available data at the time (December 2006).

Recreational anglers also catch pelagic rockfish including dusky, yellowtail, and black rockfish. Sport fishing for these species is managed under ADF&G fishing regulations. Commercial harvest amounts for this species group is under their respective OFL and ABC in 2006. The ABC for the pelagic shelf rockfish (PSR) assemblage in the western Yakutat region and Eastern Alaska/Southeast Outside district was 736 mt in 2006 and 751 mt in 2007 (NMFS SAFE 2006). The commercial catch for PSR was 174 mt in 2006, which was below the ABC which is set equal to the TAC. The OFL for the PSR assemblage was 6,662 mt for the GOA, with 2,498 mt of commercial catch for the entire GOA. Harvest in the sport fishery is not at a level high enough to cause the assemblage to exceed the OFL. In 2004, the total harvest of all Area 2C rockfish in the sport fishery (including non-pelagic species) was 22.7 mt, which when added to the commercial catch would not have exceeded the ABC or OFL. An increase in sport harvest may constrain the commercial fishery; however, rockfish stocks would still be managed within their biological benchmarks. For the previously described reasons, the impact of the alternatives is likely to be insignificant for pelagic rockfish stocks.

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The impacts of the alternatives on rockfish removals are difficult to project, because behavioral changes under a new restrictive halibut harvest policy are unknown. Small increases in rockfish removals would increase sport harvest beyond its TAC; however, given the overall joint commercial and sport harvest, it is unlikely these removals would be of a magnitude to exceed the OFL or ABC. A future directed commercial fishery would be managed under the OFL. For this reason, the impacts on rockfish from the alternatives are not expected to be significant.

Lingcod is also a commercial and sport fishery target species. Harvest levels in recent years have remained constant under strict sport fishery slot limit regulations and seasons, and commercial quota limits (Table 8). A harvest increase in the sport sector resulting from the alternatives would likely be small given the existing regulatory constraints.



**Table 8**      **Estimated rockfish and lingcod harvest (number of fish) by charter anglers by area and year**

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

Source: ADF&G, Statewide Harvest Survey data, 1996 - 2004.

**Effect of alternatives:** Demersal shelf rockfish (e.g., yelloweye rockfish), pelagic shelf rockfish, and lingcod are species commonly harvested in the sport fishery. Commercial and sport catch limit limits are set for these species and none of the catches of these species exceeded their respective ABC or OFL in 2006. DSR and pelagic shelf rockfish harvest in 2006 was well under the OFL, ABC, and TAC for the commercial and sport fisheries combined.

Under Alternative 1, there would be no change to the management of the charter halibut fisheries, thus, there is no anticipated change in the impact of this fishery on other groundfish stocks. Most charter businesses offer trips that target multiple species, including king salmon, rockfish, and ling cod, along with Pacific halibut. The impact on State-managed charter fisheries for these species is unlikely to change under Alternative 1.

The State of Alaska has identified its concerns over spillover effects from limitations on entry in the halibut charter fishery to the salmon, rockfish, and ling cod charter fisheries managed by the State. Harvest levels for lingcod in recent years have remained constant under strict sport fishery slot limit and season regulations, and commercial quota limits. A small increase in lingcod harvest would have an insignificant impact on the stock, because of ADF&G regulations for the sport and commercial sectors.

The interaction of halibut catch and harvest of other groundfish species is poorly documented and not well understood. Any discussion of impacts from the action alternative (Alternative 2) would be highly speculative. Other species taken incidentally in sport charter halibut fisheries include sculpin, arrowtooth flounder and several other flatfishes, spiny dogfish, sleeper shark, salmon shark, and greenling. No sport fish harvest estimates are available for these species for Area 2C. However, the commercial catch limit is set for these species and the harvest of these species has not historically exceeded their respective OFLs. The impact of the alternatives on these species is not expected to be significant.

### 1.7.3 Endangered or Threatened Species

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

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

In addition to listing species under the ESA, the critical habitat of a newly listed species must be designated concurrent with its listing to the “maximum extent prudent and determinable” [16 U.S.C. § 1533(b)(1)(A)]. The ESA defines critical habitat as those specific areas that are essential to the conservation of a listed species and that may be in need of special consideration. Federal agencies are prohibited from undertaking actions that destroy or adversely modify designated critical habitat. Some species, primarily the cetaceans, which were listed in 1969 under the Endangered Species Conservation Act and carried forward as endangered under the ESA, have not received critical habitat designations.

**Effect of alternatives:** After reviewing the current status of the listed species, designated critical habitat, and the potential effects of the halibut fisheries, NMFS Sustainable Fisheries concludes that this fishery off Alaska (which uses gear unlikely to generate bycatch of finfish, seabirds or marine mammals) will not affect ESA-listed species or designated critical habitat, pursuant to Section 7 of the ESA. Therefore, the ESA does not require a consultation for this fishery. Halibut do not interact with any listed species and do not comprise a measurable portion of the diet of any listed species nor do any of the species comprise a measurable portion of their diet. No interactions between the charter halibut fisheries and any listed species have been reported, and no spatial or temporal dispersion of charter halibut catch is anticipated. Table 9 identifies the species listed as endangered and threatened under the ESA. In sum, Alternative 1 and Alternative 2 are not expected to have negative impacts on endangered or threatened species.

#### 1.7.4 Seabirds

Because halibut fisheries are federally regulated activities, any negative affects of the fisheries on listed species or critical habitat and any takings<sup>55</sup> that may occur are subject to ESA Section 7 consultation. NOAA Fisheries Service initiates the consultation and the resulting biological opinions are issued to NOAA Fisheries Service. The Council may be invited to participate in the compilation, review, and analysis of data used in the consultations. The determination of whether the action “is likely to jeopardize the continued existence of” endangered or threatened species or to result in the destruction or modification of critical habitat is the responsibility of the appropriate agency (NOAA Fisheries Service or USFWS). If the action is determined to result in jeopardy, the opinion includes reasonable and prudent measures that are necessary to alter the action so that jeopardy is avoided. If an incidental take of a listed species is expected to occur under normal promulgation of the action, an incidental take statement is appended to the biological opinion.

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<sup>55</sup> The term “take” under the ESA means “harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or attempt to engage in any such conduct” (16 U.S.C. '1538(a)(1)(B)).

**Table 9** ESA listed and candidate species that range into the BSAI and GOA groundfish management areas

Common Name	Scientific Name	ESA Status
Blue Whale	<i>Balaenoptera musculus</i>	Endangered
Bowhead Whale	<i>Balaena mysticetus</i>	Endangered
Fin Whale	<i>Balaenoptera physalus</i>	Endangered
Humpback Whale	<i>Megaptera novaeangliae</i>	Endangered
Right Whale <sup>1</sup>	<i>Balaena glacialis</i>	Endangered
Sei Whale	<i>Balaenoptera borealis</i>	Endangered
Sperm Whale	<i>Physeter macrocephalus</i>	Endangered
Steller Sea Lion (Western Population)	<i>Eumetopias jubatus</i>	Endangered
Steller Sea Lion (Eastern Population)	<i>Eumetopias jubatus</i>	Threatened
Chinook Salmon (Lower Columbia R.)	<i>Oncorhynchus tshawytscha</i>	Threatened
Chinook Salmon (Upper Columbia R. Spring)	<i>Oncorhynchus tshawytscha</i>	Endangered
Chinook Salmon (Upper Willamette)	<i>Oncorhynchus tshawytscha</i>	Threatened
Chinook Salmon (Snake River spring/summer)	<i>Oncorhynchus tshawytscha</i>	Threatened
Chum Salmon (Hood Canal Summer run)	<i>Oncorhynchus keta</i>	Threatened
Coho Salmon (Lower Columbia R.)	<i>Oncorhynchus kisutch</i>	Threatened
Steelhead (Snake River Basin)	<i>Oncorhynchus mykiss</i>	Threatened
Steller's Eider <sup>2</sup>	<i>Polysticta stelleri</i>	Threatened
Short-tailed Albatross <sup>2</sup>	<i>Phoebastria albatrus</i>	Endangered
Spectacled Eider <sup>2</sup>	<i>Somateria fishcheri</i>	Threatened
Kittlitz's Murrelet <sup>2</sup>	<i>Brachyramphus brevirostris</i>	Candidate
Northern Sea Otter	<i>Enhydra lutris</i>	Threatened
Olive Ridley turtle	<i>Lepidochelys olivacea</i>	Threatened/Endangered
Loggerhead turtle	<i>Caretta caretta</i>	Threatened
Green turtle	<i>Chelonia mydas</i>	Threatened/Endangered
Leatherback sea turtle	<i>Dermochelys coriacea</i>	Endangered

<sup>1</sup> NMFS designated critical habitat for the northern right whale on July 6, 2006 (71 FR 38277).

<sup>2</sup> The Steller's eider, short-tailed albatross, spectacled eider, and Northern sea otter are species under the jurisdiction of the USFWS. For the bird species, critical habitat has been established for the Steller's eider (66 FR 8850, February 2, 2001) and for the spectacled eider (66 FR 9146, February 6, 2001). The Kittlitz's murrelet has been proposed as a candidate species by the USFWS (69 FR 24875, May 4, 2004).

In addition to those species listed under the ESA, other seabirds occur in Alaskan waters which may indicate a potential for interaction with halibut fisheries. The most numerous seabirds in Alaska are northern fulmars, storm petrels, kittiwakes, murre, auklets, and puffins. These groups, and others, represent 38 species of seabirds that breed in Alaska. Eight species of Alaska seabirds breed only in Alaska and in Siberia. Populations of five other species are concentrated in Alaska but range throughout the North Pacific region. Marine waters off Alaska provide critical feeding grounds for these species as well as others that do not breed in Alaska but migrate to Alaska during summer, and for other species that breed in Canada or Eurasia and overwinter in Alaska. Additional discussion about seabird life history, predator-prey relationships, and interactions with commercial fisheries can be found in the 2004 FPSEIS.

Since charter halibut gear are typically rod-and-reel with a maximum of two hooks, interactions with seabirds are unlikely. There are no known reported takes of seabirds in charter fisheries off Alaska, based on best available information.

**Short-tailed albatross.** In 1997, NOAA Fisheries Service initiated a Section 7 consultation with USFWS on the effects of the halibut fishery off Alaska on the short-tailed albatross. USFWS issued a Biological

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

**Effect of alternatives:** None of the alternatives under consideration would affect the prosecution of the halibut fisheries in a way not previously considered in consultations. The proposed alternative to the status quo would limit charter halibut removals and any associated bycatch, although seabirds are not a known incidental harvest in this fishery. A potential result of Alternative 2 is that commercial halibut harvests may increase; this fishery is subject to strict seabird avoidance requirements (<http://www.fakr.noaa.gov/protectedresources/seabirds/guide.htm>). In sum, direct and indirect interactions between seabirds and harvests in the charter halibut fisheries are not expected to change as a result of the alternatives. Total catch is expected to remain the same and the distribution of catch is not expected to differ in a way that will affect interactions.

### 1.7.5 Marine Mammals

The charter halibut fishery in the EEZ of Alaska is classified as Category III fishery under the Marine Mammal Protection Act. A fishery that interacts only with non-strategic stocks and whose level of take has insignificant impact on the stocks is placed in Category III.

**Effect of alternatives:** No takes of marine mammals by the charter halibut fishery off Alaska have been reported. Marine mammals are not taken in halibut charter fisheries and therefore, none of the alternatives are expected to have a significant impact on marine mammals.

### 1.7.6 Biodiversity and the Ecosystem

Halibut is one of four groundfish, in terms of biomass as measured by the trawl surveys, which dominate the Gulf of Alaska ecosystem (S. Gaichas, pers. comm.). The others include arrowtooth flounder, walleye pollock, and Pacific cod (in order of importance). Halibut is an apex predator in the GOA which seems rather dependent on pollock stocks as pollock comprised over half of adult halibut's diet composition measured in the early 1990s. Most mortality on halibut is from fishing because they have few natural predators, especially as adults.

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

Little research has been conducted on the specific trophic interactions of halibut. With trophic interactions and inter-specific competition so poorly understood, it is not possible to clearly specify the effects to the

ecosystem of the charter halibut fishery. However, given the nature of the action, the presumed effects of the alternatives on the ecosystem are insignificant.

**Effect of alternatives:** Effects of commercial fishing on the Gulf of Alaska marine ecosystem are analyzed in detail in the Alaska Groundfish Fisheries Programmatic SEIS. Additional impacts on the ecosystem from the halibut charter fisheries are expected to be small as a result of Alternative 1 or Alternative 2. Alternative 1 would not make any change to the management of the halibut charter fishery in Areas 2C and 3A. The main effect of Alternative 2 is to limit the number of halibut charter businesses operating in Areas 2C and 3A. Based on current information, it is reasonable to assume that the effect on the halibut resource of implementing measures to limit participants in the charter fisheries is negligible. Neither alternative is expected to have a significant impact on the environment. Additional discussion of the economic effects of the proposed alternatives is in Chapter 2.0.

### 1.7.7 Social and Economic Environment

A description of the charter halibut fishery and socioeconomic impacts of maintaining the current charter halibut fisheries management rules under Alternative 1 are discussed in detail in Section 2.4 of the RIR. Detailed discussions of the socioeconomic impacts of Alternative 2 are also in the RIR in Section 2.5. Chapter 3.0 contains an IRFA, conducted to evaluate the impacts of the suite of potential alternatives being considered, including the preferred alternative, on small entities, in accordance with the provisions of the Regulatory Flexibility Act.

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

Continuation of the status quo is expected to allow the halibut charter sector to increase the number clients they take fishing on an annual basis, without ‘supply-side’ constraint. The amount of halibut harvested will depend on the number of clients that ‘demand’ fishing charter trips, halibut bag and possession limits, and other similar management measures. Because current fish management measures do not limit the number of vessels that may be used to take clients halibut fishing, nor the number of clients that may be taken on a vessel<sup>56</sup>, the status quo is not expected to constrain growth in charter harvests to the 2C and 3A GHs. Growth in the charter sector’s catch in the 2C and 3A areas will reduce the commercial catch by an equal amount (all other things being equal). The commercial catch limit<sup>57</sup> is determined after deducting from the CEY all other removals (including the charter sector harvest). Therefore, any increases in charter clients’ catch will reduce the amount of halibut allocated to the commercial IFQ fishery by approximately an equal amount, all other things being equal. Without information on future halibut prices and business costs, it is not possible to predict the impacts that smaller halibut quotas may have on the economic viability of commercial halibut IFQ firms in Areas 2C

<sup>56</sup> Coast Guard requirements determine how many passengers may be onboard a for-hire vessel and not halibut charter management measures. In Area 2C, State regulations permit only 6 clients to fish at one time, but more than six clients may be onboard the vessel.

<sup>57</sup> The amount of halibut allocated to the commercial setline and longline fisheries.

and 3A. See Section 2.4 for estimates of foregone revenues in the commercial halibut fisheries resulting from projected growth in the halibut charter fisheries.

## **1.8 Summary of Environmental Impacts**

### **1.8.1 Alternative 1: No action**

Under Alternative 1, there would be no change to the management of the charter halibut fisheries in Areas 2C and 3A. Entry into the fishery would continue to be unlimited. No spatial or temporal dispersion of halibut charter catch is anticipated, and direct or indirect impacts on other groundfish stocks, threatened or endangered species, marine mammals, and seabirds are not anticipated to be significant. In addition, Alternative 1 is not expected to have any additional impacts on habitat or EFH. Effort levels for charter halibut fisheries are considered low and occur in areas of less sensitive habitat (rock, gravel, mud, and sand). Current fishing has minimal effect on benthic habitat and EFH (EFH EIS); these effects are likely to continue under Alternative 1. Alternative 1 is also not expected to have significant impacts on the Gulf of Alaska ecosystem. Information on the expected social and economic impacts of Alternative 1 is provided in the RIR in Chapter 2.0.

### **1.8.2 Alternative 2: Implement a charter halibut moratorium in Areas 2C and 3A (preferred alternative)**

Alternative 2, the preferred alternative, would implement a moratorium (limited entry program) on entry into the charter halibut fisheries in Areas 2C and 3A using a control date of December 9, 2005. Significant changes to charter halibut harvests as a result of limiting the number of operators to recent levels are not expected. The limited entry program is perceived as identifying the pool of eligible participants in these fisheries, which is the first step in a longer-term series of potential actions. The limited entry program, in combination with future Council actions (see Section 1.9), may result in reductions in charter halibut harvest in Areas 2C and 3A.

Generally, Alternative 2 is not expected to have significant negative impacts on other groundfish stocks, threatened or endangered species, marine mammals, and seabirds. Most charter businesses offer trips that target multiple species, including king salmon, rockfishes, and ling cod, along with Pacific halibut. The State of Alaska has identified its concerns about spillover effects from limitations on entry to charter halibut fisheries into these other sport fisheries, which will likely continue to be caught in conjunction with halibut. Like Alternative 1, Alternative 2 is not expected to have any additional impacts on habitat or EFH. The spatial and temporal distribution of charter halibut catch is expected to remain the same under Alternative 2. Additional impacts on the Gulf of Alaska marine ecosystem under Alternative 2 are expected to be negligible. Detailed information on the expected socioeconomic impacts of the proposed moratorium is provided in the RIR in Chapter 2.0.

## **1.9 Cumulative Effects**

The preferred alternative is designed to limit the number of halibut charter operators in Areas 2C and 3A. Any direct effects or reasonably foreseeable indirect environmental effects from the action would be minor, as the limited entry program itself would not entail changes in harvest levels, and any environmental effects, such as the removal of halibut biomass from the ecosystem, are sufficiently minor as to make it difficult to reasonably predict further indirect effects of those changes. The proposed limited entry program is also intended to identify the eligible participants in any future share-based program that the Council may recommend.

Cumulative effects are linked to incremental policy changes that individually may have small outcomes, but that in the aggregate and in combination with other factors can result in major resource trends. The proposed action would not interact synergistically with other actions or with natural trends to significantly affect the halibut resource of the Gulf of Alaska. Measures to establish a direct allocation of the halibut resource to the charter sector or to individual charter businesses are proposed as separate, future actions. The proposed action may interact with those future proposed actions in the sense that the moratorium is intended to establish the starting universe of participants that may be potentially eligible to: fish a defined allocation to the charter halibut sector; participate in a more refined limited entry program; and/or participate in a halibut charter IFQ program or other such limited access privilege program. These longer-term actions are being developed currently and will likely be considered by the Council in the next several years. No other reasonably foreseeable future actions would have impacts that would cause significant cumulative effects when combined with the effects from this action.

In January 2007, the IPHC recommended that the Secretaries of Commerce and State implement a reduction in the halibut charter bag limit to 1 fish for the entire season in Area 2C and for part of the season in Area 3A. This action was intended as a conservation measure, to reduce charter halibut harvests that exceeded the recent GHLS. The Secretary of State rejected the IPHC's recommendation for management measures in Area 3A because of action taken by the State of Alaska for 2007. The Secretary also rejected the recommendation for Area 2C because the Secretary of Commerce through NMFS is developing regulations for 2007 that are estimated to achieve the same level of reduction as recommended by the IPHC, albeit by a different management measure.

The proposed Federal regulations would restrict the harvest of halibut by anglers fishing on a guided sport charter vessel in IPHC Area 2C in Southeast Alaska. The proposed regulations would maintain the current sport fishing bag limit of two halibut per day, but require that at least one of the two fish taken daily be no more than 32 inches (81.3 cm) long. ADF&G estimates that the 32-inch maximum size restriction for one of two potential halibut taken by charter vessel clients would reduce the overall halibut charter harvest in Area 2C by about 425,000 pounds (192.8 metric tons). This action proposes the following change to regulations at 50 CFR 300.65 for anglers fishing from a charter vessel in Area 2C only:

- Charter vessel anglers would be allowed a daily bag limit of two halibut per sport fishing client on a charter vessel operating in Area 2C provided that at least one of the two halibut retained is no longer than 32 in (81.3 cm) with its head on. If only one halibut is retained by the sport fishing client, it could be of any length. Note 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.
- Charter vessel anglers would not be allowed to possess halibut on board a charter vessel in Area 2C that has been mutilated or otherwise disfigured in a manner that prevents the determination of size or number of fish. Filleted halibut may be possessed on board the charter vessel provided that the entire carcass, with the head and tail connected as single piece, is retained on board until all fillets are offloaded. This requirement allows enforcement officers to determine the size of landed halibut.

The proposed regulation would be in place for the entire 2007 sport fishing halibut season which is authorized through December 31, 2007. It is necessary to reduce the halibut harvest in the charter vessel sector while minimizing negative impacts on this sector, its sport fishing clients, and the coastal communities that serve as home ports for the fishery. The intended effect of this action is a reduction in pounds of halibut harvested by the guided sport charter vessel sector in Area 2C. The proposed rule (72

FR 17071) for this proposed action was published on April 6, 2007.<sup>58</sup> The public comment period ended April 23, 2007.

In March 2007, the Council reviewed a draft analysis addressing a wide range of management measures to reduce charter halibut harvest such that it does not exceed the GHL in Area 2C for 2008 and beyond. The Council is scheduled to make a final decision on this action at its June 2007 meeting. The range of options under consideration include: 1) No more than one trip per vessel per day; 2) No harvest by skipper and crew and line limits (number of lines = numbers of clients); 3) Annual limits of four, five or six fish per angler; 4) Reduced bag limits of one fish per day for May, June, July, August, September, or the entire season; 5) A two fish bag limit with one fish any size and one fish larger than 45" or 50"; 6) A two fish bag limit with one fish any size and one fish less than 32 inches; 7) A two fish bag limit with one fish any size and one fish either less than 32" or greater than 45" or 50"; 8) Combination of Options 1, 2, and 6 (one trip; skipper/crew; <32" 2nd fish); 9) Combination of Options 1, 2, 7 and 10) Combination of Options 1, 2, 5, and 11) Combination of Options 1, 2, 3, and 6. The regulations are intended to be in effect prior to June 1, 2008. These are viewed as interim measures during such time that a long-term solution to a permanent allocation is being developed.

The Council also initiated analysis of restrictive management measures to reduce charter halibut harvest such that it does not exceed the Area 3A GHL. These options include: (1) No more than one trip per vessel per day; (2) No harvest by skipper and crew and line limits; (3) Annual limits of four or five or six fish per angler; (4) Reduced bag limits of one fish per day for May, June, July, August, September, or the entire season; (5) A two fish bag limit with one fish any size and one fish larger than 32", 34", or 36"; (6) A two fish bag limit with one fish any size and one fish less than 32 inches; 7) A two fish bag limit with one fish any size and one fish either less than 32" or greater than 45" or 50". This draft analysis is scheduled for Council review in October and final action in December 2007. The regulations are also intended to be in effect prior to June 1, 2008.

The Council then intends to focus on long-term solutions. It has selected a range of percentages (12% - 17% in Area 2C and 13% - 15% in Area 3A) or fixed pounds (1.4 M lb – 1.9 M lb in Area 2C and 3.7 M lb – 4.2 M lb in Area 3A) for an initial, direct allocation to the charter sector. Linked to that decision, the Council forwarded a separate suite of elements and options for a compensated reallocation program to its Charter Halibut Stakeholder Committee for review and recommendations at its April 12-13, 2007 meeting in Anchorage. The intent is to develop a mechanism to fund the purchase of commercial halibut quota share in order to create future increases in the charter allocation above the level set at initial allocation, if necessary. The committee will report to the Council in June and an analysis is scheduled for October 2007. The committee will meet separately to provide final recommendations on options for potential changes to the recently adopted limited entry program or two share-based programs (client days or quota share) prior to the October Council meeting.

The Council is currently considering the following alternatives for a permanent solution: (1) no action; (2) an allocation to the charter sector, including, but not limited to: (a) sub-allocations to smaller areas; (b) sub-allocations to underdeveloped coastal communities; and (c) individual shares based on effort; and (3) an individual fishing quota program.

<sup>58</sup><http://www.fakr.noaa.gov/prules/72fr17071.pdf>



Also, the State of Alaska is currently pursuing an amendment to the Northern Pacific Halibut Act of 1982. While authority to manage halibut off Alaska resides with the IPHC, NMFS, and the Council, State authority to directly regulate the halibut fishery in Convention waters is preempted by federal law. The proposed amendment to the Northern Pacific Halibut Act is intended to provide delegation of limited authority for States to regulate recreational fishing for halibut, upon such recommendation by the appropriate regional council and Secretary of Commerce. Such delegation would require a recommendation by a council to the Secretary, based on an analysis and NMFS rulemaking. It is expected that the proposed moratorium would be implemented prior to any delegation of authority to the State(s), should the State of Alaska's proposal be successful.

## 2.0 REGULATORY IMPACT REVIEW

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

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

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

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

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

### 2.1 Problem Statement

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

based on past involvement in the fishery. To address the potential rush of new entrants into the guided sport fishery, the Council is considering establishing a moratorium on the guided sport sector.

## **2.2 Management Objectives of the Action**

The Council has proposed implementing a halibut charter vessel moratorium as one step in addressing unregulated growth in the charter industry, as it pertains to the distribution of Pacific halibut catches among commercial and charter fishing sectors. This action is designed to build on previous decisions made by the Council that are described in Section 1.3 of this document, by limiting growth in the number of vessels that may operate within the sector. This action may also serve to define the members of the charter sector that would be eligible for future charter rationalization programs, should they be proposed and approved.

The primary purpose of this amendment is to limit the number of halibut charter vessels that may carry clients in IPHC Area 2C, or in IPHC Area 3A. Limiting the number of charter vessels that may operate at one time, and the number of clients they carry, may help control long-term growth in halibut mortality that results from the charter sector. The moratorium may also provide a foundation on which other management measures can be built. Those future management measures could be more effective at controlling shorter-term growth in halibut mortality from the charter sector.

A moratorium that does not constrain charter harvests has little impact on the commercial or sport halibut fisheries relative to the status quo, because of the method used by the IPHC to determine the commercial fishery limits. Using that method, IPHC estimates of legal-sized halibut bycatch from non-target fisheries, including, halibut sport catch (guided and non-guided); commercial halibut fishery wastage; and personal use and subsistence halibut catches. The non-target removals are deducted from the total CEY<sup>59</sup> to generate the Fishery CEY. The catch limits for the commercial halibut fishery are then based on the Fishery CEY. The catch limits do not necessarily equal the Fishery CEY, as IPHC considers area-specific harvest policy objectives and also applies its Slow Up/Fast Down policy in setting the commercial halibut fishery catch limits. Thus, the moratorium may have no observable effect on the harvests by the commercial IFQ, or other sport fisheries for halibut, until the moratorium constrains charter harvests. However, this amendment package includes a provision that would allocate additional licenses to qualified communities that would not qualify under the moratorium requirements. This provision could expand charter effort in some remote communities, where other users of the halibut resource did not previously compete with charter operators for fishing grounds or space at the docks.

## **2.3 Alternatives Considered**

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

The alternatives under consideration were developed over an extended period, with input from several sources (see Appendix I for a detailed discussion of this process and development). The Council discussed charter moratorium alternatives as far back as 1995; however, the lack of data on individual operators and “political will” stymied implementing a moratorium. The State of Alaska initiated a charter vessel logbook program and collected halibut catch data from 1998 through 2001. That program was halted for a variety of reasons, including concerns over data accuracy, and replaced with a new logbook

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<sup>59</sup> Total CEY is the Exploitable Biomass multiplied by the Harvest Rate.

program in 2004. Data from the new logbook program are used to determine the persons that could qualify for a moratorium permit, under Alternative 2.

#### Expected Effects of each Alternative on each Sector

The following analysis describes the effects of Alternative 1 (the status quo/no action), and a moratorium (Alternative 2), on the charter sector, charter clients, commercial IFQ fishermen, seafood consumers, and (to a lesser extent) non-charter fishermen. Background information and options for the moratorium analysis (except for the options for qualification criteria) have been supplemented with information taken from Alternative 3 of the 2003 Charter Halibut GHL analysis.

Economic considerations associated with allocating a resource among competing sectors often center around the notion of economic efficiency, which is analogous to the idea of maximizing net benefits. An efficient allocation occurs when the combination of net benefits to consumers and producers in each sector is greatest, *ceteris paribus*. This combination is the sum of net benefits to the primary stakeholders in each user group: consumers of commercially caught halibut, commercial fishermen, sport anglers, charter operators, personal use, and subsistence. Economic theory suggests that social welfare maximizing distributions can be achieved by allocating each sector an amount of halibut that results in the marginal net benefit of each group being equal. The goal of this action is to compare net benefits under the No Action, with those under a moratorium alternative.

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

Consumer surplus in the recreational sector exists regardless of whether there is a market for the recreational activity, since it is the difference between what anglers are willing to pay to sportfish, and the costs actually incurred to do so. In the case of charter fishing, there is a market for guided trips, and the difference between what a guided angler would be willing to pay, and what she or he does pay (the charter price and other costs associated with the charter trip), is the net benefit. That estimate of net benefits accruing to charter clients is referred to as compensating variation in this analysis.

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

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

It can be the case that the management measure that produces the greatest net National benefit is one that disproportionately favors one sector over another, or that is substantially different from the starting point. As explained by Edwards (1990), potential efficiency is gained, even if it means a substantial loss of economic surplus to one of the sectors, so long as net National benefits increase. The Kaldor-Hicks "compensation" test, for judging whether efficiency can be increased, is predicated upon whether

‘winners’ could compensate ‘losers’ and still come out ahead” (Edwards 1990). Whether or not winners actually compensate the losers is irrelevant, within this context.

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

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

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

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

A description of the charter and commercial halibut fleets were presented in Appendix 2 of the 2003 GHL/RIR/IRFA (NPFMC 2003). That information is incorporated into this analysis by reference. Baseline information on the number of fishery participants and harvest levels for the 1995 through 2006 commercial and charter fisheries is presented in Table 6 of the EA for this moratorium amendment.

Additional information on the 2006 commercial halibut IFQ fishery can be found in Appendix 2 of this amendment and on the NMFS Alaska Region web site (<http://www.fakr.noaa.gov/ram/ifqreports.htm>). Information provided on that site includes allocations and catch by year, landings by port where the fish were delivered and area the fish were harvested. Information is also available there on fees collected under the IFQ program, transfers, permits issued, and vessel use caps. Those data provide background on the commercial halibut fishery and, to some extent, the communities that support the fleet. That information is included here by reference.

### *Description of Military Recreational Fleet*

The military has offered charter and other recreational fishing services, since the early 1940s, in the city of Seward. There are two facilities, the Seward Resort (Army) and the Air Force Recreation Camp.

The Seward Resort is administered as a non-profit operation by the U.S. Army Morale, Welfare, and Recreation (MWR) Program, based at Fort Richardson in Anchorage. Besides offering a variety of accommodations, the resort currently operates four charter sport fishing vessels with a capacity of 14 clients per boat. Their season is from Memorial Day to Labor Day. Eligibility for use of the facilities or charter vessels is limited to active duty, or retired, military members and their dependents, or to people who meet a number of other criteria associated with military service.<sup>60</sup> The resort employs civilian charter captains and deck hands. Charter rates are discounted (subsidized by the MWR program) and vary by client, according to rank. The camp also provides free fishing services to 26 active duty service members per week. All Seward Resort vessels currently meet the State definition of a charter boat and the resort submits ADF&G logbooks for all vessels. The Seward Resort and its guides have met ADF&G business and guide registration requirements every year since implementation. ADF&G port samplers interview captains of Seward Resort charter vessels along with the rest of the charter fleet, and collect biological data at the camp's fish cleaning facilities.

The Seward Air Force Recreation Camp is operated by Elmendorf Air Force Base in Anchorage.<sup>61</sup> The Air Force Recreation Camp currently neither owns, nor operates any sport fishing vessels of any kind, but provides fish cleaning and freezing facilities in addition to accommodations. ADF&G does collect data from non-charter boat anglers utilizing the Air Force camp fish cleaning facilities.

Through the late 1980s and much of the 1990s, the Army fleet consisted of up to fourteen 27-foot boats captained by USCG-licensed active military personnel, and up to four boats in the 43'- 50' range captained by licensed and qualified civilians. Client use on the smaller boats was generally determined by lottery (no charge), and these were technically not guided charter vessels. During the same period, the Air Force camp operated as many as four charter boats. During the late-1990s, the Army camp downsized the lottery boat fleet and gradually converted some vessels to charter boats. The Air Force camp also downsized their fleet and, by 2001, was no longer operating any charter boats. Both camps provided ADF&G with voluntary logbook data, including effort and harvests of all species, from 1987 through 1997, and submitted ADF&G logbooks every year since that program began in 1998.

As stated previously, the MWR Program continues to submit ADF&G logbooks, and the halibut harvested is counted toward the halibut charter GHL. The Council's preferred alternative would explicitly exempt these vessels from the qualifications of the halibut moratorium program and would recommend continuing to account for their halibut harvest toward the GHL. (Note that the Charter Halibut Stakeholder Committee also supported the exemption from the participation requirements necessary to receive a halibut charter moratorium permit, but recommended that the halibut harvest from these vessels should not be counted against the halibut charter GHL.) The Council has not placed any limit on the size of this fleet or the number of halibut they may harvest.

### Coastal Community Considerations

Both charter and commercial fisheries are important to the economies and social structures of coastal communities in Areas 2C and 3A. A study of the regional impacts on the Lower and central Cook Inlet

<sup>60</sup>The criteria are listed on the following website: <http://www.sewardresort.com/>

<sup>61</sup> <http://www.elmendorfservices.com/Pages/Seward/seward.htm>

was conducted by Criddle et al. (2003). Studies specific to other regions are unavailable. A description of economic and social contributions from commercial fishing to coastal communities is provided in a series of reports contracted by NMFS (Shirley et al. 1998, Dinneford 1999).

## 2.4 Alternative 1: Status Quo

The status quo in the halibut charter fishery is represented by the interactions of all the programs currently in regulation. Table 7 provides the best available background information on the number of vessels that historically operated in the fishery, the number of trips that they took, and the amount of halibut they harvested. Information for the commercial IFQ fishery is also provided in that table.

The GHL amendment for the charter halibut fishery set a target charter harvest of 1.432 M lb net weight in Area 2C, and 3.65 M lb net weight in Area 3A. Other charter management measures currently in place include a two fish bag limit, 2-hook per line gear limit, guide registration requirements, limits on captain and crew harvests (they were prohibited from retaining halibut during part of 2006 in Area 2C), and other State and Federal management and safety requirements placed on the halibut charter fishery (NPFMC 2000).

Recent halibut landing amounts by fishermen on guided charters in Area 2C and, to a lesser extent, Area 3A, have shown that the GHL will not constrain charter catches to their target level (see Table 7). This should not be surprising, since the subject “level” was established as a “Guideline”, by the Council, with no associated enforcement elements. Current management measures allowed the GHL to be exceeded starting in 2004. During 2005, removal estimates for Area 2C were 1.95 M lbs, and in 3A they were 3.69 M lbs; landing amounts 36% and 1%, respectively, over the 2C and 3A GHLs.

The number of halibut retained is determined, to a large extent, by the number of clients taking trips, client bag limits, and the desire of clients to take fish home. Trip demand is driven by the price of the trip, incomes of potential clients, costs of substitute activities, and preferences for halibut charter trips, relative to other activities. Since the charter industry operates in a (generally) competitive market for paying clients, trip prices are established by the forces of supply and demand (Wilén, 2004).

The number of visitors to Alaska from May 1 to September 30, has increased each year from 2001 to 2005. During that time, the annual number of visitors increased from 1.2 million to 1.53 million (<http://www.gov.state.ak.us/omb/results/view.php?p=178>). That represents a 28% increase in the annual number of visitors. The population of Alaska also increased, by 5.9 percent, from April 1, 2000 to July 1, 2005 (<http://quickfacts.census.gov/qfd/states/02000.html>). During that period of time the population increased from 0.63 million to 0.66 million people. The sale of sportfishing licenses reported in Table 7 seems to indicate that the number of visitors to Alaska may be a better proxy for license sales and charter halibut catches than State population changes. Both the number of visitors and residents has increased in since 2000, but license sales in 2C and 3A declined for Alaska residents and increased for visitors to the State, over that time period.

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

### Impacts on the Commercial IFQ Fishery

Continuation of the status quo is expected to allow the halibut charter sector to increase the number clients they take fishing on an annual basis, without ‘supply-side’ constraint. The amount of halibut harvested will depend on the number of clients that ‘demand’ fishing charter trips, halibut bag and possession limits, and other similar management measures. Because current fish management measures do not limit the number of vessels that may be used to take clients halibut fishing, nor the number of clients that may be taken on a vessel<sup>62</sup>, the status quo is not expected to constrain growth charter harvests to the 2C and 3A GHLS.

Growth in the charter sector’s catch in the 2C and 3A areas will reduce the commercial catch by an equal amount (all other things being equal). The commercial catch limit<sup>63</sup> is determined after accounting for the charter sector harvest (and all other removals) which is deducted from the CEY before the commercial catch limit is determined. Therefore, any increases in charter clients’ catch will reduce the amount of halibut allocated to the commercial IFQ fishery by approximately an equal amount, all other things being equal.

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

Charter harvests from IPHC Areas 2C and 3A are reported in Table 6 for the years 1995 through 2006. Based on those harvests, linear 10-year projections of catches are provided, when three levels of growth are assumed. As stated earlier, future growth in the charter sector is not known, so different growth patterns were assumed to partially account for the uncertainty. The rates of growth were calculated based on the average annual growth using the sets of years 1995-2006, 1997-2006, and 1999-2006. Assuming that the historic catch trends continue into the future, the average annual increase in 2C charter catch would be approximately 66,000 lbs, 94,000 lbs, and 168,000 lbs in Area 2C under the lower, medium, and higher catch rates. In Area 3A, the average annual increase in catch was projected to be 92,000 lbs, 120,000 lbs, and 202,000 lbs. Based on the 2007 commercial catch limits of 8.51 M lbs in 2C, and 26.2 M lbs in 3A, those increases in charter harvests, in the near term, represent about a 0.8 percent to 2 percent annual decline in the 2C commercial catch limit, and a 0.3 percent to 0.8 percent decline in the 3A commercial catch limit, *ceteris paribus*. These annual percentages would increase over time if charter catches increase and the commercial catch limit erodes.

Decreasing the amount of halibut that commercial IFQ holders may harvest from Areas 2C and 3A will decrease the ex-vessel revenue they derive from the fishery (assuming no off-setting price rise). The change in revenue is dependent on how responsive ex-vessel halibut prices are to the amount of halibut landed, in addition to other market factors that affect the demand for halibut. Herrmann and Criddle (2006) concluded that the ex-vessel price of halibut is quite inelastic, meaning that changes in the quantity of Alaskan halibut sold from the commercial IFQ fishery does not greatly impact the ex-vessel price that fishermen receive for their catch. They concluded that a 1 percent decrease in the amount of halibut landed in and off Alaska would increase the real ex-vessel price of halibut by only 0.09 percent. Using the projected changes in charter halibut catches over the 10-year period to reduce the commercial catch limits, and the Herrmann and Criddle price response estimate, the reduction in commercial production would only increase ex-vessel prices by about \$0.01 per pound. Therefore, for simplicity this analysis

<sup>62</sup> Coast Guard requirements determine how many passengers may be onboard a for-hire vessel and not halibut charter management measures. In Area 2C, State regulations permit only 6 clients to fish at one time, but more than six clients may be onboard the vessel.

<sup>63</sup> The amount of halibut allocated to the commercial setline and longline fisheries.

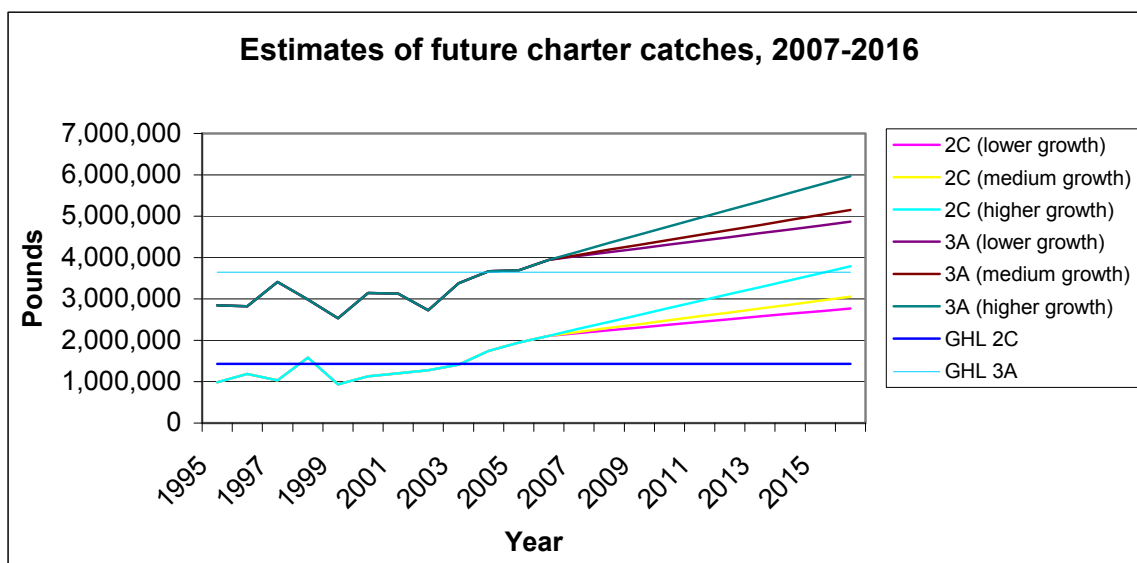


will assume that changes in the quantity of Alaska commercial halibut sold as a result of this action will not cause a change in ex-vessel prices.

Using the estimated charter harvests shown in Figure 8, for the years 2007 through 2016, projections of the amount of ex-vessel revenue that the commercial sector would forgo are reported in Table 10. Ex-vessel prices provided by the RAM Division for IPHC Areas 2C and 3A, during 2005, were used to make these estimations. Depending on the growth rate used for charter catches, the reduction in commercial revenue could range from \$11.5 million to \$29.2 million, over the 10-year period 2007 to 2016, in Area 2C. In Area 3A, the reduction in revenue is projected to be \$15.6 million to \$34.3 million, over the same time period. The changes are also reported as the percentage reduction in revenue relative to 2006 (Table 10).

Increases in the charter harvests that result in decreased commercial harvests are expected to result in small increases in the ex-vessel price of halibut (it was assumed to be zero in the estimates above), decreased post-harvest surplus<sup>64</sup>, decreased commercial net revenue, and decreased QS values.

Because the number of commercial IFQ fishermen is relatively low, and because they hold IFQs to harvest a specific percentage of the TAC, they are expected to earn a modest level of producer surplus in both the short and long term. Reductions in the amount of halibut available to the commercial sector could result in further consolidation of the QS, as harvesters try to match their holdings with harvesting capacity.



**Figure 8 10-year projections of Areas 2C and 3A halibut charter harvests**

<sup>64</sup> These include, consumer surplus of buyers of commercially caught halibut and any producer surplus generated by buyers/processors of commercially caught halibut from the harvesting vessel.

**Table 10 Estimates of the ex-vessel revenue reductions in the commercial IFQ fisheries**

Year	AREA 2C			AREA 3A		
	Slower growth	Medium growth	Faster growth	Slower growth	Medium growth	Faster growth
	Pounds					
2007	66,125	93,917	167,714	91,833	120,250	202,000
2008	132,250	187,833	335,429	183,667	240,500	404,000
2009	198,375	281,750	503,143	275,500	360,750	606,000
2010	264,500	375,667	670,857	367,333	481,000	808,000
2011	330,625	469,583	838,571	459,167	601,250	1,010,000
2012	396,750	563,500	1,006,286	551,000	721,500	1,212,000
2013	462,875	657,417	1,174,000	642,833	841,750	1,414,000
2014	529,000	751,333	1,341,714	734,667	962,000	1,616,000
2015	595,125	845,250	1,509,429	826,500	1,082,250	1,818,000
2016	661,250	939,167	1,677,143	918,333	1,202,500	2,020,000
Total	3,636,875	5,165,417	9,224,286	5,050,833	6,613,750	11,110,000
Ex-vessel value assuming ex-vessel prices of \$3.17 (2C) and \$3.09 (3A)						
2007	\$ 209,616	\$ 297,716	\$ 531,654	\$ 283,765	\$ 371,573	\$ 624,180
2008	\$ 419,233	\$ 595,432	\$ 1,063,309	\$ 567,530	\$ 743,145	\$ 1,248,360
2009	\$ 628,849	\$ 893,148	\$ 1,594,963	\$ 851,295	\$ 1,114,718	\$ 1,872,540
2010	\$ 838,465	\$ 1,190,863	\$ 2,126,617	\$ 1,135,060	\$ 1,486,290	\$ 2,496,720
2011	\$ 1,048,081	\$ 1,488,579	\$ 2,658,271	\$ 1,418,825	\$ 1,857,863	\$ 3,120,900
2012	\$ 1,257,698	\$ 1,786,295	\$ 3,189,926	\$ 1,702,590	\$ 2,229,435	\$ 3,745,080
2013	\$ 1,467,314	\$ 2,084,011	\$ 3,721,580	\$ 1,986,355	\$ 2,601,008	\$ 4,369,260
2014	\$ 1,676,930	\$ 2,381,727	\$ 4,253,234	\$ 2,270,120	\$ 2,972,580	\$ 4,993,440
2015	\$ 1,886,546	\$ 2,679,443	\$ 4,784,889	\$ 2,553,885	\$ 3,344,153	\$ 5,617,620
2016	\$ 2,096,163	\$ 2,977,158	\$ 5,316,543	\$ 2,837,650	\$ 3,715,725	\$ 6,241,800
Total	\$ 11,528,894	\$ 16,374,371	\$ 29,240,986	\$ 15,607,075	\$ 20,436,488	\$ 34,329,900
Percentage reduction in ex-vessel revenue from 2006						
2007	0.8%	1.1%	2.0%	0.4%	0.5%	0.8%
2008	1.6%	2.2%	3.9%	0.7%	0.9%	1.5%
2009	2.3%	3.3%	5.9%	1.1%	1.4%	2.3%
2010	3.1%	4.4%	7.9%	1.4%	1.8%	3.1%
2011	3.9%	5.5%	9.9%	1.8%	2.3%	3.9%
2012	4.7%	6.6%	11.8%	2.1%	2.8%	4.6%
2013	5.4%	7.7%	13.8%	2.5%	3.2%	5.4%
2014	6.2%	8.8%	15.8%	2.8%	3.7%	6.2%
2015	7.0%	9.9%	17.7%	3.2%	4.1%	6.9%
2016	7.8%	11.0%	19.7%	3.5%	4.6%	7.7%

Source: 2005 ex-vessel halibut prices from RAM. Quantity estimates were taken from Figure 8.

Note: Changes in the quantity of commercial halibut landed were assumed to have no impact on ex-vessel prices.

### *Quota share value*

Because the commercial halibut fishery operates under an IFQ program, continued reductions in the commercial catch limit will negatively impact the value of commercial QS in Areas 2C and 3A, *ceteris paribus*. The value of the QS will depend on projected future net revenues derived from owning the QS, which will include any expectations of future changes in the commercial catch limit. As the commercial catch limit declines, the amount of halibut IFQ that results from a QS unit declines. Therefore, because each QS unit equates to fewer pounds of halibut annually, and the ex-vessel price of halibut is believed to be inelastic over the relevant range, the value of the QS will decline.

Changes in QS values in other IPHC areas should be minimal as a result of this amendment, because, as stated earlier, changes in the quantity of halibut sold in the commercial market will have minimal impacts on the ex-vessel price of halibut. Since the prices and quantities of halibut harvested in other areas are either minimally impacted, or not impacted by this action, the QS value in those areas are not expected to change significantly.

### *Post-harvest surplus*

Post-harvest surplus is expected to decline under the status quo. Reductions in the supply of commercially caught halibut, at least from 2C and 3A producers, as a result of increased charter catches will result in less halibut being available in the market, and any post-harvest consumer or producer surplus attributed to those forgone fish would be deducted from the post-harvest surplus estimate. It is worth noting here that significant quantities of halibut, available to commercial harvesters in, for example, Area 4E (among others), are not being harvested at present. Clearly, logistics, production costs, transportation, etc., would influence whether reductions in commercial supplies from Area 2C and Area 3A would induce increased production from under-utilized IPHC areas off Alaska.

Consumer surplus is the difference between the willingness to pay and the actual cost consumers pay for, in this case, halibut. Criddle (2004, 2006) shows that consumer surplus (post-harvest surplus) represents a substantial portion of the commercial net benefits under a joint commercial and charter management structure. He also indicates that post-harvest surplus is directly correlated with commercial catch. Post-harvest surplus rises when commercial catch increases and falls when commercial catch declines, *ceteris paribus*.

### Charter Operators

Under the status quo alternative, charter operators will continue to enter or exit the charter fishery based on their expectations regarding economic opportunities to be had, and their ability to generate normal economic returns, over time. Businesses that successfully market their trips to potential clients could expand their operation to meet client trip demand. Businesses that are unable to market their trips successfully will leave the market.

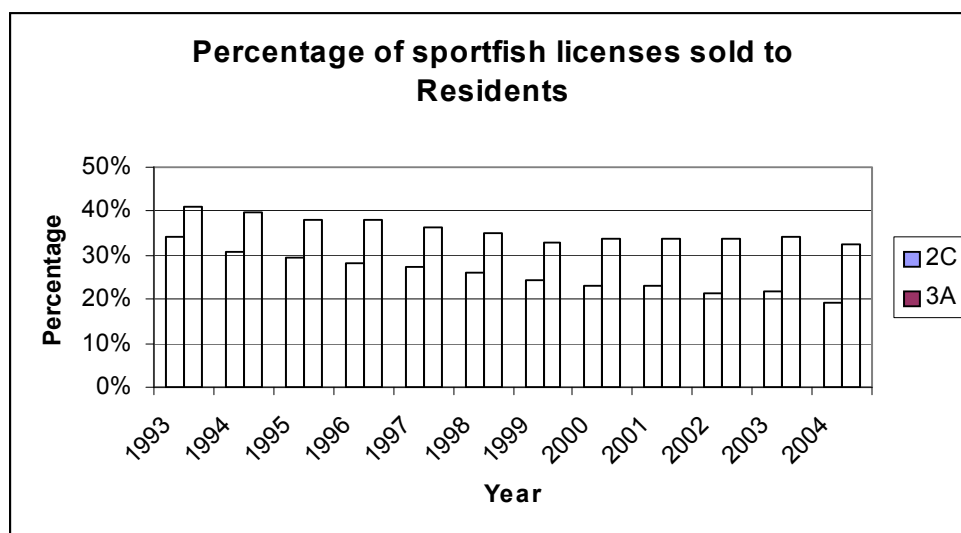
Since the charter sector is characterized by a large number of participants, and low barriers to entry, participants are assumed to operate as nearly perfect competitors. In a perfectly competitive market, the market supply of sportfishing trips is perfectly elastic and demand for those trips is perfectly elastic. The ultimate result in this market, with an increasing demand for fishing trips, is an increase in the number of sportfishing trips taken, an increase in angler surplus, and an increase in charter revenues, leading growth in capacity. In the short-run, the price of trips would tend to increase along with charter operator quasi-profits. But over time the price of trips would return to their original levels as charter operators compete

for clients. Therefore, in the long-run, no producer surplus<sup>65</sup> would be generated by the charter sector, since they would return to earning normal economic profits (Criddle, 2004). This abstraction is conditional upon a number of simplifying assumptions that do not exist in the real world (e.g., many suppliers offering a perfectly homogeneous product, perfect information, zero transactions costs, etc.). Nonetheless, it may reveal insights into the “nature” and likely “direction” these economic parameters may take, in response to the institutional changes being considered.

### Charter Clients

Charter clients pay for the privilege of being taken on a guided halibut trip. The decision whether to take a given trip is affected by the price of the trip, other recreational opportunities, the anticipated success of the trip (number and size of halibut caught), income, and other factors. Criddle, et al. (2003) examined the relationships between these factors and the probability that a potential charter client will take a trip in the lower Cook Inlet. The results of that study indicate that an increase in the price of a charter trip will reduce the probability that a client will take a trip. Alaska residents were less likely to take a trip when the price of a trip increases compared to non-residents.

Figure 9 shows the percentage of sportfish licenses that were sold to Alaska residents from 1993 to 2004, inclusive. The information in that figure indicates that overall the number of sportfish licenses sold to residents has declined over the time period. It also shows that a greater percentage of licenses are sold to residents in 3A, when compared to 2C. Therefore, price increases in Area 3A are expected to have a greater impact on client demand for a trip, than in Area 2C. Increases in the anticipated weight and number of halibut harvested on the trip increased the probability that both resident and non-resident clients would take a trip. However, Alaska residents are more responsive to increases in halibut weights and number of halibut caught than non-residents. The marginal utility of a trip was shown to increase at a decreasing rate, as the expected weight of halibut harvested increases. Catches of salmon species on a saltwater fishing trip were also shown to be substitutes for halibut trips. The probability of taking a trip increased as a function of income, age, and education. The probability of taking a trip is also higher for males. These results are specific to the Lower and Central Cook Inlet saltwater sport fishing.



**Figure 9 Percentage of sportfish licenses sold to Alaska residents by year 1993 - 2004**

<sup>65</sup> The difference between revenue earned from clients and the costs (operating and opportunity) of doing business.

Under the status quo, the factors that alter the probability that a charter client will take a halibut trip are not directly affected.<sup>66</sup> Given that those factors are not changed as a result of the status quo (including the price of a trip), the total compensating variation (consumer surplus) is expected to increase as the number of clients taking a trip increases, *ceteris paribus*. Estimates of compensating variation for the 197,556 saltwater sport fishermen (both guided and unguided) in the Lower and Central Cook Inlet in 1997 was “estimated” to be \$19.5 million (Criddle, et al, 2003). This value should not be considered the compensating variation for 2C and 3A charter fishery, because it includes all saltwater sport fishing activity for the Lower and Central Cook Inlet halibut charter fishery, and excludes charter activity in Area 2C and portions of Area 3A.

### Regional Impacts

The economic activity resulting from the charter and commercial halibut fisheries generates income and employment for residents of the communities where the expenditures occur. The economic benefits under the status quo will likely differ from those under a binding moratorium. However, changes in regional economic benefits generally do not cause changes in net National benefits. Appendix 2 provides information on the communities where charter trips terminated in 2004 and 2005. Information is also provided in that appendix showing the percentage of Area 2C and 3A commercial halibut QS held by residents of various communities. Those tables indicate that in many cases the charter and commercial fisheries operate in the same communities. When a community is home to both charter and commercial activity, the reduction in expenditures by one sector will be off-set (to some degree) by the increased activity of the other sector.

Under the status quo, the personal income and jobs generated by the charter sector is expected to increase. The economic activity reported in the University of Alaska Fairbanks angler survey (Lee et al. 1998; Herrmann et al. 2001) and the ADF&G angler survey, conducted in 1997 (Howe et al. 1998), were used to estimate regional economic impacts for the Kenai Peninsula Borough (Criddle et al. 2003). The results of that analysis showed that the 197,556 saltwater sportfishing trips in 1997 generated<sup>67</sup> \$28.5 million in expenditures, \$12 million in personal income, and 822 jobs. These values over-estimate the impact of the halibut charter sector in the Kenai Peninsula, because the values include unguided sportfishing trips. However, the impacts do not account for the regional impacts generated by trips in other Area 3A and 2C communities. That analysis also provides estimates of the impact that changes in expected charter catch and increases in trip prices will have on compensating variation, expenditures for sportfishing trips, personal income, and employment. Because the status quo is not expected to impact trip prices or halibut catches, that information is more relevant under a management system that alters those trip attributes.

### Self-guided anglers and subsistence harvesters

Continuation of the status quo is not expected to impose costs or provide additional benefits to self-guided anglers or subsistence harvesters in terms of the amount of halibut they are allowed to harvest. Because the halibut allotment for those two groups is accounted for before establishing the commercial allocation, the amount of catch by the commercial sector does not impact the halibut available to these groups. The charter harvests are accounted for at the same step in the IPHC allocation process as these groups. Therefore, the charter harvests do not impact these groups.

<sup>66</sup> This is only true if the changes in the fishery are within a relatively small range. If crowding externalities, localized depletion, smaller/fewer average fish caught accompany expansion, this conclusion may not hold.

<sup>67</sup> These studies are based on data that are now over 10 years old, but represent the most current and comprehensive data that are available.

While the commercial and/or charter harvests do not impose costs or impacts on the amount of halibut available to these two user groups, they may impose other costs. If increased charter harvests exacerbate localized depletion, crowding externalities, noise, or gear conflicts the unguided sport and subsistence harvesters could be adversely impacted. It is not possible to predict the extent

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

The Council is recommending implementation of a moratorium on new entry into the halibut charter fishery to limit the number of vessels that may fish at one time, while the Council determines what is necessary to stabilize charter landings of halibut in IPHC Areas 2C and 3A. A moratorium, if approved by the Secretary, should provide a basis for the development of a more comprehensive effort limitation program for this segment of the fishery. At its March 2007 meeting, the Council selected components from Alternative 2 as its preferred alternative.

The proposed moratorium is essentially a limited entry system by license limitation that by itself will not fully control fishing effort, because the existing fishing fleet may react by increasing overall fishing effort (number of trips or average number clients per trip). However, a moratorium could serve to better stabilize fishing effort than the status quo, because only the permitted vessels would be allowed to increase effort.

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

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

**The following sections address each of the proposed features of the moratorium.**<sup>68</sup> A total of 12 issues are addressed. Some of the issues are more statements of intent, rather than options for consideration. The discussion of those issues will be relatively short. Other issues have greater impacts on the industry; those issues will be discussed in greater detail.

### 2.5.1 Issue 1

*Permits<sup>69</sup> may be held by U.S. citizens or U.S. businesses with 75 percent U.S. ownership of the business<sup>70</sup>. Businesses<sup>71</sup> may receive multiple permits due to charter halibut activity by vessels reported by the businesses in ADF&G logbooks. Initial permit recipients may be “grandfathered” below the U.S. ownership level and above the proposed use caps until any change in ownership of the business occurs<sup>72</sup>.*

<sup>68</sup> Military (Morale, Welfare, and Recreational) boats are exempted from limited entry, but harvests still count against the GHL.

<sup>69</sup> Through initial issuance and transfers.

<sup>70</sup> A business means a business licensed by the State of Alaska as a sport fish guide operator.

<sup>71</sup> This also includes citizens.

<sup>72</sup> Transferred permits would not be grandfathered below the U.S. ownership cap, even upon sale of a business, but would be grandfathered above the use cap upon sale of the entire business (see Issue 11).

**Issue 1 was selected as part of the Council's preferred alternative.** The permit conditions identified by the Council will add a U.S. ownership requirement a person must meet in order to operate a halibut charter business in IPHC Areas 2C and 3A. Currently, the only requirements to own and operate a guide business in the State of Alaska are found in Section 16.40.260 of the Alaska Statutes (AS). Those requirements do not include U.S. ownership provisions. Language from AS 16.40.260 is provided in the box below.

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

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

Implementing the permit requirements identified by the Council will ensure that any transfers of permits must be made to U.S. citizens, or to U.S. businesses with at least 75 percent U.S. ownership of the business. This regulation will prohibit nonresident aliens, and citizens of Canada and Mexico that were not initially issued a permit from owning halibut charter businesses that fish in Area 2C and/or 3A. Persons grandfathered under this provision will not be allowed to purchase permits. If they sell a permit they would not be allowed to replace that permit in the future. They will also not be allowed to purchase additional permits for the purpose of stacking permits to increase the number of clients they may carry.

Non-U.S. residents could continue to own and operate halibut charter businesses operating in other areas of the State. Because the moratorium permits apply only to IPHC Areas 2C and 3A, these regulations would not alter the management structure in those areas. Guide business operators will continue to need a State guide business license, but a Federal moratorium permit is not needed to operate the halibut charter guide business in areas other than 2C and 3A.

Net National benefits only include the consumer and producer surplus from U.S. residents. Excluding non-residents from purchasing permits may increase net benefits to the Nation, by ensuring that U.S. operators capture any charter producer surplus. It is expected that the producer surplus generated from the halibut charter fishery will be relatively small when barriers to entry are relatively low. Under the

Council's preferred alternative, the number of permits issued and the potential for businesses to increase capacity should cause increased competition for clients. Competition for clients will cause operators to bid away producer surplus.

The issue also states that persons may be issued multiple permits based on the bottomfish trip history of vessels as reported in ADF&G Saltwater Logbooks<sup>73</sup> that were submitted by the charter business in a timely manner. A business that submitted logbook data for two qualified vessels, for example, would be issued two distinct permits. Each of those permits would be transferable independent of the other. Allowing businesses to sell permits independently does not add additional vessels to the charter fleet. Yet, it may allow the charter to increase effort by allowing permits that were not fully used by the original recipient to be used to take more clients fishing (harvest more fish) by the charter operator purchasing the permit.

## 2.5.2 Issue 2

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

**Issue 2 was selected as part of the Council's preferred alternative.** Each permit would be issued for IPHC Area 2C or 3A, meaning all permits would be designated for use in one area or the other. In the near term, limiting moratorium permits to a specific IPHC area is not expected to have a substantial impact on charter businesses or guided anglers. The permits issued for each area are expected to be about the same or greater than the number of vessels that operated in recent years. If conditions change in the fishery and clients want to take substantially more trips in an area, the restrictions could eventually impact the availability and price of trips.

The amount of protection<sup>74</sup> specific ports within an area receive will depend on the number of permits issued in that IPHC area and the number of permits needed to operate guide operations in other ports. If several permits are issued that are not needed to provide charter clients trips in the port in which they were earned, they could be moved to other ports in that IPHC area. Increased competition for clients could benefit guided anglers through lower prices, but increased fishing effort could impact catch rates if localized depletion of halibut results from the increase in effort.<sup>75</sup>

ADF&G provided data that allow preliminary estimates of the maximum number of permits that would be issued in each area. The data provided was only for 2004 and 2005, so additional participation would also be required in the "year prior to implementation". Based on those data, seven businesses submitted logbook entries for both Areas 2C and 3A. A brief summary of those operations is provided. Three businesses submitted logbook entries for three vessels that made trips in Areas 2C and 3A during the 2004 and 2005 qualifying period. One vessel would qualify for an Area 3A permit under any option and

<sup>73</sup> Bottomfish trips reported in ADF&G logbooks are defined by the requirement to generate a logbook entry. Logbook entries are required to be completed before the fish and clients are offloaded on single day trips. If more than one group of clients is fishing from a vessel during the day, a half-day trip, the logbook must be completed before each group departs the vessel. If a charter operator completes two half-day trips in the same day, they would be credited with taking two trips. For multi-day trips, the logbook must be filled out at the end of each day. Therefore, if a charter operator took clients on a five-day trip and each day had bottomfish fishing activity reported, they would be credited with having taken 5 trips.

<sup>74</sup> "Protection" refers to limits placed on the number of new businesses and vessels that may operate out of a port, and the impacts those operations could have on competition for clients, fishing grounds, and port infrastructure.

<sup>75</sup> Localized depletion may be less of an issue as the size of charter vessels increases and the range that vessels operate in becomes larger. ADF&G Sport Fish Division staff has indicated that charter vessels are regularly ranging up to 60-80 nautical miles from the ports of Homer, Seward, Whittier, and Valdez.



an Area 2C permit if 1-trip was required. A second vessel would qualify for an Area 3A permit at the 1, 5, or 10 trip levels, and an Area 2C permit at any level. The third vessel did not fish both areas in the same year, but would qualify for a 3A license under the Council's 1 or 5 trip alternatives, or a 2C license at the 1 trip threshold, depending on the year they selected for qualification. If a vessel qualifies for more than one area, the charter operator would be issued a permit for both areas. In addition to those three vessels, four other businesses reported trips in both 2C and 3A, but did not have a single vessel operate in both areas. These businesses would be issued one or more permits for 2C and other permits for 3A (if they meet the minimum trip requirements). Under the Council's preferred alternative, no vessel would qualify for a permit in both IPHC Areas 2C and 3A.

Refer to Section 2.5.10 for information on the estimated number of permits that would be issued in each area.

### 2.5.3 Issue 3

#### *Permit would be issued to an ADF&G licensed fishing guide business owner*

**Issue 3 was selected as part of the Council's preferred alternative.** The initial allocation of transferable fishing privileges is typically one of the most scrutinized and contentious aspects of a limited entry program's design. Recipients of the initial allocation, in cases where the privilege is gifted or a small fee is charged, are considered the winners of the allocation process. Those that do not qualify for the initial allocation are considered the losers. The initial allocation is important because subsequent purchasers of the privilege would be required to pay the free market price (when freely transferable). That price represents a windfall to initial recipients, because they were not required to pay for the fishing privilege.

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

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

The first method would be to allocate permits based on historic participation in the fishery. Historic participation could be based on holding a fishing permit or active participation in the fishery. The time it takes to develop a limited entry program under the Council process creates opportunities for persons to enter the fishery or increase their historic participation to obtain permits during the initial allocation. This rent-seeking behavior results in economically wasteful activities (Criddle, 2006). Trends in the number of businesses and vessels participating in the 2C and 3A charter fishery seem to reflect that notion. Historic participation tables presented in the EA indicate that during 2000 and 2005, the numbers of vessels and businesses increased. Those are years when halibut charter limited entry programs were active topics in the Council process. Public testimony has also indicated that some long-term operators are staying in the fishery with the hope of being issued a permit they can sell.

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

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

Auctions have been discussed in recent years as a method to create an efficient initial allocation (Morgan, 1995) and as a mechanism for the government to better control the use of the public resource, while providing financial return to public owners of the resource (Macinko, 2002). From an economic perspective, auctions would provide a very efficient method of allocating fishing privileges, because they allocate permits to those persons who place the greatest value on them<sup>76</sup>. It would also determine the market value of the permits. Auctions would also allow the Council and NMFS to control the number of permits to be auctioned. Auctions that sell to the highest bidder would generate the greatest revenue for the government, but other types of auctions could also be developed that allow the government to meet the needs of persons without the financial resources to successfully bid (Macinko, 2002).

As part of its recent reauthorization, the MSA was modified to allow Regional Fishery Management Councils to recommend auctions or other programs to collect royalties when developing a “limited access privilege program”. A limited access privilege program is defined in the MSA as a “Federal permit, issued as part of a limited access system under section 303A, to harvest a quantity of fish expressed by a unit or units representing a portion of the total allowable catch of the fishery that may be received or held for exclusive use by a person.” Because the proposed moratorium program does not allocate a quantity of fish expressed as units or units representing a percentage of the TAC, the MSA does not provide the option to auction or sell moratorium permits proposed in this action<sup>77</sup>.

The final method would have the government sell permits for a fixed price. One problem with this method is NMFS would need to determine the appropriate price for the permits. Because NMFS does not have detailed cost and revenue data for the charter operators, it would be difficult for NMFS to set the “correct” price. Setting the price too high would prevent persons from buying all the permits. If the price was set too low, NMFS would create excess demand and persons would engage in behavior to collect rents from the fishery. Like with auctions described above, the Council currently does not have the authority to recommend, and NMFS does not have the authority to implement, a regulation that would sell moratorium permits proposed in this action to collect royalties.

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

In the halibut charter fishery, the guide business owner will be issued the moratorium permit, in part because they are licensed by the State of Alaska and are responsible for reporting logbook data for the charter industry. They are also typically responsible for booking clients and in many cases own the charter vessel<sup>78</sup>. Vessel owners have been issued permits under the commercial fishery moratorium and

<sup>76</sup> This ignores the income effect that shifts the consumer’s budget constraint. When income increases, the budget constraint is relaxed, because the consumer can purchase more. In the case of an auction, persons with more income may be able to purchase more of the halibut available. However, some types of auctions have been described by Macinko and others that would minimize the income effect.

<sup>77</sup> Members of the Council’s Scientific and Statistical Committee have expressed concern that this is a “very narrow reading of the MSFCMA”.

<sup>78</sup> Given the variety of business models in the charter industry, some charter business owners do not own their own vessel or take clients fishing.

license limitation programs the Council developed in the past. Licensed captains and crew hired to operate vessels would not be included in this initial allocation, though captains were included in crab IFQ program. The Council elected not to include those individuals in the initial allocation of this program, because of the type of fishing privilege issued and the difference in the business structures in the charter industry.

#### 2.5.4 Issue 4

*Permit applicant would be required to sign affidavit attesting that all legal requirements were met.*<sup>79</sup>

**Issue 4 was selected as part of the Council's preferred alternative.** This requirement was developed as part of the procedure for gathering information that is necessary to issue a permit. The goal is to encourage permit applicants to provide true and accurate information on their permit application. It also provides a record of owners stating they are entitled to the permit based on having met the legal requirements for its issuance. It eliminates new, conflicting, or redundant requirements by simply referring to other legal requirements.

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

Finally, any additional recordkeeping and reporting requirements will increase the cost of doing business for the charter operators. However, the additional costs associated with signing an affidavit should be minimal. NMFS will also incur costs associated with developing, distributing, and verifying information submitted on the affidavit. Those costs are also expected to be relatively small.

#### 2.5.5 Issue 5

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

*Suboption 1: Prohibit 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 5, Suboption 1 (15 trips) was selected as part of the Council's preferred alternative.** Transferability facilitates the development of a market in which permits are traded. After the initial allocation of licenses, market forces would determine access to the fishery. Newcomers would buy permits to enter the fishery, and those selling would be paid to leave. Competition in the market for permits ensures that those most willing or able to buy permits would acquire them, whatever the initial distribution. This does not mean that everyone that purchases a permit will succeed in their business venture. Expectations of people entering the business may be too high and their business may fail. For an industry such as the for-hire sector that is characterized by a high turnover rate, transferability of permits assumes particular importance. It would allow the more efficient operators to remain in or enter the fishery, while the less efficient ones would be compensated for leaving. Under this process, the price of a permit would start to partly reflect the value generated from its use. Public testimony at Council meetings has indicated that participants in the fishery anticipate that permits will initially sell for about \$5,000 each. Until a competitive market for those permits is established, the actual price will be unknown. The value of permits that allow a person to carry more clients is expected to sell for a higher price than a permit endorsed for fewer clients, all else equal. For example, a permit that is endorsed for 4 clients would be expected to sell for less than a permit that allows 6 clients per trip, endorsed for the same

<sup>79</sup> The only tangible evidence is the ADF&G logbook, which requires meeting all State legal requirements.

area. The difference in permit prices should reflect the change in profits that can be generated by the two permits. A more complete discussion of the number of clients that may be carried at one time is provided in the “Permit Endorsement for Number of Clients on Board” section (Issue 7).

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

Suboption 1, the Council’s preferred alternative, would create a class of permits that are non-transferable.<sup>80</sup> Permits would be classified at initial issuance as transferable or non-transferable based on the number of trips taken by the “vessel” that generated the initial permit. Vessels that earned a permit but did not take the required minimum number of trips (i.e., 15 trips under the preferred alternative) in a calendar year during the qualifying period would be issued a non-transferable permit.

It is important to define the terms “vessel” and “qualify” as they are being used in this alternative. The term vessel refers to a vessel that was reported in the ADF&G saltwater logbooks as being used to take clients fishing for bottomfish/halibut during the historical participation periods used to determine qualification. Under Issue 10, the two periods necessary to qualify for permit(s) are: 1) 2004 or 2005, and 2) the year prior to implementation of the program. To determine if a transferable permits should be issued, NMFS would look at the first period (2004 or 2005) and count the number of vessels that took at least 15 bottomfish trips in an IPHC area, as reported in the ADF&G Saltwater Logbook by the guide business operator. The number of vessels that met the 15-trip threshold represents the maximum number of transferable permits that could be issued to the business. If that business had the same number of vessels (or fewer) that took at least 15 halibut trips during the second qualifying period (the year prior to implementation), they would be issued a transferable permit for each vessel that took 15 halibut trips during the second qualifying period.

It is thus possible that the total number of transferable permits earned by the business could be fewer than the number of vessels that took 15 groundfish trips in the first qualifying period (2004 or 2005), but the business could not earn more permits than the number of vessels that took 15 groundfish trips in the first qualifying period (2004 or 2005). If the business had *more* vessels take at least halibut 15 trips during the second period, they would be issued transferable permits *equal to* the number of vessels that took at least 15 qualifying trips during the first period (2004 or 2005). For example, a business reported in their ADF&G logbooks that 3 vessels took at least 15 bottomfish trips during 2004 and 2005. That same business reported in their ADF&G saltwater logbooks that four vessels (and none of the vessels were the same as fished in the first period) took 15 halibut trips in the year prior to implementation. That business would be issued three transferable permits.

In the example above, it is important to note that none of the same individual vessels fished in both the first and the second qualifying period. Because many businesses used different vessels during the two periods, it is assumed that that the same exact vessel is not required, to meet the 15-trip threshold in both time periods. If the same vessel was required to fish in both time periods, it could result in a business that replaced an old vessel not qualifying for a transferable permit even though the vessel the business operated met the minimum trip requirement every year. To alleviate problems associated with a business using different vessels during the qualification period, NMFS will simply count the total number of

<sup>80</sup> Transfers are defined as the permanent sale of the permit or when persons are added as owners of the entity holding the permit. Removing owners from the entity holding the permit would not be considered a transfer.

vessels that reported 15 trips in each period used to qualify for a permit. NMFS would then issue transferable permits based on the maximum number of vessels that reached that threshold in both periods. The term “qualify” in this case means that a business must have had sufficient participation, numbers of trips, by individual vessels (as reported in their ADF&G Saltwater Logbooks) to earn a transferable permit.<sup>81</sup>

The Council indicated that one reason they recommended allocating non-transferable permits is to make selecting a less restrictive option (that would allow more overall persons to qualify) for an initial allocation more palatable. Allowing more persons to qualify for a permit overall may reduce the opposition to the program, and making some permits non-transferable could help to constrain halibut charter harvests by the permits that are no longer used by the original recipient. For example, the difference in number of permits that would be issued under Option 10.1 at the 5-trip and 15-trip level is 127 permits in Area 2C and 96 permits in Area 3A (see Table 16). If each vessel was required to take 15 trips to qualify for a transferable permit under Option 10.1, then 255 non-transferable permits would be issued in Area 2C and 166 in Area 3A to vessels making more than 5-trips, but fewer than 15. The number of non-transferable permits is the additional permits issued by selecting a 5-trip qualification criterion, minus the number of permits issued at the 15-trip criterion. Creating a class of non-transferable permits could prevent some permits from being used more fully. Quantitative estimates of the amount of halibut that would be harvested under the two options cannot be predicted. However, the non-transferable permits would be expected to decrease effort in the fishery over time, as they become inactive.

**Note that allowing permits to be used on vessels that are not owned by the permit holder could expand the use of non-transferable permits.** This problem is similar to those encountered in trying to prevent the leasing of a permit (Issue 6). Persons holding a non-transferable permit could hire a captain and vessel to carry clients. The person holding the permit would only be required to maintain their State Business License and obtain ADF&G saltwater logbooks to report the activity of the vessel(s) using the permit. This practice is not uncommon in the charter fishery and could be used to keep non-transferable permits active in the fishery longer than if this practice was not used. The number and percentage of permits under each option that are estimated to be non-transferable are shown in Table 11.

Fewer non-transferable permits are issued when the number of trips required to qualify for a permit increases and fewer trips are required to earn a transferable permit. Fewer non-transferable permits are issued under Option 10.2 compared to Option 10.1 when more than 1 trip is required to qualify. The reason that fewer non-transferable permits are issued is because the vessels closest to not qualifying under Option 10.1 do not receive a permit under Option 10.2. So, under Option 10.1 they would be issued a non-transferable permit and under 10.2 they would not be issued any permit. The maximum number of non-transferable permits that could have been issued, based on the alternatives considered, ranged from 10 (1 percent of the total permits issued) to 544 (38 percent of the total permits issued).

<sup>81</sup> Note that this requirement is based on the activity of individual vessels; thus, it is different than Alternative 10 where business are allowed to sum the number of trips from all vessels that were reported in their ADF&G Saltwater Logbooks to determine qualification.

**Table 11 Estimate of maximum of non-transferable permits under each option**

Council Alternative	Number of Permits			Percentage of Permits		
	2C	3A	Total	2C	3A	Total
<b>Vessels qualified with less than 10 trips</b>						
<b>Option 10.1 (1 trip)</b>	218	127	345	29%	19%	24%
<b>Option 10.1 (5 trips)</b>	146	76	222	21%	12%	17%
<b>Option 10.1 (10 trips)</b>	77	26	103	12%	5%	9%
<b>Option 10.1 (15 trips)</b>	48	20	68	9%	4%	6%
<b>Option 10.1 (20 trips)</b>	34	15	49	7%	3%	5%
<b>Option 10.2 (1 trip)</b>	218	127	345	29%	19%	24%
<b>Option 10.2 (5 trips)</b>	118	61	179	18%	10%	14%
<b>Option 10.2 (10 trips)</b>	35	6	41	6%	1%	4%
<b>Option 10.2 (15 trips)</b>	13	8	21	2%	2%	2%
<b>Option 10.2 (20 trips)</b>	8	2	10	2%	0%	1%
<b>Vessels qualified with less than 15 trips</b>						
<b>Option 10.1 (1 trip)</b>	272	178	450	36%	27%	32%
<b>*Option 10.1 (5 trips)</b>	<b>200</b>	<b>127</b>	<b>327</b>	<b>29%</b>	<b>21%</b>	<b>25%</b>
<b>Option 10.1 (10 trips)</b>	130	77	207	21%	14%	18%
<b>Option 10.1 (15 trips)</b>	74	31	105	13%	6%	10%
<b>Option 10.1 (20 trips)</b>	55	25	80	11%	5%	8%
<b>Option 10.2 (1 trip)</b>	272	178	450	36%	27%	32%
<b>Option 10.2 (5 trips)</b>	172	112	284	26%	19%	23%
<b>Option 10.2 (10 trips)</b>	89	57	146	15%	11%	13%
<b>Option 10.2 (15 trips)</b>	33	13	46	6%	3%	5%
<b>Option 10.2 (20 trips)</b>	22	4	26	5%	1%	3%
<b>Vessels qualified with less than 20 trips</b>						
<b>Option 10.1 (1 trip)</b>	327	217	544	43%	33%	38%
<b>Option 10.1 (5 trips)</b>	255	166	421	37%	27%	32%
<b>Option 10.1 (10 trips)</b>	185	116	301	30%	21%	26%
<b>Option 10.1 (15 trips)</b>	129	70	199	23%	14%	18%
<b>Option 10.1 (20 trips)</b>	75	36	111	15%	7%	11%
<b>Option 10.2 (1 trip)</b>	327	217	544	43%	33%	38%
<b>Option 10.2 (5 trips)</b>	227	151	378	34%	25%	30%
<b>Option 10.2 (10 trips)</b>	144	96	240	25%	18%	21%
<b>Option 10.2 (15 trips)</b>	88	52	140	17%	10%	14%
<b>Option 10.2 (20 trips)</b>	37	11	48	8%	2%	5%

\*Council Preferred Alternative. Source: ADF&G Saltwater Logbook data, 2004-2005.

Note: The information in this table does not account for the requirement to make landings in the year prior to implementation. That requirement will likely reduce the total number of permits and the number of transferable and non-transferable permits.

Implementing a program that allocates both transferable and non-transferable permits will impact permit holders differently, depending on the type(s) of permit(s) they are issued. Table 12 shows the number of businesses that would be issued transferable, non-transferable, or both types of permit by alternative. Persons that are only issued transferable permits would be allowed to continue operating their business and if they decide to leave the halibut charter business they would be compensated for leaving. Persons that are issued both types of permit would be able to sell at least one of their permits. Businesses issued both types of permits could have a variety of structures. Those structures could range from being issued one transferable permit for their main vessel and a non-transferable permit based on the history of a vessel they used only during the peak season, when their main vessel was under repair, or some other scenario.

In these cases, the permit holder could sell the transferable permit and retain the non-transferable permit. They would need to decide if the revenue forgone by not using the backup vessel outweighs the income generated by selling the permit. Finally, many of the persons that would be issued only non-transferable permits would not have been issued a permit if a higher trip threshold was required to qualify. These persons may be recent entrants to the halibut charter businesses, participants that charter part-time, or diversified operations that provide other fishing, hunting, or sightseeing charters. These persons would be given the opportunity to remain in the fishery, without being required to buy a permit, but they would not be compensated when they leave the fishery.

**Table 12 Number of businesses issued transferable and/or non-transferable permits**

Min. # of trips	Permit type(s) issued	Option 10.1					Option 10.2				
		1 Trip	5 Trips*	10 Trips	15 Trips	20 Trips	1 Trip	5 Trips	10 Trips	15 Trips	20 Trips
10	Both	68	65	62	45	39	68	39	18	13	8
	Transferable only	668	671	674	627	573	668	697	718	659	603
	Non-trans. only	224	112	14	5	1	224	111	14	4	1
10 Total		960	848	750	677	613	960	847	750	676	612
15*	Both	83	<b>80</b>	79	62	54	83	57	41	23	15
	Transferable only	587	<b>590</b>	591	608	556	587	613	629	647	594
	Non-trans. only	290	<b>178</b>	80	7	3	290	177	80	6	3
15 Total		960	<b>848</b>	750	677	613	960	847	750	676	612
20	Both	84	81	81	72	64	84	62	51	38	21
	Transferable only	516	519	519	528	536	516	538	549	562	578
	Non-trans. only	360	248	150	77	13	360	247	150	76	13
20 Total		960	848	750	677	613	960	847	750	676	612

\* Council preferred alternative.

Source: ADF&G Saltwater Logbook data for 2004 and 2005.

Note: The permit estimates in this table do not account for the participation requirements in the year prior to implementation.

## 2.5.6 Issue 6

*Leasing of permits (annual) would not be allowed.*<sup>82</sup>

**Issue 6 was selected as part of the Council's preferred alternative.** Leasing of permits (and IFQs) is generally discouraged in fisheries under Council authority. Prohibitions on leasing stem from a desire to keep persons from holding permits for the sole purpose of generating income from the active participants. The Groundfish LLP program discourages leases by only allowing the permit to be transferred once per year. The NMFS transfer application also asks if there is an agreement to return the license to the seller or to transfer it to any other person, or if there is any condition requiring the resale or conveyance of the license.<sup>83</sup> The IFQ program for halibut and sablefish has an owner-on-board requirement for most vessel classes, to encourage only persons intending to actively fish to buy into the fleet. Persons subject to owner-on-board must carry government issued photo identification while onboard the vessel.

Tracking whether halibut charter moratorium permits are being leased may be difficult without a provision such as owner-on-board. However, that type of requirement is not practical, because of the

<sup>82</sup>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.

<sup>83</sup>[http://www.fakr.noaa.gov/ram/LLP\\_trans\\_form.pdf](http://www.fakr.noaa.gov/ram/LLP_trans_form.pdf)

structure of the halibut charter fishery. In some cases, a charter business may hire a captain(s) to take clients fishing. Contracts with captains are business arrangements that can be extended within a year, or over a number of years, and may be terminated at any time with proper notice. The hired captain may or may not own the vessel used to take clients fishing. If the captain owns the vessel and the permit holder hires him to take their clients fishing, distinguishing this operation from a lease arrangement may not be possible.<sup>84</sup> These business arrangements may make it difficult to determine with certainty whether permits are being leased to a captain for a year, or if the captain is working as an employee of the owner. Given the structure of business arrangements within the halibut charter industry, enforcing a prohibition on permit leases may be problematic.

Given the above complexity with enforcing a prohibition on leasing, the Council added a footnote to this provision, clarifying the implementation approach intended under the moratorium. In brief, 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 also be recorded on the logbook for each trip. While these provisions are not expected to completely prevent leasing, they are intended to discourage some private leasing arrangements. A discussion of this approach is provided in Section 2.6.4.3 of the implementation section.

## 2.5.7 Issue 7

### *Permit Endorsement for Number of Halibut Clients Onboard*

*Highest number on any trip in 2004 or 2005, but not less than 4. Permits issued under the military hardship provision would receive a halibut client endorsement of 6 (Council preferred alternative).*

*Suboption 1:*        *Area 2C: cap maximum endorsements at 6, 8, 10, or 15*  
                           *Area 3A: cap maximum endorsements at 10, 15, 20, or 25*

*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 transfers of the permit occurs; the permit is then subject to the cap on client endorsements in Suboption 1.*

**Issue 7 was selected as part of the Council's preferred alternative, but neither suboption was selected.** The intent of this action is to limit the number of clients fishing halibut a vessel may carry on a trip. Each permit would be endorsed with the maximum number of such clients the vessel would be allowed to carry while charter fishing for halibut. The maximum number of clients fishing halibut, carried by the vessel generating the permit during the qualifying period, determines the maximum number of clients fishing halibut that may be carried in the future. If the vessel carried 4 or fewer clients fishing halibut during 2004 or 2005, the resulting permit would be endorsed for up to 4 such clients per trip.

Table 13 provides a summary of the number of clients<sup>85</sup> that each permit allows the holder to carry. The number of permits is reported for each Council option being considered. The number of permits issued

<sup>84</sup> Note that the proposed moratorium program does not require that a permit holder own a vessel or be on board the vessel in order to use the permit.

<sup>85</sup> The term client, in this section, refers to clients fishing bottomfish in 2004 or 2005 and halibut in the year prior to implementation on the vessel. The intent is not to limit the total number of people that can be onboard the vessel, only to limit the number of halibut fishermen. When more people are on the vessel than may fish, this endorsement will be enforced by limiting the number of halibut that may be harvested by the vessel per trip. The halibut limit will be calculated by multiplying



under each of the five trip level requirements is listed under the primary options. A summary row was added to the table to show the number of permits that would be issued to businesses whose vessels never carried more than four clients during the qualifying period.

A small number of businesses did not report the number of clients carried on the vessel in their logbook entry. In those cases the number of clients reported in the table is 0, and the maximum number of clients endorsed on the permit was set at four in the table. During the application process for the permits, persons will be given the opportunity to correct errors in the data. At that time, they can provide information that would be considered to update their client endorsement. NMFS will make the final decision on the number of clients endorsed on those permits.

Vessels assigned a permit endorsed for fewer than six clients (depending on the alternative selected between about 300-500 permits in Area 2C, and 80 - 210 permits in Area 3A) would be forced to operate at less than the capacity of “six-pack” vessels in the fleet. These vessel operators would realize similar costs for fuel and other vessel expenses, as vessels carrying more clients, but fewer clients on the vessel would reduce their revenue.

Table 14 aggregates the permits that were over the maximum number of clients proposed in Suboption 1. The table shows that in Area 2C, between 0 and 22 permits would be impacted by the cap. More permits are affected when the cap is set at lower levels and a less restrictive allocation formula is used to determine qualifiers for the initial allocation. At the 6-client cap, between 13 and 22 permits would be affected by the cap. The 8-client cap would affect 2 to 6 permits. From 0 to 2 permits would be limited at the 10 client cap and no permits are constrained at the 16 client cap.

In Area 3A, the proposed client caps are set at 10, 15, 20, or 25 people per trip. The 10-client cap would limit 54 to 57 permits to fewer passengers than the maximum number they carried during 2004 and 2005. A cap of 15 clients would limit 33 to 35 permits, a 20-client cap would limit 13 permits under every option, and the 25-client cap would limit 4 permits under every option.

In Area 2C, only 6 rods are allowed to be fished at any given time on halibut charter vessels, but more than 6 clients may be on the vessels if the vessel is allowed to carry them under USCG and State regulations. ADF&G staff members have knowledge of vessels that carry more than 6 clients when only six lines are fished at one time. Area 2C vessels could be allowed to continue carrying more than six clients, but only allowed 6 to fish at one time, or they could be limited to only carrying 6 clients at one time. Limiting the number of clients that a vessel is allowed to carry could reduce revenues for owners that base their business plan on carrying more than 6 clients, but allowing only 6 to fish at one time. Under the proposed action the 6-client limit would allow only 12 halibut to be harvested per trip, under a two-fish bag limit, regardless of the number of clients onboard the vessel. In other words, a charter operator could still have, for example, 8 clients on the vessel with only six lines being fished. However, the 6 client limit would constrain the total number of halibut being harvested on the trip to 12.

The costs of imposing limits on the number of clients that may be carried are borne by the holders of permits that could carry more clients than the cap allows them to carry. In a competitive market they will be unable to increase trip prices above that charged by other charter operators in the area to cover costs, unless they are able to market unique attributes of their trips. Charter operators that can carry more clients per vessels will benefit from this measure, unless the cap precludes their carrying a “full complement” of clients per trip. They will be able to generate more gross revenue per trip, if they charge

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the possession limit by the client cap. Overnight trips that allow two bag limits to be harvested will simply double the possession limit that is multiplied by the client cap.

similar prices for a trip, but presumably their costs are higher if their vessel can physically accommodate substantially more clients.

It is possible that commercial IFQ halibut fishermen could also benefit, if the constraint slows the growth in charter catches in the future. However, given the excess capacity that is likely to exist in the fleet after implementation of the moratorium, this outcome is unlikely, all else equal.

**Table 13** Number of permits endorsed to carry the specified number of clients by area and option

IPHC Area	Maximum Clients	Option 10.1					Option 10.2				
		1 Trip	5 Trips	10 Trips	15 Trips	20 Trips	1 Trip	5 Trips	10 Trips	15 Trips	20 Trips
2C	0	9	<b>5</b>	5	3	3	9	5	5	3	3
	1	6	<b>3</b>	1	1	0	6	2	0	0	0
	2	30	<b>21</b>	18	16	11	30	17	12	9	5
	3	40	<b>30</b>	21	18	15	40	27	19	14	12
	4	234	<b>207</b>	180	159	144	234	194	157	138	123
	Sum (0-4)	319	<b>266</b>	225	197	173	319	245	193	164	143
	5	187	<b>176</b>	163	150	140	187	172	158	147	137
	6	233	<b>228</b>	214	201	183	233	225	209	196	178
	7	7	<b>5</b>	5	4	4	7	5	5	4	4
	8	9	<b>8</b>	8	7	7	9	8	8	7	7
	9	3	<b>3</b>	2	1	1	3	3	3	1	1
	10	1	<b>1</b>	1	1	1	1	1	1	1	1
	12	1	<b>1</b>	0	0	0	1	1	0	0	0
	13	1	<b>1</b>	1	1	0	1	1	1	1	0
2C Total		761	<b>689</b>	619	562	509	761	661	578	521	471
3A	0	20	<b>17</b>	12	12	10	20	17	12	12	10
	2	13	<b>9</b>	6	3	2	13	7	4	3	1
	3	29	<b>14</b>	10	5	4	29	13	8	5	4
	4	82	<b>67</b>	56	43	31	82	61	51	39	26
	Sum (0-4)	<b>144</b>	<b>107</b>	<b>84</b>	<b>63</b>	<b>47</b>	<b>144</b>	<b>98</b>	<b>75</b>	<b>59</b>	<b>41</b>
	5	68	<b>64</b>	56	48	43	68	60	51	42	37
	6	346	<b>337</b>	321	306	293	346	335	316	299	281
	7	19	<b>19</b>	18	17	17	19	19	18	17	17
	8	18	<b>18</b>	17	17	17	18	18	17	17	17
	9	4	<b>4</b>	4	4	4	4	4	4	4	4
	10	6	<b>5</b>	4	4	4	6	5	4	4	4
	11	5	<b>5</b>	5	5	5	5	5	5	5	5
	12	5	<b>5</b>	5	5	5	5	5	5	5	4
	13	3	<b>3</b>	3	3	3	3	3	3	3	3
	14	6	<b>6</b>	6	6	6	6	6	6	6	6
	15	3	<b>3</b>	3	3	3	3	3	3	3	3
	16	8	<b>8</b>	8	8	8	8	8	8	8	8
	17	6	<b>6</b>	6	6	6	6	6	5	5	5
	18	3	<b>3</b>	3	2	2	3	3	3	2	2
	19	2	<b>2</b>	2	2	2	2	2	2	2	2
	20	3	<b>3</b>	3	3	3	3	3	3	3	3
	21	3	<b>3</b>	3	3	3	3	3	3	3	3
	22	1	<b>1</b>	1	1	1	1	1	1	1	1
	23	2	<b>2</b>	2	2	2	2	2	2	2	2
	25	3	<b>3</b>	3	3	3	3	3	3	3	3
	28	1	<b>1</b>	1	1	1	1	1	1	1	1
	30	1	<b>1</b>	1	1	1	1	1	1	1	1
	33	1	<b>1</b>	1	1	1	1	1	1	1	1
	38	1	<b>1</b>	1	1	1	1	1	1	1	1
3A Total		662	<b>611</b>	561	515	481	662	596	541	497	455

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

Note: The rows showing 0 clients means that client data was not reported in the logbook. A total of 6 vessels in 2004 and 3 vessels in 2005 did not report information on the number of clients that were carried in IPHC Area 2C; in 3A a total of 19 vessels did not report the number of clients in 2004 and 6 did not report the information in 2005. Those vessels, when qualified, were assigned a 4-client permit. During the application, they would be given the opportunity to provide information to obtain the proper endorsement.

**Table 14** Number of permits over the proposed client caps in Area 2C and 3A

IPHC Area	Maximum Clients	Option 10.1					Option 10.2				
		1 Trip	5 Trips	10 Trips	15 Trips	20 Trips	1 Trip	5 Trips	10 Trips	15 Trips	20 Trips
2C	7+	22	<b>19</b>	17	14	13	22	19	18	14	13
	9+	6	<b>6</b>	4	3	2	6	6	5	3	2
	11+	2	<b>2</b>	1	1	0	2	2	1	1	0
	16+	0	<b>0</b>	0	0	0	0	0	0	0	0
3A	11+	57	<b>57</b>	57	56	56	57	57	56	55	54
	16+	35	<b>35</b>	35	34	34	35	35	34	33	33
	21+	13	<b>13</b>	13	13	13	13	13	13	13	13
	26+	4	<b>4</b>	4	4	4	4	4	4	4	4

Source: ADF&amp;G bottomfish logbook data from 2004 and 2005.

Using the maximum number of fishing clients on a trip during the qualifying period to generate an endorsement will increase the capacity of the fleet relative to the average number of clients carried during the qualifying period. Table 15 provides estimates of the additional capacity in the fleet, in terms of maximum number of clients, that could be carried in a day and the number of trips (permits) that would be required to carry those clients on a six-pack vessel. The information shows that the increase in maximum number of clients fishing halibut that could be carried range from 420 to 624 in Area 2C, and 760 to 919 in 3A. While these estimates represent the maximum increase in client capacity, the actual increase in client numbers carried would be expected to be smaller, because of the difficulties associated with booking a completely full trip every time the vessel leaves port.

**Table 15** Difference in aggregate number of clients that would be endorsed on permits using maximum clients carried versus average number of clients

Alternative	2C	3A	Total
Number of clients			
Option 10.1 1 trip	624	919	1,543
<b>Option 10.1 5 trips</b>	<b>599</b>	<b>900</b>	<b>1,499</b>
Option 10.1 10 trips	527	841	1,368
Option 10.1 15 trips	479	790	1,269
Option 10.1 20 trips	412	756	1,168
Option 10.2 1 trip	624	919	1,543
Option 10.2 5 trips	606	905	1,511
Option 10.2 10 trips	543	850	1,393
Option 10.2 15 trips	486	795	1,281
Option 10.2 20 trips	420	760	1,180
Equates to increasing the number of trips per day (6 clients per trip)			
Option 10.1 1 trip	104	153	257
Option 10.1 5 trips	100	150	250
Option 10.1 10 trips	88	140	228
Option 10.1 15 trips	80	132	211
Option 10.1 20 trips	69	126	195
Option 10.2 1 trip	104	153	257
Option 10.2 5 trips	101	151	252
Option 10.2 10 trips	91	142	232
Option 10.2 15 trips	81	133	213
Option 10.2 20 trips	70	127	197

Source: ADF&amp;G Saltwater logbooks, 2004 and 2005.

### 2.5.8 Issue 8

*Permits may be stacked up to the use caps<sup>86</sup>*

**Issue 8 was selected as part of the Council's preferred alternative.** More than one permit may be assigned to a vessel. The advantage of assigning more than one permit to a vessel is that it would allow the vessel to carry the number of clients fishing halibut equal to the aggregate number of such clients that the combined permits are endorsed to carry. For example, a vessel that had three permits that are each permitted to carry 6 clients fishing halibut would be allowed to carry up to 18 such clients, if the U.S. Coast Guard and the State of Alaska licensed the vessel and captain for that activity.

Licenses may be stacked or unstacked by having one or more licenses on a vessel during a trip. The ability to stack licenses provides operators the flexibility to increase the number of clients carried on one vessel or spread the clients out on different vessels that would individually carry fewer clients.

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

### 2.5.9 Issue 9

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

**Issue 9 was selected as part of the Council's preferred alternative.** Because the Council selected historic participation as the method used to allocate permits, it needed a data set that contains the participation history of the vessels and businesses in the halibut charter industry. After considering all data sources available, the Council concluded the best source of participation data for the halibut charter industry is ADF&G Saltwater Logbooks. All Alaskan fishing guide businesses operating in saltwater are required to obtain, complete, and submit logbooks (although halibut specific data were not collected during all of the period of interest). ADF&G Saltwater Logbooks require that entries covering bottomfish trips include the primary 6-digit statistical area fished, maximum number of rods fished, boat hours fished, number of fish kept, number of fish released, and the number of clients on the trip. An example of the logbook and the instructions for completing the logbook may be viewed at the ADF&G web site.<sup>87</sup>

ADF&G Saltwater Logbooks, prior to 2006, were not designed to allow halibut data to be separated from other bottomfish data. The information presented in this analysis (data from 2004 and 2005) will overestimate the participation in the halibut charter fishery to the extent that non-halibut bottomfish trips are reported in the logbooks. However, because the predominant bottomfish species targeted in saltwater is halibut, it is assumed that bottomfish data provide a reasonable proxy for halibut activity. The logbook data since 2006, separate halibut trips from bottomfish trips. So, data for the year prior to implementation (2007 or 2008) reflect only halibut participation history, as reported in the logbooks.

<sup>86</sup> A business can use, for example, two licenses (each endorsed for 6 clients) on one vessel, assuming that vessel has the necessary USCG certifications.

<sup>87</sup> [docushare.sf.adfg.state.ak.us/docushare/dsweb/Get/Version-25308/Sample\\_SWLogbook05.pdf](http://docushare.sf.adfg.state.ak.us/docushare/dsweb/Get/Version-25308/Sample_SWLogbook05.pdf).

Public testimony has indicated that some charter operators would qualify based on the area fished, when they were not fishing for halibut. This type of error would increase the number of permits issued. However, because a person must participate in 2004 or 2005, and in the year prior to implementation of the program, using halibut data for the second period may reduce the number of people that could qualify based on non-halibut history during the first period. There is a clear economic incentive for persons to make sure they have sufficient trips in the year prior to implementation to qualify for a permit. However, there may be circumstances where a person makes the decision not to participate in the charter industry during the year prior to implementation; they would not earn a permit.

## 2.5.10 Issue 10

### *Qualification Period*

The Council considered two primary options (with several trip options under each) for determining which persons will be issued permits in this amendment package. Both options are based on the catch history of vessels operating in the saltwater bottomfish fishery in 2004 or 2005. They both also have an additional requirement that the vessel meet a minimum trip requirement in the year prior to implementation of the program. The minimum trip requirements being considered are 1, 5, 10, 15, or 20 trips. The two options differ in how the number of trips is calculated for businesses with multiple vessels that individually do not meet the minimum trip requirement. Option 10.1 allows all the trips by vessels the business submitted logbooks for to be included in the number of trips calculation, while Option 10.2 separates the trips of vessels that qualify based on their own activity and those that do not.

**Option 10.1:** *Each licensed guide business owner(s) who reported a minimum of 1, 5 (Council's preferred alternative), 10, 15, or 20 bottomfish logbook trips during 2004 or 2005 and year prior to implementation would be issued a permit(s) based on the number of trips summed for all vessels in his best year of the qualification period, unless an unavoidable circumstances occurred. A business would be limited to the number of permits equal to the highest number of vessels used in any one year during the qualifying period<sup>88</sup>.*

**Option 10.2:** *Each licensed guide business owner(s) who reported a minimum of 1, 5, 10, 15, or 20 bottomfish logbook trips during 2004 or 2005 and year prior to implementation would be issued a permit(s) for each vessel based on the number of trips in his best year during the qualification period, unless an unavoidable circumstances occurred. Trips by vessels operated by a licensed guide business owner that do not individually meet qualification criteria may be combined to meet the criteria. A business would be limited to the number of permits equal to the highest number of vessels used in any one year during the qualifying period<sup>89</sup>.*

Table 16 provides an estimate of the number of permits that would be issued to qualified businesses. The table contains information on each of the minimum number of trip options. Information was also presented for the number of unique logbooks that were submitted in 2005 and the number of businesses that submitted those logbooks. The total number of permits that a business may be issued is constrained to the maximum number of logbooks that were submitted in a year (2004 or 2005). That requirement eliminates permits that would have been issued when a business changed vessels between 2004 and 2005. For example, if a business submitted 50 logbook entries for vessel "A" in 2004, and vessel "B" in 2005,

<sup>88</sup> Example: A business owner operated 3 vessels with 6, 10, and 8 trips, respectively (summed trips = 24) in his best year. He would be issued 1 permit under a 20 trip minimum ( $24/20 = 1$ ); 2 permits under a 10 trip minimum ( $24/10 = 2$ ); or 3 permits under a 5 trip minimum ( $24/5 = 4$ , but the maximum number of vessels in that year is 3).

<sup>89</sup> Example: Under a 5-trip threshold, a vessel with 10 trips generates 1 permit; second and third vessels with 3 trips each earn 1 permit by combining their trips.

without that provision the business would be issued two permits. Issuing the business two permits would contradict the Council's "primary" goal of limiting growth in the number of vessels in the fishery. Therefore, businesses are restricted to a maximum number of permits equal to or fewer than the maximum number of vessels that submitted logbooks for 2004 or 2005.

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

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

**Table 16**      **Estimated number of permits that would be issued and the number of businesses receiving the permits**

Minimum Number of Trips Required to Qualify	Option 10.1		Option 10.2	
	Permits	Businesses	Permits	Businesses
	AREA 2C			
2005 Participation	654	381		
1 or More Trips	761	446	761	446
<b>5 or More Trips*</b>	<b>689</b>	<b>380</b>	661	380
10 or More Trips	619	327	578	327
15 or More Trips	562	291	521	291
20 or More Trips	509	255	471	255
	AREA 3A			
2005 Participation	567	450		
1 or More Trips	662	520	662	520
<b>5 or More Trips*</b>	<b>611</b>	<b>471</b>	596	471
10 or More Trips	561	426	541	426
15 or More Trips	515	388	497	388
20 or More Trips	481	360	455	360

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

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

\* The Council's preferred alternative

Table 17 shows the number of additional permits that would be issued if Option 10.1 was selected instead of Option 10.2. The number of businesses does not change under the two options at comparable trip level requirements. The reason that more permits are issued under Option 10.1 is that all the trips for the business are summed to determine which vessels qualify. Under Option 10.2, only the vessels that do not qualify with their own history may combine their trips to meet the minimum trip requirements. For example, if a business reported logbook entries for 2 vessels in 2005, one vessel had 19 trips and the other vessel had 1 trip the business would be credited with having provided 20 trips. Under Option 10.1 the business would be issued 2 permits at the 1-trip, 5-trip, and 10-trip level. They would also be issued 1

permit at the 20-trip level. Under Option 10.2 the business would be issued 2 permits at the 1-trip level, 1 permit at the 5-trip and 10-trip level, and 1 permit at the 20-trip<sup>90</sup> level.

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

**Table 17**      **Number of additional permits issued using Option 10.1**

Minimum Trip Requirement	Permits	Businesses
	<b>Area 2C</b>	
1 or More Trips	0	0
<b>5 or More Trips*</b>	<b>28</b>	<b>0</b>
10 or More Trips	41	0
15 or More Trips	41	0
20 or More Trips	38	0
	<b>Area 3A</b>	
1 or More Trips	0	0
<b>5 or More Trips*</b>	<b>15</b>	<b>0</b>
10 or More Trips	20	0
15 or More Trips	18	0
20 or More Trips	26	0

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

\*Council preferred alternative.

Table 18 shows the difference in the number of permits allocated to the charter sector, when compared to the number of vessels and businesses operating in 2005. Recall that more vessels operated in 2005 than any other year between 1993 and 2005. If permits were issued for a vessel that took one or more trips, about 100 more permits would be issued for each area than vessels that carried clients during 2005 (due to qualifying based on one year of activity in 2004 or 2005). A one-trip requirement for a permit would allow capacity (in terms of vessels and client trips) to expand over maximum historic levels.

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

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

<sup>90</sup> The trips from both vessels could be combined at the 20-trip level because neither vessel qualified at that level.



**Table 18**      **Difference in permit estimates compared to 2005 participation**

	<b>Option 10.1</b>		<b>Option 10.2</b>	
	Permits	Businesses	Permits	Businesses
	<b>Area 2C</b>			
1 or More Trips	107	65	107	65
<b>5 or More Trips*</b>	<b>35</b>	<b>-1</b>	7	-1
10 or More Trips	-35	-54	-76	-54
15 or More Trips	-92	-90	-133	-90
20 or More Trips	-145	-126	-183	-126
	<b>Area 3A</b>			
1 or More Trips	95	70	95	70
<b>5 or More Trips*</b>	<b>44</b>	<b>21</b>	29	21
10 or More Trips	-6	-24	-26	-24
15 or More Trips	-52	-62	-70	-62
20 or More Trips	-86	-90	-112	-90

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

\*Council preferred alternative.

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

To further illustrate the point that sufficient capacity will likely remain in the charter fleet to carry more clients than fished in 2005, Table 19 was developed. This table shows the average number of client trips that each permit (vessel) would need to carry to reach historic participation levels. Depending on the option selected, the average number of trips each vessel needs to take to meet 2005 levels ranges from 27 to 57. Since the charter season lasts approximately 100 days, the moratorium would allow a sufficient number of vessels to qualify to meet current client demand. However, there may be specific times of the year when client demand for trips exceed supply at the prevailing trip price. For example, it is not possible to predict if the supply of trips under Option 10.2 and the 20-trip requirement would issue enough permits to cover client demand during the July 4<sup>th</sup> holiday (traditionally, a peak-demand period).

**Table 19 Participation in the 2004 and 2005 fisheries compared to moratorium alternatives**

Year/Option	Total Trips		# of Vessels		Avg. # of client trips taken per vessel		Avg. # of client trips reach 2005 level	
	2C	3A	2C	3A	2C	3A	2C	3A
Historic Participation in 2004 and 2005								
2005	20,215	23,278	654	567	31	41		
2004	20,920	23,306	624	532	34	44		
Qualified Participation Level in Best Year (2004 or 2005)								
1 trip (option 10.1)	24,743	27,749	761	662	33	42	27	35
<b>5 trips (option 10.1)*</b>	<b>24,580</b>	<b>27,628</b>	<b>689</b>	<b>611</b>	<b>36</b>	<b>45</b>	<b>30</b>	<b>38</b>
10 trips (option 10.1)	24,136	27,274	619	561	39	49	34	42
15 trips (option 10.1)	23,556	26,780	562	521	42	51	37	45
20 trips (option 10.1)	22,912	26,268	509	481	45	55	41	48
1 trip (option 10.2)	24,743	27,749	761	662	33	42	27	35
5 trips (option 10.2)	24,521	27,586	661	596	37	46	32	39
10 trips (option 10.2)	23,981	27,197	579	541	41	50	36	43
15 trips (option 10.2)	23,342	26,654	515	497	45	54	41	47
20 trips (option 10.2)	22,638	26,021	471	455	48	57	44	51

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

\*Council preferred alternative.

Information on the number of permits that would be issued under the various alternatives, and the maximum number of clients that vessels would be allowed to carry, allows the maximum number of clients that can be carried in a day to be estimated. To determine the maximum number of clients that could be carried in a year, under a moratorium, assumptions would need to be made regarding the maximum number of trips that could be taken in a year. It is not possible to determine exactly what that number should be, so a range of days fished are used to provide a range of outcomes. Assuming that the halibut charter season lasts for 100 days, the range of options considered was 55 to 100 days in 15-day increments. These estimates assume that each vessel only takes one trip per day. However, this will slightly under-estimate the total, because logbook data show that in IPHC Area 2C, 98.11 percent of the trips were taken on days the vessel only<sup>91</sup> took one trip. A total of 1.87 percent of the trips were taken on days when two trips were taken. Finally, 0.03 percent of the trips were taken on days when three or more trips were taken. In IPHC Area 3A, 95.59 percent of the trips were taken on days the vessel only took one trip. A total of 4.32 percent of the trips were taken on days when two trips were taken. Finally, 0.08 percent of the trips were taken on days when three or more trips were taken.

**Table 20 Estimated number of clients that could take halibut charter trips**

Trips per Year	Client endorsement based on maximum number of clients carried on a trip 2004 or 2005									
	Option 10.1					Option 10.2				
	1 Trip	<b>5 Trips*</b>	10 Trips	15 Trips	20 Trips	1 Trip	5 Trips	10 Trips	15 Trips	20 Trips
<b>Area 2C</b> (67,803 clients were estimated to take halibut charter trips in 2004 and harvest 1,750,000 lbs)										
55 Trips	208,560	<b>191,015</b>	172,645	157,300	142,615	208,560	184,305	163,075	147,565	133,540
70 Trips	265,440	<b>243,110</b>	219,730	200,200	181,510	265,440	234,570	207,550	187,810	169,960

<sup>91</sup> A variety of variables confound estimates of how many trips could be taken during a specific period of time. Some days, weather precludes any trips from being taken. Seasonality is also a consideration since fewer clients are available to take trips early and late in the season. Other factors such as the size of the port, the size of the vessel, reputation and/or expected success of a specific guide/company could also influence the number of trips taken.

85 Trips	322,320	<b>295,205</b>	266,815	243,100	220,405	322,320	284,835	252,025	228,055	206,380
100 Trips	379,200	<b>347,300</b>	313,900	286,000	259,300	379,200	335,100	296,500	268,300	242,800
<b>Area 3A</b> (116,670 clients were estimated to take halibut charter trips in 2004 and harvest 3,668,000 lbs)										
55 Trips	240,075	<b>227,315</b>	213,400	200,255	191,070	240,075	223,575	207,460	194,480	182,545
70 Trips	305,550	<b>289,310</b>	271,600	254,870	243,180	305,550	284,550	264,040	247,520	232,330
85 Trips	371,025	<b>351,305</b>	329,800	309,485	295,290	371,025	345,525	320,620	300,560	282,115
100 Trips	436,500	<b>413,300</b>	388,000	364,100	347,400	436,500	406,500	377,200	353,600	331,900
<b>Area 2C</b> (estimated percentage increase in number of clients that could be carried over 2004 levels)										
55 Trips	308%	<b>282%</b>	255%	232%	210%	308%	272%	241%	218%	197%
70 Trips	391%	<b>359%</b>	324%	295%	268%	391%	346%	306%	277%	251%
85 Trips	475%	<b>435%</b>	394%	359%	325%	475%	420%	372%	336%	304%
100 Trips	559%	<b>512%</b>	463%	422%	382%	559%	494%	437%	396%	358%
<b>Area 3A</b> (estimated percentage increase in number of clients that could be carried over 2004 levels)										
55 Trips	206%	<b>195%</b>	183%	172%	164%	206%	192%	178%	167%	156%
70 Trips	262%	<b>248%</b>	233%	218%	208%	262%	244%	226%	212%	199%
85 Trips	318%	<b>301%</b>	283%	265%	253%	318%	296%	275%	258%	242%
100 Trips	374%	<b>354%</b>	333%	312%	298%	374%	348%	323%	303%	284%

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

Assumptions: Qualified vessels only take one trip per day and carry the maximum number of clients they are allowed to carry on each trip. Vessels, on average, can take between 55 and 100 trips per year.

\*Council preferred alternative.

Based on these assumptions, Table 20 shows the potential number of clients that could be carried in a year and the percentage increase in number of clients that could take a halibut charter trip, relative to 2004 reported client trips. The information shows that the most restrictive allocation in Area 2C would allow approximately twice as many clients to take a charter trip, when compared to 2004 activity. The least restrictive alternative would allow approximately 5.5 times as many clients to be carried. In Area 3A, the most restrictive allocation would allow about 1.5 times as many clients to take trips, compared to 2004 activity. The least restrictive allocation would allow about alternative would allow the number of clients to increase by over 3.5 times the 2004 levels.

Imposing the requirement that Area 2C vessels would be allowed to carry a maximum of 8 clients and 3A vessels would be allowed to carry a maximum of 20 clients, slightly changes the outcome from Table 20. Because imposing the cap on the number of clients, impacts only a few vessels, the overall impacts are relatively modest in terms of the total number of clients that could take charter trips.

Table 21 shows the decrease in the number of clients that could be carried and the percent of 2004 clients the change represents. The economic impacts are likely to be greater on the specific companies that are constrained by the cap when compared to the overall impacts.

It is important to note that the number of trips and percentages stay the same under each option in Area 3A. That is because the vessels that would be capped in that area qualify under all of the options considered.

**Table 21 Reduction in number of clients and percentage when client caps are imposed**

Trips per Year	Client endorsement based on maximum number of clients carried on a trip 2004 or 2005, but capped at 8 clients in Area 2C and 20 clients in Area 3A									
	Option 10.1					Option 10.2				
	1 Trip	5 Trips	10 Trips	15 Trips	20 Trips	1 Trip	5 Trips	10 Trips	15 Trips	20 Trips
<b>Area 2C</b> (67,803 clients were estimated to take halibut charter trips in 2004 and harvest 1,750,000 pounds)										
55 Trips	770	770	495	440	165	770	770	550	440	165
70 Trips	980	980	630	560	210	980	980	700	560	210
85 Trips	1,190	1,190	765	680	255	1,190	1,190	850	680	255
100 Trips	1,400	1,400	900	800	300	1,400	1,400	1,000	800	300
<b>Area 3A</b> (116,670 clients were estimated to take halibut charter trips in 2004 and 3,668,000 pounds)										
55 Trips	4,125	4,125	4,125	4,125	4,125	4,125	4,125	4,125	4,125	4,125
70 Trips	5,250	5,250	5,250	5,250	5,250	5,250	5,250	5,250	5,250	5,250
85 Trips	6,375	6,375	6,375	6,375	6,375	6,375	6,375	6,375	6,375	6,375
100 Trips	7,500	7,500	7,500	7,500	7,500	7,500	7,500	7,500	7,500	7,500
<b>Area 2C</b> (estimated percentage increase in number of clients that could be carried over 2004 levels)										
55 Trips	1.1%	1.1%	0.7%	0.6%	0.2%	1.1%	1.1%	0.8%	0.6%	0.2%
70 Trips	1.4%	1.4%	0.9%	0.8%	0.3%	1.4%	1.4%	1.0%	0.8%	0.3%
85 Trips	1.8%	1.8%	1.1%	1.0%	0.4%	1.8%	1.8%	1.3%	1.0%	0.4%
100 Trips	2.1%	2.1%	1.3%	1.2%	0.4%	2.1%	2.1%	1.5%	1.2%	0.4%
<b>Area 3A</b> (estimated percentage increase in number of clients that could be carried over 2004 levels)										
55 Trips	3.5%	3.5%	3.5%	3.5%	3.5%	3.5%	3.5%	3.5%	3.5%	3.5%
70 Trips	4.5%	4.5%	4.5%	4.5%	4.5%	4.5%	4.5%	4.5%	4.5%	4.5%
85 Trips	5.5%	5.5%	5.5%	5.5%	5.5%	5.5%	5.5%	5.5%	5.5%	5.5%
100 Trips	6.4%	6.4%	6.4%	6.4%	6.4%	6.4%	6.4%	6.4%	6.4%	6.4%

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

Assumptions: Qualified vessels only take one trip per day and carry the maximum number of clients they are allowed to carry on each trip. Vessels, on average, can take between 55 and 100 trips per year.

### Community impacts

Table 22 shows the number of qualified vessels and businesses, by the community where the trips used for qualification terminated, under Option 10.1 at the 1-trip and 20-trip levels. Information on all of the options being considered by the Council is provided in Appendix 2. That appendix also provides information on the distribution of halibut QS by the owner's community of residence. Some vessels terminated trips in more than one community, so the totals for businesses do not equal the numbers in Table 25 under Issue 12. The information in Table 22 is presented to supplement a qualitative analysis of the impacts the proposed moratorium would have on communities. The table also indicates which communities are eligible under Amendment 66. Those communities will be discussed in greater detail under Issue 12 in Section 2.5.12. A subset of those communities may be eligible to request a limited number of halibut charter permits under the provisions in Issue 12.

Studies that are currently available do not provide information on regional economic impacts for 2C and 3A in total. Criddle et al. (2003) provides the most recent information available. That study focused on the Kenai Peninsula region, and included impacts from all saltwater sport fishing. A summary of that study was provided under the status quo portion of the RIR.

Given the halibut resource in 2C and 3A is fully utilized and the method the IPHC uses to allocate halibut to various sectors, increases in charter harvests decrease the amount of halibut available to the

commercial IFQ fishery. Communities relatively more dependent on the commercial IFQ fishery could be worse off if the charter fishery increased harvests, all else equal. Therefore the various options under consideration will tend to redistribute regional economic impacts, depending on relative levels of charter and commercial activity in the communities.

The change in numbers of qualified vessels that ended at trip in a specified community seems to indicate that selecting a 20-trip requirement would impact Area 2C more than Area 3A. Juneau, Petersburg, Sitka, and Ketchikan would realize substantial reductions in the number of permits landing in their community, when compared to the 1-trip option. Many of these same communities are also active in the commercial IFQ fishery. However, because the overall amount of halibut taken by the charter fleet in Area 2C is not expected to decline, these communities could lose jobs and revenues from both the commercial and charter sectors as a result of implementing a more restrictive moratorium.

**Table 22 Communities where charter trips used for qualification terminated**

Community	Am. 66	Option 10.1 (1 trip)		Option 10.1 (20 trips)		Difference	
		Permits	Businesses	Permits	Businesses	Permits	Businesses
Afognak		1	1	1	1	0	0
Amook Island		2	2	2	2	0	0
Amook Pass		1	1	1	1	0	0
Anchor Point		60	57	51	49	-9	-8
Anchor River		1	1	1	1	0	0
Angoon	Yes	13	9	11	7	-2	-2
Anton Larsen Bay		6	5	4	3	-2	-2
Auke Bay		45	39	16	12	-29	-27
Bar Harbor		4	4	1	1	-3	-3
Bartlett Cove		6	6	4	4	-2	-2
Bay Of Pillars		3	2	3	2	0	0
Boardwalk		3	2	2	2	-1	0
Camp Island		1	1	1	1	0	0
Cannery Cove		6	3	5	2	-1	-1
Cape Chacon		3	3	0	0	-3	-3
Cape Ninilchik		2	1	0	0	-2	-1
Cedars Lodge		10	9	6	5	-4	-4
Chenega	Yes	1	1	0	0	-1	-1
Clover Bay		2	1	2	1	0	0
Clover Pass		14	13	10	9	-4	-4
Coffman Cove	Yes	7	6	7	6	0	0
Cordova		9	8	5	4	-4	-4
Craig	Yes	74	36	62	28	-12	-8
Cranberry Creek		1	1	1	1	0	0
Crescent Harbor		4	4	1	1	-3	-3
Dall Island		1	1	1	1	0	0
Deep Creek		114	97	88	72	-26	-25
Dog Bay Harbor		1	1	0	0	-1	-1
Eagle Creek Lodge		1	1	1	1	0	0
Eagle Harbor		1	1	0	0	-1	-1
El Capitan Lodge		7	2	7	2	0	0
Elfin Cove	Yes	31	18	28	15	-3	-3
Ellamar		1	1	1	1	0	0
Excursion Inlet		2	2	0	0	-2	-2
False Island		5	3	5	3	0	0

Community	Am. 66	Option 10.1 (1 trip)		Option 10.1 (20 trips)		Difference	
		Permits	Businesses	Permits	Businesses	Permits	Businesses
Fishermans Bend		4	4	2	2	-2	-2
Funter Bay		2	2	1	1	-1	-1
Glacier Bay		1	1	1	1	0	0
Gold Coast Lodge		1	1	1	1	0	0
Gull Cove		2	2	1	1	-1	-1
Gustavus	Yes	25	21	20	17	-5	-4
Haines		4	4	2	2	-2	-2
Halibut Cove	Yes	1	1	0	0	-1	-1
Hallo Bay		1	1	0	0	-1	-1
Hanus Bay		1	1	0	0	-1	-1
Happy Valley		8	2	8	2	0	0
Hawk Inlet		1	1	1	1	0	0
Hidden Basin		1	1	1	1	0	0
Hollis	Yes	1	1	0	0	-1	-1
Homer		203	180	176	154	-27	-26
Hood Bay		2	2	0	0	-2	-2
Hoonah	Yes	14	12	5	5	-9	-7
Iliamna Bay		1	1	0	0	-1	-1
Iron Creek		2	1	2	1	0	0
Juneau		35	27	15	13	-20	-14
Kake	Yes	1	1	0	0	-1	-1
Kalinin Bay		2	2	0	0	-2	-2
Kasitsna Bay		1	1	1	1	0	0
Kelp Bay		3	2	3	2	0	0
Ketchikan		69	56	33	23	-36	-33
Killisnoo		5	3	5	3	0	0
Kiluda Bay		1	1	1	1	0	0
Klawock	Yes	19	13	16	10	-3	-3
Knudson Cove		21	17	7	6	-14	-11
Kodiak		42	42	26	26	-16	-16
Kukak Bay		3	3	2	2	-1	-1
Kupreanof Island		1	1	0	0	-1	-1
Larsen Bay	Yes	15	8	12	7	-3	-1
Little Tutka Bay		1	1	1	1	0	0
Log Cabin Resort		1	1	1	1	0	0
Millers Landing		2	1	2	1	0	0
Morne Island		3	2	3	2	0	0
Narrows Inn		3	3	3	3	0	0
Naukati		3	3	2	2	-1	-1
Ninilchik		16	16	13	13	-3	-3
Old Harbor	Yes	10	6	9	5	-1	-1
Orr Island		1	1	1	1	0	0
Ouzinkie	Yes	1	1	0	0	-1	-1
Pasagshak Bay		1	1	1	1	0	0
Pelican	Yes	9	8	4	4	-5	-4
Petersburg		40	38	22	21	-18	-17
Point Baker	Yes	3	2	2	1	-1	-1
Poohs Landing		1	1	1	1	0	0
Port Alexander	Yes	6	5	5	5	-1	0

Community	Am. 66	Option 10.1 (1 trip)		Option 10.1 (20 trips)		Difference	
		Permits	Businesses	Permits	Businesses	Permits	Businesses
Port Lions	Yes	14	14	7	7	-7	-7
Port Protection	Yes	3	3	2	2	-1	-1
Port St Nicholas		2	1	2	1	0	0
Port Wakefield		4	2	1	1	-3	-1
Port William		1	1	1	1	0	0
Prince Rupert		1	1	0	0	-1	-1
Pybus Point		4	3	4	3	0	0
Raspberry Island		3	2	2	2	-1	0
Rocky Pass Resort		2	2	2	2	0	0
Rocky Point		1	1	1	1	0	0
S Kaigani Bay		5	2	5	2	0	0
Sadie Cove		1	1	1	1	0	0
Saginaw Bay		1	1	1	1	0	0
Salmon Falls		18	3	7	1	-11	-2
Salmon Landing		7	4	7	4	0	0
Saltery Cove		1	1	1	1	0	0
Sarkar Cove		1	1	1	1	0	0
Sea Otter Sound		1	1	1	1	0	0
Seal Bay (Sc)		3	2	3	2	0	0
Sealing Cove		6	5	5	4	-1	-1
Seldovia	Yes	12	12	10	10	-2	-2
Seward		151	122	110	84	-41	-38
Shelter Island		7	4	6	3	-1	-1
Shuyak Island		1	1	1	1	0	0
Silver King Lodge		6	6	6	6	0	0
Silver Salmon		2	2	2	2	0	0
Sitka		197	137	146	96	-51	-41
Skagway		3	3	1	1	-2	-2
Sportsman Cove		12	3	12	3	0	0
Spruce Mill New Flt		4	1	4	1	0	0
Ssbh		5	4	5	4	0	0
Swanson Harbor		1	1	1	1	0	0
Tenakee	Yes	4	3	2	2	-2	-1
Thomas Basin		4	4	2	2	-2	-2
Thorne Bay	Yes	11	7	9	6	-2	-1
Tokeen		1	1	0	0	-1	-1
Tutka Bay		1	1	1	1	0	0
Ugak Bay		6	3	3	3	-3	0
Uganik Bay		4	2	2	2	-2	0
Uyak Bay		3	3	2	2	-1	-1
Valdez		55	51	29	27	-26	-24
Wakefield		1	1	0	0	-1	-1
Warm Springs Bay		10	3	9	2	-1	-1
Waterfall		25	1	25	1	0	0
Whale Pass (Pow - Se)	Yes	6	4	4	3	-2	-1
Whale Pass (Sc)		2	2	0	0	-2	-2
Whalers Cove		3	2	3	2	0	0
Whiskey Gulch		4	2	2	1	-2	-1
Whitestone Harbor		1	1	1	1	0	0

Community	Am. 66	Option 10.1 (1 trip)		Option 10.1 (20 trips)		Difference	
		Permits	Businesses	Permits	Businesses	Permits	Businesses
Whittier	Yes	27	27	18	18	-9	-9
Williamsport		1	1	0	0	-1	-1
Wrangell		14	13	3	3	-11	-10
Yakutat		16	12	13	9	-3	-3
Yes Bay		13	2	10	2	-3	0
Zachar Bay		7	3	4	1	-3	-2

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

### 2.5.11 Issue 11

*Use caps, with grandfather provision.<sup>92</sup> The AFA 10% ownership rule for affiliation<sup>93</sup> will be applied to determine the number of permits associated with an entity under the use cap.*

- Option 1. 1 permit*
- Option 2. 5 permits*
- Option 3. 10 permits*

**The Council selected Issue 11, Option 2 as part of its preferred alternative.** Under this issue, the Council considered limiting the number of permits that may be used by a halibut charter business at one time. If there was no use cap, halibut charter businesses would not be limited to using a specific number of moratorium permits. Three options were considered as the appropriate level for the use cap: 1 permit, 5 permits (Council preferred alternative), or 10 permits. Charter businesses that qualify for and are allocated more permits than the cap would be grandfathered at their initial allocation level. These businesses would not be allowed to use any new permits, until they are below the cap. The AFA 10% ownership rule for affiliation will be used to determine which permits an entity is using.

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

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

Table 23 shows the number of businesses that would be grandfathered under each of the options considered<sup>94</sup>. Option 10.1 usually results in more entities being grandfathered. A use cap set at one

<sup>92</sup>A business whose permit is endorsed in excess of the use cap maintains that exemption for those permits that remain in its control after other permits are sold, but those sold permits lose that grandfather status in perpetuity. Grandfathered permits that are sold in total when a business owner sells his entire business/fleet maintain that grandfathered status. Grandfather status refers to permits, not vessels.

<sup>93</sup>Any entity in which 10% or more of the interest is owned or controlled by another individual or entity shall be considered to be the same entity as the other individual or entity.



permit would require everyone with two or more permits to be grandfathered. Under Option 10.1 and 10.2 at the 1-trip level, 205 entities would be grandfathered above the cap. The Council's preferred alternative of a 5-permit use cap would grandfather 18 businesses above the cap. Setting the use cap at 10 permits would reduce the number of grandfathered entities to 5. As the number of trips required to qualify increases, the number of entities that would be grandfathered tends to decrease. Likewise, as the use cap increases, the number of entities grandfathered decreases.

**Table 23**      **Number of businesses grandfathered at various use caps**

<b>Alternative</b>	<b>2+ Permits</b>	<b>6+ Permits</b>	<b>11+ Permits</b>
Option 10.1 (1 trip)	205	18	5
<b>Option 10.1.(5 trips)</b>	<b>197</b>	<b>18</b>	<b>5</b>
Option 10.1 (10 trips)	181	18	4
Option 10.1 (15 trips)	165	17	3
Option 10.1 (20 trips)	154	16	2
Option 10.2 (1 trip)	205	18	5
Option 10.2 (5 trips)	180	17	5
Option 10.2 (10 trips)	158	15	2
Option 10.2 (15 trips)	144	14	2
Option 10.2 (20 trips)	132	12	2

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

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

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

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

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

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

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

**Use cap impacts:** The implementation of use caps will impose constraints on the number of permits that may be held or used. It is assumed that the entities that would exceed the cap, through transfer or gaining control of a permit's use after the initial allocation, are the most efficient charter operators. A concern that is often expressed by members of the charter sector is that a large tour company could enter the

<sup>94</sup> As noted earlier, these estimates do not include information on participation in the year prior to implementation. When those data are included, that may reduce the number of businesses that are grandfathered.

market for permits. The tour company could direct their clients to their charter businesses and control a relatively large portion of the industry. It may also be possible for a large tour company to reduce costs (e.g., marketing, administration) by integrating the charter trips into existing packages.

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

## 2.5.12 Issue 12

The box below provides the suite of options considered under Issue 12, as well as identifies the Council's final preferred alternative under Issue 12, selected in March 2007.<sup>95</sup> This section includes a description of the intent of Issue 12, baseline information on the communities at issue, and qualitative and quantitative analysis, when possible, of the effects of the proposed action. While the Council's preferred alternative is highlighted in each relevant subsection, a summary of the preferred alternative is provided in Section 2.7.2. A summary of the general expected effects of Issue 12 on each sector is provided in Section 2.7.2.1.

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

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

Area 2C – use cap of 3, 4\*, 5, or 7 requested permits per eligible community.

Area 3A – use cap of 4, 5, 7\*, 10, or 15 requested permits per eligible community.

Overall use caps for all CQEs in a management area (different use caps may be selected for CQEs representing communities in Area 2C and 3A):

Option 1: 1, 3, or 5 times those selected for permits holders under Issue 11.

\*Option 2: 2 times those selected for the CQE requested permit use cap for each area.

\*Provisions for CQE requested permits:

- The permit is designated for the area in which the community represented by the CQE is located
- The permit is endorsed for 6 clients
- The permit cannot be sold (i.e., permanently transferred)
- 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).

**\*Denotes the Council's preferred alternative under Issue 12, selected in March 2007.**

<sup>1</sup>Active is defined as it is defined in the general moratorium program under Issue 10 (e.g., at least 1, 5\*, 10, 15, or 20 bottomfish trips). (The Council's preferred alternative is 5 trips.)

<sup>95</sup>In February 2007, the Council selected a preliminary preferred alternative, including the options that comprise the preliminary preferred alternative under Issue 12. While the final preferred alternative selected in March 2007 differs slightly from the preliminary preferred alternative, both are variations of Alternative 2. See the *Public Review Draft of the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis for a Regulatory Amendment to Limit Entry in the Halibut Charter Fisheries in IPHC Regulatory Areas 2C and 3A* (March 9, 2007) for detailed discussion of the preliminary preferred alternative.

## Goal of the provisions under Issue 12

Alternative 2 would create a limited entry program for halibut charter businesses in Areas 2C and 3A. Recognizing that the stated concern in the problem statement is to limit further growth in the number of charter operations in these areas, it is also recognized that this program would create a new barrier to access (i.e., the cost of a limited entry permit) into this fishery. This barrier is, in the Council's judgment, disproportionately burdensome for small, rural communities with under-developed charter ports. The Council, thus, included for consideration as part of Alternative 2, several provisions under Issue 12 which specifically provide for new entry, through rural community participation in the halibut charter limited entry program. Communities that meet the selected criteria will be eligible to request a specified number of halibut charter limited entry permits from NMFS at no cost, similar to businesses that initially qualify to receive a permit under the general program. In effect, Issue 12 would retain the status quo to a limited extent, for a particular set of rural communities.

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

At its December 2006 meeting, the Council revised the options and provided clarification of several issues, including the overall goal and the intended beneficiary of the proposed options. The problem statement notes that the purpose of the moratorium program is to limit entry into the growing halibut charter industry in Areas 2C and 3A. In June and December, the Council discussion on the community options focused on the fact that, while Area 2C and 3A harvest has been steadily increasing, there are several small, rural communities not located on the road system, in both areas, that do not have a fully developed halibut charter industry. The charter industry continues to be relatively concentrated in and around a small number of larger coastal communities. In Area 2C, the vast majority of charter businesses reported Sitka (112), Juneau/Auke Bay (53), Ketchikan (43), Petersburg (37), or Craig (30), as the port of landing in 2005. These businesses made up about 57% of all of the active businesses <sup>96</sup> in Area 2C in 2005. (Note that 'active businesses' referenced in this section means a charter business reporting at least one charter bottomfish trip.) In Area 3A, in 2005, most charter businesses reported the port of landing as communities on the Kenai Peninsula, primarily Homer (149), Deep Creek/Ninilchik (95), Seward (89), and Anchor Point (49), or Valdez (38). These businesses made up nearly 73% of all of the active businesses in Area 3A in 2005. Businesses reporting the port of landing in these communities comprise over 63% of the total number of businesses reporting bottomfish trips in 2005, in Areas 2C and 3A combined.

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

<sup>96</sup>ADF&G logbook data, 2005.

Recognizing that substantial growth in the industry has been limited to relatively few communities, charter businesses in these communities would receive the great majority of limited entry permits allocated under the proposed moratorium program (see Table 22 in Section 2.5.10.) **The community provisions are intended to ‘keep the door open’ for those rural, small communities that have few alternative economic opportunities, to develop or further develop charter operations in those areas. Similar to an individual who is initially issued a permit, allowing communities to receive halibut charter permits at no cost removes an economic barrier for communities with undeveloped or under-developed charter industries to participate in the halibut charter industry, and potentially expands effort.**

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

Given the objective above, the Council clarified that the intended beneficiary of the community provisions (i.e., holder of the charter halibut permit) is the non-profit entity chosen by the community to represent it. In this program, that entity is the Community Quota Entity (CQE), provisions for which were originally established under GOA Amendment 66. It is the CQE that ties the permit to the community, as the CQE is the holder of the permit under the option in Issue 12. In effect, the CQE would be issued the permit and would designate a skipper with a USCG license to take clients halibut charter fishing, similar to any other business. Additional information on the CQE structure is provided in the following section.

### Community Quota Entity structure

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

Community quota entity (CQE) (for purposes of the IFQ Program)<sup>97</sup> means a non-profit organization that:

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

<sup>97</sup>From 50 CFR 679.2: “IFQ program means the individual fishing quota program for halibut and sablefish in waters in and off Alaska and governed by regulations under this part

#### GOA Am. 66 eligible communities in Areas 2C and 3A<sup>1</sup>

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

<sup>1</sup>As listed in Table 21 to Part 679.

\*Formed a CQE as of January 2008.

While GOA Amendment 66 included Gulf communities in Areas 2C, 3A, and 3B, the proposed moratorium program is limited to Areas 2C and 3A. Under Amendment 66, there are 21 eligible communities in Area 2C and 14 in Area 3A (see box above). An additional 7 communities are eligible under Amendment 66 in Area 3B, but not qualified to participate under the proposed action. The community provision under Issue 12 is limited to those 35 communities in Areas 2C and 3A that have been deemed eligible under Amendment 66 to form a CQE and participate in the commercial halibut and sablefish IFQ Program through the approved CQE.

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

To be approved as a CQE representing an eligible community or communities, a non-profit entity seeking to become a CQE must submit a completed application to NMFS. As provided for in 50 CFR 679.41(l)(3), a complete application consists of:

- the articles of incorporation under the State of Alaska;<sup>98</sup>
- a list of the communities represented by the CQE;
- management organization information (bylaws; personnel; description of and demonstration that the CQE is qualified to manage QS on behalf of the community; contact and tax identification information);
- a statement describing the procedures that will be used to determine the distribution of IFQ to community residents; and
- a statement of support from the governing body of the eligible community (the governing body for each community is identified in Table 21 to Part 679).

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

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

- recognized by the U.S. Census;<sup>99</sup>
- population of greater than 20 but less than 1,500 according to the 2000 U.S. Census;
- not be connected to a larger community on the road system;
- located on the coast of the Gulf of Alaska;

<sup>98</sup>The exception is a non-profit entity formed to represent the Metlakatla Indian Village. Due to its status as an Indian Reservation, this entity may provide articles of incorporation under Federal law.

<sup>99</sup>This means that the U.S. Census would identify the community as a city or census designated place (CDP).

- have a commercial landing of either halibut or sablefish by a resident between 1980–2000 according to Commercial Fisheries Entry Commission data for permit and fishing activity; and
- designated on Table 21 to Part 679 of Federal regulations.

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

The Amendment 66 criteria may not represent an exact fit for the charter sector. The additional criteria included under the options are intended to better define an ‘underdeveloped charter port’ relative to small, rural communities. Two of the primary policy decisions under the community provisions are thus related to the definition of an ‘active’ charter business and the criteria for determining what constitutes an ‘underdeveloped charter port.’ This issue is discussed in more detail in the community eligibility section.

In addition to being listed as an eligible community in Table 21 to Part 679, a community must have formed a CQE under the laws of the State of Alaska and had its application to represent the community approved by NMFS. Of the 35 eligible communities in Area 2C and 3A, nine communities in Area 2C (Angoon, Coffman Cove, Craig, Hoonah, Hydaburg, Kassan, Klawock, Pelican, Thorne Bay) and eight communities in Area 3A (Akhiok, Chenega Bay, Larsen Bay, Nanwalek, Old Harbor, Ouzinkie, Port Graham, Yakutat) have approved CQEs as of January 2008.<sup>100</sup> Of the approved CQEs, only one has purchased halibut or sablefish commercial quota share to date.

Several reasons have been cited as contributing to the relatively limited community participation in the commercial CQE program thus far; one of the most significant being that communities were not included until ten years after the IFQ Program was established. While a substantial number of transfers and consolidation took place in the first several years of the IFQ Program, they have declined since implementation. For example, in 1996, there were 473 permanent transfers of Area 2C halibut QS, while in 2006,<sup>101</sup> there were only 137. There were 591 permanent transfers of Area 3A halibut QS in 1996, compared to 187 transfers in 2006. Similarly, the number of halibut QS holders initially issued quota share in Area 2C was 2,388; by mid-2006, there were 1,358 holders. The number of halibut QS holders initially issued quota share in Area 3A was 3,072; compared to 1,804 holders by mid-2006.<sup>102</sup> The IFQ sablefish fishery in the Gulf of Alaska exhibited the same trend, although not to the same extent. At the same time, quota share prices have trended upward as the market for fresh fish has expanded, from an average 1995 price of less than a dollar per pound for some types of halibut quota to upwards of \$20 per pound in recent years for some types of halibut quota. Both the price and availability of quota have been cited as factors contributing to limited community participation.

Research was conducted by the Institute of Social and Economic Research (ISER) to determine the status of the commercial CQE program in various communities during 2006, with the preliminary findings presented at a conference in September 2006.<sup>103</sup> All but one of the communities expressed awareness of

<sup>100</sup>See <http://www.fakr.noaa.gov/ram/cqp/CQEcontacts.pdf>. While not applicable to the charter halibut moratorium program, three communities in Area 3B (Perryville, Sand Point, and King Cove) have also formed CQEs for the purposes of the commercial halibut and sablefish IFQ program.

<sup>101</sup>Number of permanent QS transfers as of November 22, 2006.

<sup>102</sup>Initial issuance was accomplished primarily at the beginning of the IFQ Program (1994 – 1995), but also occurred later as a result of adjudicated appeals. Source: <http://www.fakr.noaa.gov/ram/ifqreports.htm#qstransfer>.

<sup>103</sup>Dr. Steve J. Langdon and Emilie Springer, Institute of Social and Economic Research, University of Alaska Anchorage, presented at *Alaska's Fishing Communities – Harvesting the Future* conference, September 21, 2006, in Anchorage, Alaska.

the program, and over 75% of the eligible communities reported having considered participating in the program. While a few communities reported lack of interest for various reasons, several communities and community organizations reported making substantial efforts to find a way to make the program work. Some of the obstacles cited included: lack of funds available for direct purchase of quota share; prohibitively high quota share prices; unfavorable State and private loan terms; little quota share available on the market; and restrictions on the type of QS a community is allowed to purchase.

Another analysis, conducted by the McDowell Group for the Southeast Alaska Inter-tribal Fish and Wildlife Commission, evaluated the financial viability of the CQE program. In part, the report concluded the following: "It does not appear possible to purchase and fish halibut shares profitably at today's prices, particularly with the added overhead needed to support a CQE organization, unless the cost of capital is very low...In general, only fishermen who received halibut QS initially at no cost, or who bought it prior to the price increases of recent years, are in a position to maintain an overall average cost-of-quota low enough to allow them to consider additional purchases at today's prices."<sup>104</sup> These are some of the reasons recently cited as contributing to the relatively limited community participation in the commercial CQE program thus far. However, in order to receive halibut moratorium permits, as proposed under Issue 12, an eligible community must form a CQE under the laws of the State of Alaska and had its application to represent the community approved by NMFS.

Finally, the stated intent is that the moratorium will be an interim program, replaced by a long-term solution in the future. Thus, there was an effort to develop a simple and streamlined management approach to the design of the limited entry program in this phase. **Note, however, that a moratorium serves as a means of pre-selecting the set of likely beneficiaries in subsequent revisions to a limited entry program or quota share program.** Thus, the stakeholders that are recognized in the distribution of benefits (i.e., permits) in the moratorium program, whether communities or licensed sportfishing businesses, will most likely be the same set of stakeholders that will benefit from the longer-term proposals.<sup>105</sup>

### 2.5.12.1 Baseline Information on Amendment 66 Communities

#### Population and location

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

Table 24 provides the population of each community, according to the most recent (2000) U.S. Census. This table also provides a brief description of the location of each community. Note that Akhiok is located on the southern end of Kodiak Island, and was originally reported in the analysis and final Council motion for GOA Amendment 66 as located in Area 3A. However, IPHC staff has confirmed that Akhiok (and Alitak Bay) is actually located in Area 3B.<sup>106</sup> Akhiok is on the border of Area 3A and 3B, and the vast majority of Kodiak Island is located in Area 3A. This is of no practical importance under GOA

<sup>104</sup>*Community Quota Entity Financial Analysis*, McDowell Group. Prepared for the Southeast Alaska Inter-tribal Fish and Wildlife Commission. October 28, 2005.

<sup>105</sup>Keith Criddle, personal communication, December 12, 2006.

<sup>106</sup>Tom Kong, personal communication, November 15, 2006. According to the regulations, the 3A/3B border is defined as: "...a line extending from the most northerly point on Cape Aklek (57°41'15" N. latitude, 155°35'00" W. longitude) to Cape Ikolik (57°17'17" N. latitude, 154°47'18" W. longitude), then along the Kodiak Island coastline to Cape Trinity (56°44'50" N. latitude, 154°08'44" W. longitude), then 140° true."

Amendment 66, as all communities located in either Area 3A or Area 3B are allowed to purchase commercial quota share in both areas. The community provisions in the halibut charter program, however, are explicitly limited to “*Area 2C and 3A communities previously identified under GOA FMP Amendment 66.*” Because Akhiok was identified under GOA FMP Amendment 66 as an eligible community in Area 3A, staff assumes that Akhiok is included under the halibut charter provisions considered in this amendment. This issue is discussed further in a subsequent section of this analysis, relative to restrictions proposed to require that the halibut charter permit held by a community’s CQE is designated only for the IPHC area in which the community is located.

Figure 10 and Figure 11 below, are maps of the eligible communities in Areas 2C and 3A, respectively.

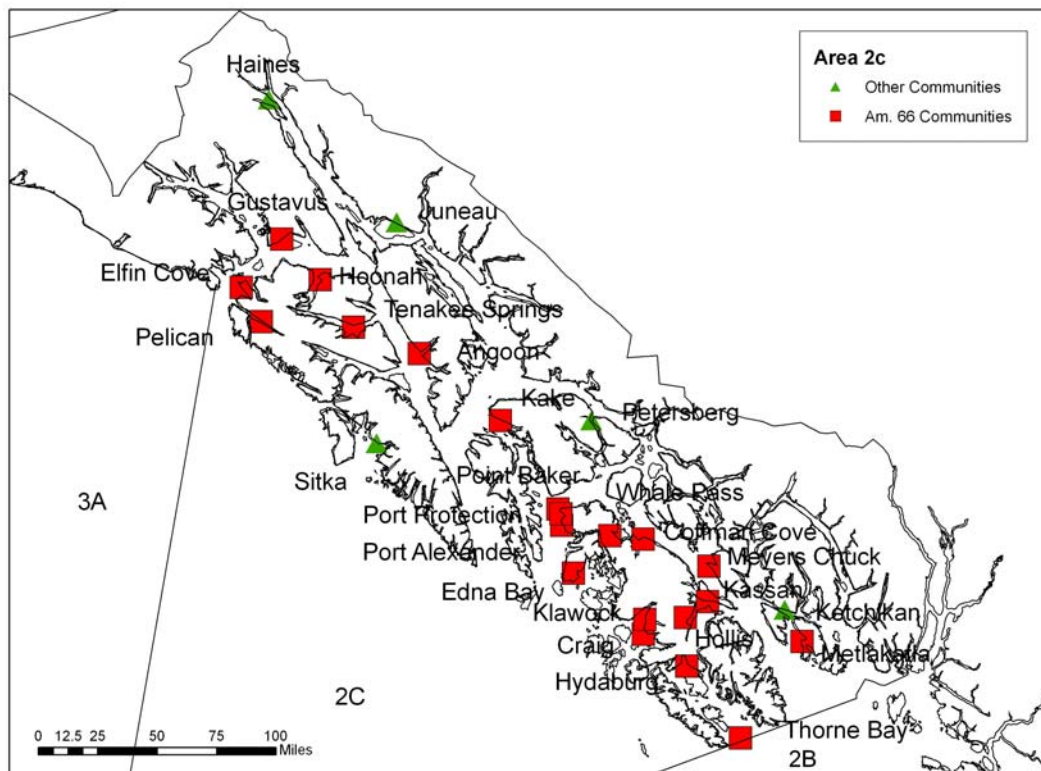
**Table 24 Population and location of potentially eligible communities under Issue 12**

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

<sup>1</sup>2000 U.S. Census.

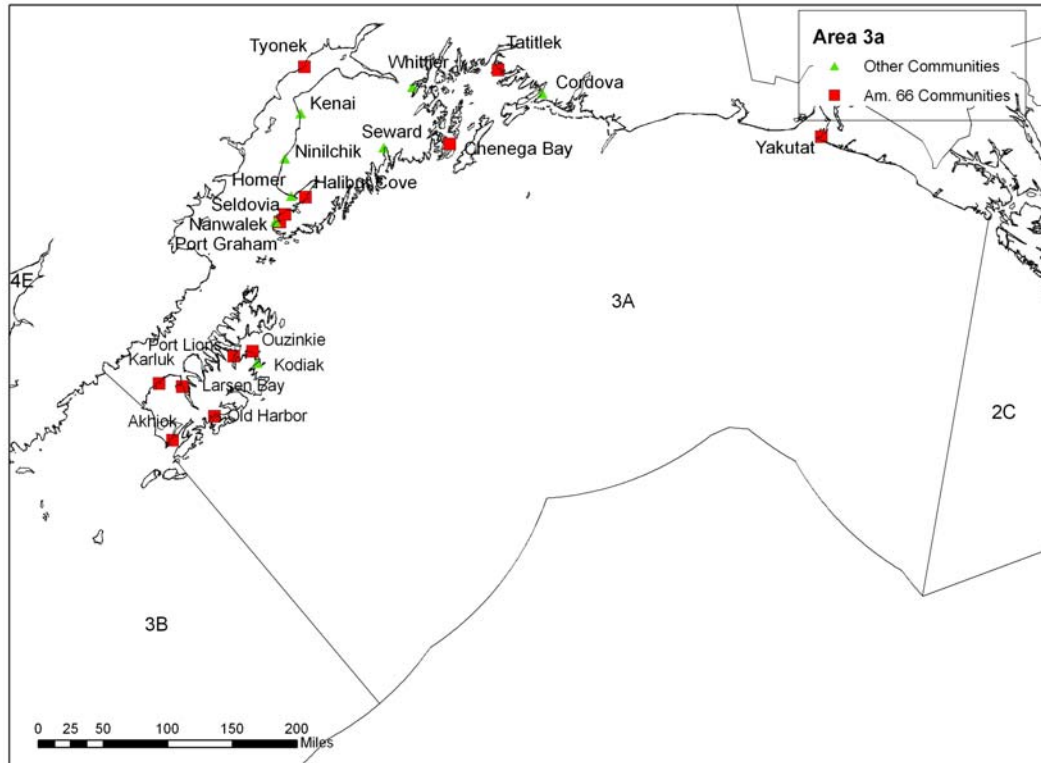
<sup>2</sup>State of Alaska, DCCED, Community Database Community Information Summaries.





**Figure 10 Map of the 21 GOA Amendment 66 communities in Area 2C**

Source: NPFMC



**Figure 11 Map of the 14 GOA Amendment 66 communities in Area 3A**

Source: NPFMC.

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

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

**Table 25** shows the number of charter businesses that reported the community as the port of landing during 2001 – 2005, under various trip thresholds of at least 1, 5, 10, 15, or 20 charter bottomfish trips. While the criteria to qualify communities mirrors the qualifying years for the rest of the moratorium program (2004 and 2005), charter data across a five-year period are provided for reference. Note that the data in Table 25 are based on counting trips at the 'business level.' For example, if a business operated two vessels that each had 8 trips in the year at issue, and the minimum trip requirement is designated as 10 or more trips, the business would qualify and be counted in Table 25 in the appropriate column. In effect, a business qualifies by the sum of its trips; each individual vessel does not have to meet the threshold. The Council confirmed that this is the preferred approach at its December 2006 meeting for qualification of a permit under the general moratorium program—both options for determining the number of permits issued to a licensed guide business owner under Issue 10 are based on qualifying at the business level.

Under Issue 10, the Council considered either 1, 5, 10, 15, or 20 bottomfish trips per year as the participation threshold for qualifying for a halibut charter permit. Note that the motion explicitly states that the trip threshold for Issue 12 will mirror the trip threshold selected in Issue 10. Thus, the following are a few summary points from Table 25, based on defining an 'active' charter business as having conducted **10 or more bottomfish trips per year**:

- All but 6 of the 35 communities typically had 5 or fewer active charter businesses operating out of the community in any given year during 2001–2005.
- The 6 communities with the highest number of active bottomfish charter businesses were Craig, Elfin Cove, Gustavus, Hoonah, Klawock, and Yakutat.
- In the vast majority of communities (~71%), the number of charter businesses did not fluctuate by more than one business from 2001 to 2005.<sup>107</sup>
- Seven of the Area 2C communities and 7 of the Area 3A communities were not reported as the port of landing for any bottomfish charter business with 10 or more bottomfish trips during 2001 - 2005.

<sup>107</sup>This is the case comparing the number of active businesses listed for 2001 to those listed for 2005, not by comparing between each year within the range. In sum, 8 communities were reported as the port of landing for fewer businesses in 2005 than in 2001; 9 communities were reported as the port of landing for more businesses in 2005 than in 2001.

In addition, in general:

- Most communities had differing numbers of businesses depending on the trip threshold applied; thus, very few communities only had businesses that operated at 10 or more bottomfish trips per year.
- Three of the Area 2C communities and 6 of the Area 3A communities were not reported as the port of landing for any bottomfish charter business under any bottomfish trip threshold during 2001 - 2005.

Table 26 is provided to show the number of vessels operated by the businesses that qualify at the various bottomfish trip thresholds during 2001–2005. In other words, Table 26 shows whether the businesses in Table 25 are associated with relatively large fleets, or whether it is more common for a business to operate one or two vessels in a given year on average. Note that the vessel counts in Table 26 are not equivalent to the number of individual vessels that meet the various trip threshold levels. An example of how to read Table 25 and Table 26 together is as follows:

- Table 25 shows that, in 2005, Angoon is listed as the port of landing for a total of 6 businesses that had at least one bottomfish trip. Five of those businesses had at least 10 trips, and 4 of those businesses had at least 20 trips.
- Table 26 shows that, in 2005, those 6 businesses whose port of landing was Angoon operated 10 vessels. The 5 businesses with at least 10 trips operated 9 of those vessels, and the 4 businesses that had at least 20 trips operated 8 of those vessels.

The data show that businesses making 1 to 9 trips per year are usually operating only one vessel on average, while many some businesses making 20 or more trips per year operate multiple vessels. Across the 21 communities that had at least one active charter business in 2004 or 2005,<sup>108</sup> each active charter business in Area 2C operated an average of 1.6 vessels both 2004 and 2005. Each active charter business in Area 3A operated an average of 1.3 vessels both 2004 and 2005. The median number of vessels operated per active business in Area 2C in 2004 and 2005 was 1.5 and 1.7, respectively. The median number of vessels operated per active business in Area 3A in 2004 and 2005 was 1 in both years. **In sum, no community/port of landing averaged 3 or more vessels per active business; most communities averaged 1 to 2 vessels per active business.**

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

**Note also that neither Table 25 nor Table 26 provide the estimated number of *permits* that the businesses associated with these ports would receive under the general moratorium program, absent the community provisions under Issue 12.** Whether an existing business receives a permit is related to the Council's decision under Issue 10 (see Section 2.5.10 and Table 22 for details).

<sup>108</sup> Active in this example is defined as a business conducting 10 or more bottomfish trips per year. Recall that 14 of the Am. 66 communities were not reported as the port of landing for any bottomfish charter business that made at least 10 bottomfish trips per year in 2004 or 2005.

**Table 25** Number of businesses meeting the categorized vessel trip thresholds (1+, 5+, 10+, 15+, or 20+ bottomfish trips) by port of landing, 2001 - 2005

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

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

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

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

Table 25 continued.

IPHC Area	Port of Landing Site	2003		2004					2005				
		15 or more Bottomfish Trips per Year	20 or more Bottomfish Trips per Year	At least 1 Bottomfish Trip per Year	5 or more Bottomfish Trips per Year	10 or more Bottomfish Trips per Year	15 or more Bottomfish Trips per Year	20 or more Bottomfish Trips per Year	At least 1 Bottomfish Trip per Year	5 or more Bottomfish Trips per Year	10 or more Bottomfish Trips per Year	15 or more Bottomfish Trips per Year	20 or more Bottomfish Trips per Year
2C	ANGOON	3	3	8	5	4	4	3	6	5	5	4	4
2C	COFFMAN COVE	4	4	4	4	4	4	4	5	5	5	5	5
2C	CRAIG	16	13	29	26	20	18	16	30	25	20	17	17
2C	EDNA BAY	0	0	0	0	0	0	0	0	0	0	0	0
2C	ELFIN COVE	10	10	14	12	11	10	9	13	12	11	11	9
2C	GUSTAVUS	11	8	15	13	12	12	12	18	14	12	12	12
2C	HOLLIS	0	0	0	0	0	0	0	1	0	0	0	0
2C	HOONAH	4	2	9	8	8	4	2	12	7	6	6	2
2C	HYDABURG	0	0	0	0	0	0	0	0	0	0	0	0
2C	KAKE	0	0	1	0	0	0	0	0	0	0	0	0
2C	KASSAN	0	0	0	0	0	0	0	0	0	0	0	0
2C	KLAWOCK	5	4	10	9	6	6	4	8	7	6	5	5
2C	METLAKATLA	0	0	0	0	0	0	0	0	0	0	0	0
2C	MEYERS CHUCK	0	0	0	0	0	0	0	0	0	0	0	0
2C	PELICAN	4	4	7	6	3	2	1	7	5	5	5	4
2C	POINT BAKER	0	0	1	1	1	0	0	2	2	1	1	1
2C	PORT ALEXANDER	4	4	4	4	4	4	3	4	4	4	4	4
2C	PORT PROTECTION	1	1	2	1	1	1	1	2	2	1	1	1
2C	TENAKEE	0	0	3	2	0	0	0	3	2	1	0	0
2C	THORNE BAY	2	1	4	4	3	3	2	6	6	4	4	3
2C	WHALE PASS	1	1	4	2	2	2	2	2	2	2	2	2
3A	AKHIOK	0	0	0	0	0	0	0	0	0	0	0	0
3A	CHENEGA	1	1	2	1	1	1	0	1	1	0	0	0
3A	HALIBUT COVE	0	0	0	0	0	0	0	1	1	0	0	0
3A	KARLUK	0	0	0	0	0	0	0	0	0	0	0	0
3A	LARSEN BAY	5	4	5	5	5	4	4	6	5	4	4	4
3A	NANWALEK	0	0	0	0	0	0	0	0	0	0	0	0
3A	OLD HARBOR	3	2	5	3	3	3	1	4	3	3	2	2
3A	OUZINKIE	0	0	1	0	0	0	0	1	1	1	0	0
3A	PORT GRAHAM	0	0	0	0	0	0	0	0	0	0	0	0
3A	PORT LIONS	2	2	10	9	7	6	4	10	7	4	4	3
3A	SELDOVIA	4	4	10	5	5	4	4	10	7	6	4	4
3A	TATITLEK	0	0	0	0	0	0	0	0	0	0	0	0
3A	TYONEK	0	0	0	0	0	0	0	0	0	0	0	0
3A	YAKUTAT	8	7	9	8	8	8	8	10	9	8	7	7

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

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

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

**Table 26** Number of vessels operated by businesses that meet the various trip thresholds (1+, 5+, 10+, 15+, or 20+ bottomfish trips) by port of landing, 2001–2005

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

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

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

Note: These counts are not equivalent to the number of vessels that would “qualify” at the various threshold levels; these counts represent the total number of vessels operated by a business that ‘qualifies’ under the various thresholds in Table 25. For the purposes of business qualification, these counts assume that the trips are counted at the ‘business level’ (as opposed to the individual vessel level). For example, if a business operated two vessels that each had 8 trips in the qualifying years, and the minimum trip requirement was 10 trips, the business would qualify. The number of permits that the example business would receive depends on the preferred option under Issue 10.

Table 26 continued.

IPHC Area	Port of Landing Site	2003		2004					2005				
		15 or more Bottomfish Trips per Year	20 or more Bottomfish Trips per Year	At least 1 Bottomfish Trip per Year	5 or more Bottomfish Trips per Year	10 or more Bottomfish Trips per Year	15 or more Bottomfish Trips per Year	20 or more Bottomfish Trips per Year	At least 1 Bottomfish Trip per Year	5 or more Bottomfish Trips per Year	10 or more Bottomfish Trips per Year	15 or more Bottomfish Trips per Year	20 or more Bottomfish Trips per Year
2C	ANGOON	3	3	8	5	4	4	3	10	9	9	8	8
2C	COFFMAN COVE	6	6	6	6	6	6	6	5	5	5	5	5
2C	CRAIG	44	41	62	59	53	50	48	69	64	59	55	55
2C	EDNA BAY	0	0	0	0	0	0	0	0	0	0	0	0
2C	ELFIN COVE	24	24	28	26	25	24	23	27	26	25	25	22
2C	GUSTAVUS	16	13	22	20	18	18	18	23	19	17	17	17
2C	HOLLIS	0	0	0	0	0	0	0	1	0	0	0	0
2C	HOONAH	4	2	11	10	10	4	2	12	7	6	6	2
2C	HYDABURG	0	0	0	0	0	0	0	0	0	0	0	0
2C	KAKE	0	0	1	0	0	0	0	0	0	0	0	0
2C	KASSAN	0	0	0	0	0	0	0	0	0	0	0	0
2C	KLAWOCK	10	9	17	16	13	13	11	15	14	13	12	12
2C	METLAKATLA	0	0	0	0	0	0	0	0	0	0	0	0
2C	MEYERS CHUCK	0	0	0	0	0	0	0	0	0	0	0	0
2C	PELICAN	4	4	7	6	3	2	1	7	5	5	5	4
2C	POINT BAKER	0	0	1	1	1	0	0	3	3	2	2	2
2C	PORT ALEXANDER	7	7	5	5	5	5	3	5	5	5	5	5
2C	PORT PROTECTION	1	1	3	2	2	2	2	2	2	1	1	1
2C	TENAKEE	0	0	3	2	0	0	0	4	3	2	0	0
2C	THORNE BAY	6	5	8	8	7	7	6	11	11	9	9	8
2C	WHALE PASS	2	2	6	4	4	4	4	3	3	3	3	3
3A	AKHIOK	0	0	0	0	0	0	0	0	0	0	0	0
3A	CHENEGA	1	1	2	1	1	1	0	1	1	0	0	0
3A	HALIBUT COVE	0	0	0	0	0	0	0	1	1	0	0	0
3A	KARLUK	0	0	0	0	0	0	0	0	0	0	0	0
3A	LARSEN BAY	9	8	13	13	13	11	11	13	12	11	11	11
3A	NANWALEK	0	0	0	0	0	0	0	0	0	0	0	0
3A	OLD HARBOR	6	4	7	5	5	5	3	6	5	5	4	4
3A	OUZINKIE	0	0	1	0	0	0	0	1	1	1	0	0
3A	PORT GRAHAM	0	0	0	0	0	0	0	0	0	0	0	0
3A	PORT LIONS	3	3	11	10	8	7	5	10	7	4	4	3
3A	SELDOVIA	4	4	10	5	5	4	4	10	7	6	4	4
3A	TATITLEK	0	0	0	0	0	0	0	0	0	0	0	0
3A	TYONEK	0	0	0	0	0	0	0	0	0	0	0	0
3A	YAKUTAT	13	12	14	13	13	13	13	14	13	12	11	11

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

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

Note: These counts are not equivalent to the number of vessels that would “qualify” at the various threshold levels; these counts represent the total number of vessels operated by a business that ‘qualifies’ under the various thresholds in Table 25. For the purposes of business qualification, these counts assume that the trips are counted at the ‘business level’ (as opposed to the individual vessel level). For example, if a business operated two vessels that each had 8 trips in the qualifying years, and the minimum trip requirement was 10 trips, the business would qualify. The number of permits that the example business would receive depends on the preferred option under Issue 10.

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

Profiles for 136 fishing communities in Alaska were recently completed by NOAA Fisheries and documented in *Community Profiles for North Pacific Fisheries – Alaska* (December 2005). This document provides social and economic baseline data for Alaskan communities involved in commercial fisheries in the North Pacific, including 28 of the 35 potentially eligible communities under Issue 13.<sup>109</sup>

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

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

Profiles for each of the 35 potentially eligible communities are also provided in the State of Alaska’s Community Information Summaries.<sup>110</sup> The Alaska Department of Commerce, Community, and Economic Development (DCCED) compiles summaries including community location, population, taxes, climate, history, culture, demographics, utilities, schools, health care, economy, transportation, and major contacts. Table 27 provides some demographic and economic statistics for the 35 potentially eligible communities from this database, the primary source of which is the U.S. Census. Please reference the State’s database directly for comprehensive information on each community of interest.

<sup>109</sup> Amendment 66 communities in Area 2C or Area 3A not profiled in *Community Profiles for North Pacific Fisheries – Alaska* (December 2005) are: Coffman Cove, Hollis, Kassan, Chenega Bay, Nanwalek, Tatitlek, and Tyonek.

<sup>110</sup>Source: [www.commerce.state.ak.us/dca/commdb/CF\\_CIS.htm](http://www.commerce.state.ak.us/dca/commdb/CF_CIS.htm)



**Table 27 Demographic and economic statistics of potentially eligible communities**

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

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

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

n/a = not applicable.

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

**Table 28**      **Number of registered sport fishing guide businesses (2002) and sport fish licenses sold (2000), by community**

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

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

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

### 2.5.12.2 Eligible communities under Issue 12

This section provides an evaluation of the number of Amendment 66 communities that would qualify under the eligibility criteria options under consideration. Note that all options are analyzed, and the options that comprise the Council preferred alternative from March 2007 are highlighted as such. A summary outlining the impacts of the Council's preferred alternative is provided in Section 2.7.2.

As currently structured, NMFS would issue the charter halibut permit to the CQE, which would designate a skipper with a USCG license to take clients halibut charter fishing, similar to any other business. The provisions allow the CQE to determine who it may retain to conduct the charter operation, regardless of the residency of the vessel owner or skipper. In effect, the CQE would be the holder of the permit, and it would decide how the permit is to be used, as long as it complies with the requirement that the permit must be used in the community represented by the CQE. This means that the charter trip must originate and/or terminate in the CQE community. This requirement is discussed in more detail in Section 2.5.12.4.

The intent is that the CQE would use the permit in such a way that maximizes the benefit to the community it represents, under the requirements of the program. There are a variety of ways the CQE could use the permit, for example, the CQE could contract with a business owned by a resident of the community it represents, or the CQE could purchase a vessel and hire a resident skipper or crew to conduct charter operations. The CQE could also contract with a skipper that is a resident of a different community, but require that the charter business operate out of the represented community. The only restriction is that the CQE would not be allowed to contract with a skipper to operate the business in and out of another port, nor could they sell the permit.

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

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

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

Two of the primary policy decisions under the community provisions are thus related to the definition of an 'active' charter business and the criteria for determining what constitutes an 'underdeveloped charter port.' Under the current options, in order to be determined eligible under Issue 12, a CQE must represent a community in which either 5 or fewer, or 10 or fewer, active charter businesses terminated trips in the community in 2004 and 2005. 'Active' is currently defined in the Council motion the same way it will be defined in the general moratorium program under Issue 10: at least 1, 5, 10, 15, or 20 bottomfish trips reported in an ADF&G logbook during each qualifying year.

**Combined, there are thus 10 different options for defining the participation criteria by which a community is evaluated for eligibility. In order for a community to be eligible to request a permit it must have:**

5 or fewer active charter businesses with:		*10 or fewer active charter businesses with:	
Option 1	≥1 bottomfish trip	Option 6	≥1 bottomfish trip
Option 2	≥5 bottomfish trips	Option 7	≥5 bottomfish trips
Option 3	≥10 bottomfish trips	Option 8	≥10 bottomfish trips
Option 4	≥15 bottomfish trips	Option 9	≥15 bottomfish trips
Option 5	≥20 bottomfish trips	Option 10	≥20 bottomfish trips

Note: The community must meet the selected criteria in 2004 and 2005.

Note: The trip threshold to define an “active” business is linked to the Council’s decision under Issue 10.

Note that the Council’s final preferred alternative is that the community must have 10 or fewer active charter businesses reporting the community as the port of landing in both 2004 and 2005, with an ‘active’ business defined as a business having 5 or more bottomfish trips. The relevant data to evaluate all ten of these options are provided in this section of the analysis.

Under the above criteria, if a community has *more* than 10 active bottomfish charter businesses operating out of its port, depending on the trip threshold selected, in either 2004 or 2005, its CQE would not qualify to receive halibut charter permits. Note that in the general moratorium program, a business owner receives a permit at initial issuance if he/she had the requisite number of bottomfish trips documented in an ADF&G logbook in 2004 or 2005 and the year prior to implementation of the program (see Issue 10). In effect, a CQE wants to demonstrate little to no charter activity in each of two years in order to benefit from the program (i.e., receive a permit), while a registered guide business owner wants to demonstrate a higher level of charter activity in order to benefit from the program. The qualification criteria for CQEs are based on an identified economic development need for small, rural communities with few alternative economic opportunities; the qualification criteria in the general moratorium program are based on historical participation.

Prior to the February 2007 Council meeting, the options stated that the CQE must have met the criteria in 2004, 2005, and the year prior to implementation. The requirement to meet the criteria in the year prior to implementation (which is likely 2007) was removed at the February 2007 Council meeting. The primary reason for this change was so the number of eligible communities would be certain at the time of Council final action. This list of communities is intended to be published in the final rule implementing the action, should it be approved by the Secretary. Retaining the requirement to meet the criteria in the year prior to implementation would have prevented knowing the list of eligible communities until the 2007 logbook information was processed by NMFS during the implementation phase of the program.

In addition, the Council recognized that the structure of the eligibility criteria was such that it provided significant disincentives for a community to encourage new halibut charter businesses, whether operated by residents or others, to operate out of its port until after implementation of the moratorium program. This is because if a community exceeded the threshold in 2007 (i.e., the likely year prior to implementation), it would not be eligible to receive permits from NMFS at no cost, similar to every other initial permit recipient. Added to this disincentive was the fact that a business that starts operating for the first time in 2007, would not receive a permit under the general moratorium program because it must also have generated the required logbook activity in 2004 or 2005.

The intent of the eligibility criteria in Issue 12 is to narrow eligibility to communities that do not already have fully developed charter ports; in effect, targeting communities that have less than a selected number of businesses operating out of the port in recent years. The general assumption appears to be that charter

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

**Note, however, that receipt of a halibut charter permit under the general program means that a business can use the permit anywhere within the IPHC area in which the permit is designated (Area 2C or Area 3A). Thus, even in a community that appears to have a ‘developed’ charter port based on activity in 2004 or 2005, there is no guarantee that the halibut charter permit issued to an individual business owner in the general program will continue to be used in that community’s port in the future or that the business will remain viable.** Part of the intent of the community provision under Issue 12 is to mitigate this possibility, by requiring a subset of halibut charter permits be permanently tied to the CQE, which represents the community.

This issue may raise concerns with the design of the eligibility criteria, as it would likely disadvantage Amendment 66 communities (relative to other Amendment 66 communities) that are not long established charter ports, but whose CQE would not qualify to receive permits because the community exceeded the number of businesses in one of the two years at issue. This issue is exacerbated by the relatively narrow window of participation history used to determine the beneficiaries of the charter halibut permit program. This may be less of an issue for communities that are well above the selected criteria, but more of an issue for communities that only slightly exceed the designated maximum. This issue may provide rationale to use the less restrictive of the two threshold options: a community must have 10 or fewer businesses, as opposed to 5 or fewer, in order to receive (gifted) charter permits. Note that this reflects the Council’s preferred alternative.

There are several advantages to the approach to determining eligibility. The criteria are relatively clear and objective, and the number of eligible communities can be determined with certainty at final action. Note, however, that the number of eligible communities that form a CQE and participate (request halibut charter permits) through this program cannot be estimated. In addition, the use of the Amendment 66 communities as a starting point for eligibility encompasses a broad range of factors by definition, and is not limited to historical participation in the charter fishery.

Given the above discussion, this section provides an evaluation of the communities that potentially qualify under all of the eligibility criteria under consideration, including the preferred alternative, based on 2004 and 2005 ADF&G charter bottomfish logbook activity.

Note that in both of the following tables, the data are based upon counting charter trips at the ‘business level.’ For example, if a business operated 2 vessels that each had 8 trips in a qualifying year, and the minimum trip requirement was 10 trips, the business would be counted in Table 29 and Table 30. In effect, a business is counted as such by the sum of its trips; each individual vessel does not have to meet the threshold. This is consistent with the approach in Issue 10.

Table 29 indicates the Amendment 66 communities that have **5 or fewer** active charter businesses meeting the various trip thresholds to define an 'active' charter business, by port of landing, in 2004 and 2005. This table is based upon data provided in Table 25. **The shaded cells denote communities that do not qualify under the identified criteria. Recall that the community must meet the criteria (5 or fewer active businesses under the identified trip threshold) in both 2004 and 2005 in order to qualify.** For example, if a community was reported as the port of landing for 4 businesses in 2004 and 6 businesses in 2005, it would not qualify (see Thorne Bay as an example). Depending upon the trip threshold, **23 to 31** of the 35 Amendment 66 communities qualify to receive charter permits under this option.

**Table 29 Comparison of qualifying Am. 66 communities using criteria of 5 or fewer businesses under various trip thresholds to define an active charter business, 2004 - 2005**

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

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

**NOTE: Shaded cells denote communities that do not qualify under the selected criteria. The number of businesses is provided in each cell.** Note that eligible communities would also need to form and qualify a CQE with NMFS in order to receive a charter permit under Issue 12.

Table 30 shows the same information as Table 29, except the qualification option is **10 or fewer** active charter businesses reported the Amendment 66 community as the port of landing in 2004 and 2005, if 'active' is defined as minimum activity of at least 1, 5, 10, 15, or 20 bottomfish charter trips in a given year. This table is also based upon data provided in Table 25. **The shaded cells denote communities that do not qualify under the identified criteria. Recall that the community must meet the criteria (10 or fewer active businesses under the identified trip threshold) in both 2004 and 2005 in order to qualify.**

Depending upon the trip threshold, 31 to 33 of the 35 Amendment 66 communities qualify to receive charter permits under this option. Note that the Council's preferred alternative (10 or fewer businesses with active defined as  $\geq 5$  trips) qualifies 32 communities, and the same 32 communities also qualify under the 10 or 15 trip thresholds. By comparison, one additional community (Hoonah) is disqualified under the 1 trip threshold; while one additional community (Elfin Cove) qualifies under the 20 trip threshold.

**Table 30 Comparison of qualifying Am. 66 communities using criteria of 10 or fewer businesses under various trip thresholds to define an active charter business, 2004 - 2005**

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

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

**NOTE: Shaded cells denote communities that do not qualify under the selected criteria. The number of businesses is provided in each cell.** Note that eligible communities would also need to form and qualify a CQE with NMFS in order to receive a charter permit under Issue 12.



**Table 31** Number of estimated eligible communities in Area 2C and 3A under Issue 12

Community qualifying criteria under Issue 12	Area 2C	Area 3A	TOTAL
≤5 businesses; ≥1 trip	13	10	23
≤5 businesses; ≥5 trips	14	11	25
≤5 businesses; ≥10 trips	16	11	27
≤5 businesses; ≥15 trips	16	12	28
≤5 businesses; ≥20 trips	18	13	31
≤10 businesses; ≥1 trip	17	14	31
<b>≤10 businesses; ≥5 trips (Council PA)</b>	<b>18</b>	<b>14</b>	<b>32</b>
≤10 businesses; ≥10 trips	18	14	32
≤10 businesses; ≥15 trips	18	14	32
≤10 businesses; ≥20 trips	19	14	33

The Council's preferred alternative qualifies 18 communities in Area 2C and 14 communities in Area 3A, for a total of 32 communities. The same number of communities qualifies regardless of whether the trip threshold to define an active business is 10 trips or 15 trips.

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

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

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

There is a much broader range (23 – 31) of potentially qualifying communities under the threshold of 5 or fewer active businesses. All but four communities have fewer than 6 businesses if the trip threshold is 20 or more trips. Three additional communities do not qualify if the trip threshold is reduced to 15 or more trips, and one additional community does not qualify if the trip threshold is reduced to 10 or more trips. Another two communities do not qualify if the trip threshold is reduced to 5 or more trips, and another

two communities do not qualify, for a total of 12 unqualified communities, if the trip threshold to denote an active business is reduced to one or more trips. Note that only Craig, Elfin Cove, and Gustavus substantially exceed the minimum number of businesses allowed (at least two times under most options) in order to qualify to receive halibut charter permits.

While these are clearly the most significant factors, the requirement to meet the criteria in both 2004 and 2005 versus 2004 or 2005 also has an effect on the number of eligible communities. The current Council motion requires that communities meet the criteria in both 2004 and 2005. Alternatively, if the requirement was relaxed to 2004 or 2005, one community (Hoonah) would become eligible under the criteria of 10 or fewer businesses when active is defined as 1 or more bottomfish trips that would otherwise not be eligible. A different community (Elfin Cove) would become eligible under the criteria of 10 or fewer businesses when active is defined as 15 or more bottomfish trips that would otherwise not be eligible. It does not affect the number of eligible communities when ‘active’ business is defined as at least 5, 10, or 20 charter bottomfish trips.

There is a larger difference under the criteria of 5 or fewer businesses. If the requirement was relaxed to 2004 or 2005, 2, 3, 2, and 3 additional communities would become eligible under these criteria when active is defined as  $\geq 1$ ,  $\geq 5$ ,  $\geq 10$ , and  $\geq 15$  bottomfish trips, respectively.<sup>111</sup> It does not affect the number of eligible communities when ‘active’ business is defined as at least 20 charter bottomfish trips under a threshold of 5 or fewer businesses.

The following tables indicate the number of permits that could potentially be issued to individual business owners (not CQEs) that reported a potentially eligible community as the port of landing *for at least one trip* during the 2004 – 2005 qualification period in the *general program*, under Option 10.1 in Issue 10. Table 32 shows the results using a 1-trip threshold and 20-trip threshold as bounds. Table 44 shows the results of the Council’s preferred alternative: 32 eligible communities under Issue 12 and using Option 10.1 and a 5-trip threshold under Issue 10.

These data are of limited value, however, as there is no guarantee in the general program that the charter permit issued to an individual business owner that operated at one time in a specific port, will continue to be used in that community’s port in the future. (Note that, by attributing these businesses to a particular community, this does not mean that the business is located in the community, that the business owner is a resident of the community, or that the business only operated charter trips out of that community.) Several businesses operated out of more than one port, during the qualification period (2004 – 2005).

<sup>111</sup>Thorne Bay and Larsen Bay have more than 5 active businesses ( $\geq 1$  trip) in only one of the years 2004 - 2005. Thorne Bay, Pelican, and Seldovia have more than 5 active businesses ( $\geq 5$  trips) in only one of the years 2004 - 2005. Port Lions and Seldovia have more than 5 active businesses ( $\geq 10$  trips) in only one of the years 2004 - 2005. Hoonah, Klawock, and Port Lions have more than 5 active businesses ( $\geq 15$  trips) in only one of the years 2004 - 2005.

**Table 32 Maximum and minimum number of estimated permits issued to individual businesses reporting the port of landing as a potentially eligible community under the qualifying options**

Community qualifying criteria under Issue 12	Estimated number of potentially eligible communities under Issue 12		# of estimated permits issued to businesses under Issue 10, Op. 10.1, using 1 trip threshold		# of estimated permits issued to businesses under Issue 10, Op. 10.1, using 20 trip threshold	
	Area 2C	Area 3A	Area 2C	Area 3A	Area 2C	Area 3A
≤5 businesses; ≥1 trip	13	10	31	13	n/a	n/a
≤5 businesses; ≥20 trips	18	13	n/a	n/a	67	38
≤10 businesses; ≥1 trip	17	14	83	70	n/a	n/a
≤10 businesses; ≥20 trips	19	14	n/a	n/a	95	51

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

In sum, of the potential permits to be issued, Table 32 shows that an estimated 31 – 83 permits could be issued under the general program to businesses which have reported an eligible Area 2C Amendment 66 community as the port of landing for at least one trip during the 2004 – 2005 qualifying period under Issue 10, Option 10.1 under a 1-trip minimum; an estimated 67 – 95 permits would be issued under a 20-trip minimum.<sup>112</sup> In sum, 4% - 11% of the total estimated number of permits to be issued for Area 2C would be issued under the general program to businesses that reported an eligible Amendment 66 community as the port of landing for at least one trip during the qualification period, if the business qualified under Option 10.1 using the 1-trip threshold. If the 20-trip minimum threshold was used, the range of permits increases to 13% - 19%.

Likewise in eligible Area 3A communities, an estimated 13 – 70 permits would be issued under the general program to businesses which have reported an eligible Area 3A Amendment 66 community as the port of landing for at least one trip during the 2004 – 2005 qualifying period under Option 10.1 using a 1-trip minimum; an estimated 38 – 51 permits would be issued using a 20-trip minimum.<sup>113</sup> In sum, 2% - 11% of the total estimated number of permits to be issued for Area 3A under the general program would be issued to businesses that reported an eligible Amendment 66 community as the port of landing for at least one trip during the qualification period, if the business qualified under Option 10.1 using the 1-trip threshold. If the 20-trip minimum threshold was used, the range of permits increases to 8% - 11%. The increase occurs under the higher trip threshold because the trip threshold selected for the regular program would also be applied to the eligibility criteria for communities. A greater number of communities qualify under the 20-trip minimum because very few communities had more than 5, or more than 10, charter businesses operating out of the community that had at least 20 trips.

The same estimates are not provided for Issue 10, Option 10.2. Overall, the number of permits in the general program would decrease under Option 10.2.

<sup>112</sup>A minimum of 13 and a maximum of 17 Area 2C communities are eligible under a one-trip minimum, depending on the business threshold selected (either 5 or fewer; or 10 or fewer). A range of 18 to 19 Area 2C communities are eligible under a 20-trip minimum.

<sup>113</sup>A minimum of 10 and a maximum of 14 Area 3A communities are eligible under a one-trip minimum, depending on the business threshold selected (either 5 or fewer; or 10 or fewer). A range of 13 to 14 Area 3A communities are eligible under a 20-trip minimum.

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

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

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

This section evaluates the effects of the proposed caps on the number of new permits that a CQE could request from NMFS. Thus, this cap would only apply to those communities that are deemed eligible at final action to request permits at no cost. These permits would be in addition to the existing pool of permits that results from the qualification period selected in Issue 10. While permit consolidation is a concern and can be mitigated with overall use caps, the limit on the number of newly created halibut charter permits for rural communities, in the context of the problem statement and the general purpose of a limited entry program, is relatively controversial.

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

Area 2C = 3, 4, 5, or 7 permits per eligible community represented by a CQE

Area 3A = 4, 5, 7, 10, or 15 permits per eligible community represented by a CQE

There are 21 Area 2C communities eligible under Amendment 66, five of which have approved CQEs to date. There are 14 Area 3A communities eligible under Amendment 66, four of which have approved CQEs to date. Referring to Table 29 and Table 30, the minimum and maximum number of Area 2C communities that could be eligible for receiving halibut charter permits under the options is 13 and 19, respectively. The minimum and maximum number of Area 3A communities that could be eligible under the options is 10 and 14, respectively. **Table 33** below shows the range of potential new permits that could be created and issued to CQEs under the respective use cap options, assuming that all eligible communities would create a CQE and request the maximum number of permits allowed. The options the Council has recommended as its preferred alternative are noted.

**Table 33 Maximum number of new halibut charter permits that could be requested by CQEs under the options in Issue 12**

<b>AREA 2C</b>			
Use cap on requested permits (# permits per community)	Minimum estimate = 13 communities	Maximum estimate = 19 communities	Council PA = 18 communities
3 permits	39	57	54
4 permits (PA)	52	76	<b>72</b>
5 permits	65	95	90
7 permits	91	133	126
<b>AREA 3A</b>			
Use cap on requested permits (# permits per community)	Minimum estimate = 10 communities	Maximum estimate = 14 communities	Council PA = 14 communities
4 permits	40	56	56
5 permits	50	70	70
7 permits (PA)	70	98	<b>98</b>
10 permits	100	140	140
15 permits	150	210	210

PA = Council's preferred alternative, March 2007. Under the PA, the number of eligible communities in each area is based on each community meeting the criteria of  $\leq 10$  active businesses, with active defined as  $\geq 5$  trips.

The use cap on the number of halibut charter permits that each CQE can request is intended to limit the number of newly created halibut charter permits in excess of the pool of permits issued to individual business owners using the qualification period. As the use cap options are currently structured, recall that the maximum number of new permits that could be created for CQEs representing eligible Area 2C and Area 3A communities is 39 - 133 and 40 - 210, respectively. The Council's preferred alternative would establish a use cap of 4 requested permits per eligible Area 2C community and 7 requested permits per eligible Area 3A community.

The halibut charter harvest has exhibited steady growth in the past several years in Areas 2C and 3A, and the moratorium program is intended, in substantial part, to limit effort in the halibut charter fishery as the first step to a long-term management solution. The primary long-term solutions being discussed are a limited entry program with client day endorsements or a quota share program based on past participation in the fishery. The Council selected a control date of December 9, 2005, to implement a moratorium on entry into the charter sector, as the problem statement notes, "to address the potential against the rush of new entrants into the guided sport fishery..." The moratorium program is thus expected to minimize the potential for speculative investment and participation in the charter fishery during the interim period in which a quota share program or other solution is being developed. The National Research Council found that early adoption and adherence to control dates and moratoria on new entry, licenses, and effort greatly reduces the incentive for speculative entry.<sup>114</sup>

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

<sup>114</sup>Sharing the Fish, National Research Council, 1999, p. 199.

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

Finally, recall that each eligible community must form a CQE in order to participate in the program. Under the *existing* number of eligible CQEs<sup>115</sup> and the range of options for use caps, a maximum of 27 to 63 permits could be issued in Area 2C, and between 32 and 120 permits in Area 3A. In addition, it is more likely that those communities with the support services and transportation network available to support halibut charter operations (e.g., regular air service, ferry access, cruise ships, lodges, harbors, etc) would take advantage of the permit opportunity. Varying levels of support services are in place in the communities with existing CQEs, but most have regular air service with daily flights, bed-and-breakfasts or lodges, fish cutting, cleaning, and sealing services, cultural attractions, and residents with USCG licenses and vessels.

Absent analysis to determine the ‘optimum’ or ‘preferred’ number of charter halibut limited entry permits issued in each area, it is a policy decision by the Council to determine the appropriate number of permits created for use by CQEs, in order to balance the dual goals of limiting further entry in the halibut charter sector and reducing an economic barrier to future access for small, rural communities.

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

In addition, the existing charter sector could also be affected by an influx of new or expanded charter operations through CQE permits, depending upon the level of CQE participation. As the CQE is required to use the permit in its member community, charter operations in other communities may not be substantially affected, even with the overall increase in competition. However, there may be some negative effects on existing charter operators in the Amendment 66 communities, as they realize increased competition for clients from new charter operations within their community. In part, however, the eligibility criteria are intended to exclude Amendment 66 communities whose charter halibut market is already relatively developed or saturated. In addition, existing charter operators in communities with the least developed industries may benefit from additional operators in the community, as they potentially strengthen the overall market for charter operations (e.g., via increased marketing, back-up charter services, increased incentive to develop support services, etc.).

### Overall use cap

While evaluating the effects of the proposed limit on the number of newly created permits held by CQEs, it is important to discuss, in tandem, the proposed overall cap on the number of permits that a CQE could hold and use in total (whether requested or purchased permits). Note that the overall use cap applies to all

<sup>115</sup>As of January 2008, there were 9 approved CQEs in Area 2C and 8 in Area 3A.

35 Amendment 66 communities; it is not limited to the subset of communities that qualify to receive requested permits. Thus, if all 35 communities eligible *under Amendment 66* formed CQEs, each would be subject to the same overall use cap, even if they are not all eligible to receive requested permits at no cost. All permits held by CQEs, whether purchased or received from NMFS at no cost, would be subject to the overall use cap.

The intent of an overall use cap is primarily to limit the amount of consolidation that can occur in the number of permit holders over time. Under Issue 12, two options were proposed for calculating the overall use caps applicable to CQEs in Area 2C and 3A. **Option 1** would equate the overall use cap to 1, 3, or 5 times those selected for every other permit holder (with the exception of grandfathered permit holders) under Issue 11. (Under Issue 11, the use cap options are: 1, 5, or 10 permits per entity.) **Option 2** would equate the overall use cap to 2 times the cap selected for the CQE requested permit use cap in each area. As discussed in the previous section, the CQE requested permit use cap options are 3, 4, 5, or 7 for Area 2C and 4, 5, 7, 10, or 15 for Area 3A. These two options result in 11 unique options for overall use caps for eligible CQEs in Area 2C and 11 unique options for eligible CQEs in Area 3A. However, note that the options allow selection of an overall use cap at any point within the range analyzed (i.e., 1 – 50 permits per community).

The entire suite of options, including the Council's preferred alternative (Option 2), is noted below. Combined with the preferred use cap on requested permits, Option 2 results in an overall use cap of 8 permits for Area 2C CQEs and 14 permits for Area 3A CQEs. This option is structured such that a community would be allowed to purchase a number of permits equal to those that it can request from NMFS.

**Option 1:**

1x the general use cap = **1, 5, or 10** permits per community represented by a CQE

3x the general use cap = **3, 15, or 30** permits per community represented by a CQE

5x the general use cap = **5, 25, or 50** permits per community represented by a CQE

**Option 2 (PA)\*:**

Area 2C: 2x the CQE permit use cap = **6, 8\*, 10, or 14** permits per community represented by a CQE

Area 3A: 2x the CQE permit use cap = **8, 10, 14\*, 20, or 30** permits per community represented by a CQE

**PA\* = Council's preferred alternative, March 2007.**

Note also that the Council motion states that different overall use caps can be selected for CQEs representing communities in Area 2C, versus Area 3A. This provision was included to recognize that the Council wanted to consider a lower limit on the number of permits that may be held by CQEs in Area 2C than Area 3A, given that there are more potentially eligible communities in Area 2C than in Area 3A.

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

Recall that under the general program, the business owner will receive the charter permit, based on charter activity by a vessel(s) during the qualification period. In the proposed program, it is intended that

a business would need a charter permit for each vessel it operates for halibut charters. Thus, if a business intends to operate a fleet of three vessels simultaneously, the business owner would need three permits. The same permit requirement would apply to any business, including permits being used by CQEs. Thus, if a CQE is limited to a total of 4 permits per represented community, those 4 permits could support operation of up to 4 vessels at any one time. The way in which the permits would be used would be at the discretion of the CQE; all 4 permits could be used to support one lodge business in the community, or each of the 4 permits could be used for 4 different start-up charter operations operating one vessel each.

Table 34 shows the overall use cap options that could be applied to CQEs and the resulting maximum number of permits that could be held in total by CQEs in Area 2C and 3A (whether purchased from the existing pool of permits or new permits issued by NMFS). The Council's preferred alternative is noted in the table in bold. Recall that while the tables are based on the maximum number of eligible communities, each community would also need to form an approved CQE in order to be subject to these higher caps. Currently, of the **35** Amendment 66 communities, **17** are represented by CQEs in Area 2C and 3A.

**Table 34 Maximum number of charter halibut permits that could be held by CQEs, whether purchased or requested, under Issue 12**

Overall use cap option (# permits per community)	Area 2C = 21 communities	Area 3A = 14 communities	Total = 35 communities
1 permit	21	14	35
3 permits	63	42	105
5 permits	105	70	175
6 permits	126	84	210
8 permits	<b>168*</b>	112	280
10 permits	210	140	350
14 permits	294	<b>196*</b>	490
15 permits	315	210	525
20 permits	420	280	700
25 permits	525	350	875
30 permits	630	420	1050
50 permits	1050	700	1750

**\*Denotes the Council's preferred alternative from March 2007.**

The policy decision for the Council is thus to determine the appropriate maximum number of permits a CQE is allowed to hold and use, in order to balance the conflicting goals of: (1) limiting consolidation of permits; (2) providing for meaningful opportunities for CQEs to support a rural community's development of the halibut charter industry; and (3) preventing continued new entry into the halibut charter industry in Areas 2C and 3A.

Recall that this overall use cap includes any permits that the CQE purchases on the open market. If the overall use cap is set higher than the cap on requested permits, CQEs could purchase a number of permits over and above the number of permits that they request from NMFS. As CQEs would be purchasing permits from the existing pool of initial permits issued, a possible effect is that some redistribution of permits could occur from ports with the highest historical charter activity (Sitka, Juneau, Homer, Seward,



Ninilchik) to the more rural communities represented by CQEs. Recognizing that several of the CQE communities conduct (or would likely conduct) charter operations in the same or nearby waters as the larger ports, a redistribution of charter permits does not necessarily mean that halibut charter fishing effort would also be redistributed. However, it is possible that some geographic redistribution of both permit holders and halibut charter fishing effort could occur in this case. The level of redistribution will depend upon several factors, including the use caps established for CQEs; the number of eligible communities that form CQEs in order to participate; client demand for halibut charter operations in rural areas not connected to the road system; and the financial ability of CQEs to purchase halibut charter permits. It is not known to what extent these factors would be realized. Recall that only one of the nine existing CQEs in Area 2C and Area 3A has purchased halibut or sablefish IFQ to date.

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

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

- The permit is designated for the area in which the community represented by the CQE is located
- The permit is endorsed for 6 clients fishing halibut
- The permit cannot be sold (i.e., permanently 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 (each trip must originate or terminate in the CQE community)

**The first requirement establishes that the permit issued to a CQE is designated for the area (Area 2C or Area 3A) in which the community represented by the CQE is located.** Note that the overall moratorium program only applies to Areas 2C and 3A, thus, permits would only be designated for these areas. This provision has not appeared to be controversial to date, and is consistent with the intent that the CQE use the permit in the community that it represents. However, staff was asked to provide information on whether there are any communities that are located close to the boundary of the two IPHC areas for which permits will be designated.

Refer to Table 24 for a short description of the location of each community, and Figure 10 and Figure 11 for maps. Of the potentially eligible communities in Area 2C, two communities on the northwest coast of Chichagof Island appear to be located near the boundary of IPHC Areas 2C and 3A (Pelican and Elfin Cove) and are likely to be able to charter for halibut in either area. If these communities were determined eligible under Issue 12 and formed the requisite CQE, the Council could consider allowing the CQE to choose the area for which its permit(s) are designated. Assuming multiple permits can be requested by each CQE, the Council would also need to clarify whether the CQE would have to select the same area for all permits it requests.

The practical effect of this consideration would be that two (or more) Area 2C communities, if determined eligible, would be able to instead receive permits designated for Area 3A. Because the halibut charter effort in Area 2C has grown at faster rate than that in Area 3A, and because the guided sport sector harvest has exceeded the Area 2C GHL substantially more so than in Area 3A in recent years,<sup>116</sup> issuing a small portion of the 'new' CQE halibut charter permits to Area 3A that would otherwise be issued to Area 2C, is a relatively insignificant issue. However, Elfin Cove is not eligible under the

<sup>116</sup>ADF&G, December 2006. ADF&G estimated that in 2006, the Area 2C and Area 3A GHLs were exceeded by 42% and 9%, respectively. This projection was based on traditional method based on linear trends in Statewide Harvest Survey estimates.

Council's preferred alternative or almost any option under consideration, and anecdotal evidence from Pelican residents conveyed that current charter operations operating out of Pelican operate in Area 2C. Thus, it does not appear necessary to allow the CQE of any community to choose the area for which its permit(s) are designated.

Finally, as discussed in the background section, Akhiok is located at the southern end of Kodiak Island in Alitak Bay. Akhiok was originally reported in the analysis and final Council motion for GOA Amendment 66 as located in Area 3A, however, IPHC staff has confirmed that Akhiok (and Alitak Bay) is actually located in Area 3B.<sup>117</sup> Akhiok is on the border of Area 3A and 3B, and the vast majority of Kodiak Island is located in Area 3A—but the nature of the IPHC boundary is such that it follows the part of the southern Kodiak coastline (see Figure 11).

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

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

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

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

<sup>117</sup>Tom Kong, personal communication, November 15, 2006. According to the regulations, the 3A/3B border is defined as: "...a line extending from the most northerly point on Cape Alek (57°41'15" N. latitude, 155°35'00" W. longitude) to Cape Ikolik (57°17'17" N. latitude, 154°47'18" W. longitude), then along the Kodiak Island coastline to Cape Trinity (56°44'50" N. latitude, 154°08'44" W. longitude), then 140° true."

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

The intent of the above requirement is thus to ensure that the community is the beneficiary of the permit(s) over the long-term. Note also that similar to the permit holders in the general program, there is nothing in this program that requires the CQE to hire a resident of the community to conduct the charter operation, or own a charter vessel. At the February meeting, however, the Council added an explicit requirement that the requested CQE permit must be used in the community represented by the CQE. The following section discusses these issues in brief.

As discussed previously, the intent of the community options is to benefit communities by encouraging or allowing new businesses to operate out of small rural communities in Area 2C and 3A that have under-developed halibut charter industries, regardless of whether the charter operators are residents of these communities. Given the objective above, the Council clarified that the intended beneficiary of the community provisions (i.e., holder of the charter halibut permit) is the non-profit entity (CQE) chosen by the community to represent it. This decision is fundamental to the development and implementation of Issue 12. In effect, the CQE would be issued the permit and would designate a skipper with a USCG license to take clients halibut charter fishing, similar to any other business. In this case, whereby the CQE is the intended beneficiary, there is no issue regarding the delegation of Secretarial authority to make allocations.

In order to fulfill the program's intent, the Council thus added a requirement that the requested CQE permit be used by a business operating in or out of the represented community's port. The motion states that this means that the charter trip must originate or terminate in the CQE community. The purpose of this requirement is to prevent the possibility that the CQE permit could be used to support additional businesses operating out of the most commonly used ports of landing, as opposed to the rural communities for which it was intended. Absent this provision, Issue 12 could result in increasing growth in the industry in the relatively few communities whose businesses will receive the majority of limited entry permits allocated under the general moratorium program.

Absent this requirement, use of the CQE permit could still generate either revenue for the CQE, employment for residents, or both. If the purpose is to provide a net benefit to the community, then it would appear that this purpose is accomplished. However, the primary purpose of this program appears to be more specific—to mitigate the economic cost of the proposed charter permit on small, rural, communities with under-developed charter industries, in order to provide for charter business opportunities in these communities. Thus, using the permit outside of the represented community does not appear to directly meet this purpose. A discussion regarding how this requirement is intended to be implemented and enforced by NMFS is provided in Section 2.6.

Anecdotal evidence suggests that the communities which have already established CQEs in Area 2C or 3A are interested in using the permits to support businesses either physically located in, or operating out of, the represented eligible community. An informal survey of the existing CQEs provided information on the ways that the CQEs would anticipate using the permits should this provision be selected at final

action.<sup>118</sup> Several CQE representatives listed small, start-up lodges that would need the permits in order to operate, as well as individual residents, primarily young people, in the community that are getting started in the halibut charter business that would not otherwise receive a permit under the general program. In addition, some communities currently have one or two lodges, which typically hire community residents to captain their charter vessels. These individual captains also retain a few to several of their own charter clients that they host annually, outside of their work for the lodges. For some individuals, these clients comprise the client base from which they are attempting to grow to establish their own charter business in the future. Some individuals may expand to make charter fishing their primary income, while many permit recipients will likely use the charter permits as a means of supplemental income to commercial fishing or other employment. Thus, there are several different ways in which the CQEs would anticipate using the charter permits.

Even if not required, each respondent thought that its CQE would use the permit by designating a charter operator with a vessel that operates out of its community and is a permanent resident of its community, primarily because there is sufficient need, interest, and capability within the community. Because of community dynamics, identity, and the demand for employment opportunities, it is also somewhat unlikely that a non-resident would be allowed to use a CQE's permit. Most respondents anticipate incorporating the opportunity into their overall community economic development plan, as one component of a larger plan to either re-establish or maintain a fisheries-based economic structure. While the opportunity could support charter businesses and individual operators and deckhands in the community, it would also support other local businesses such as local fish packing and processing businesses, artists, shop owners, restaurants, bed and breakfasts, etc.

Still other communities, Pelican for example, contend that outside businesses (from Sitka, Juneau, Elfin Cove) with substantial financing are increasingly basing their operations out of the Pelican harbor, and displacing year-round Pelican residents from an opportunity to partake in the halibut charter industry. The CQE in Pelican would anticipate allowing year-round residents to use the charter permits held by the CQE, likely to generate a livelihood that supplements their commercial fishing and subsistence lifestyle.

**Finally, in February 2007, the Council also added a requirement that the CQE must identify the recipient of the requested permit, prior to issuance of the permit by NMFS.** This requirement is intended to force the CQE to undertake the process of determining how the permit will be used and solicit requests from specific businesses, prior to requesting the permit from NMFS. **Note that this requirement is only intended to apply to permits that are initially issued to the CQE from NMFS at no cost (Issue 12); they do not apply to permits purchased by a CQE.** Purchased permits would be treated similarly to permits held by any other business.

### Leasing of permits

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

<sup>118</sup>The seven existing CQEs in Area 2C and 3A were contacted by the analyst, informed of the proposed action, and asked a few questions related to anticipated use of the charter permits. All seven CQE representatives responded. As no formal survey was conducted, all information should be considered anecdotal.

arrangement may not be possible, due to uncertainty as to whether a captain is leasing the permit on an annual basis or working as an employee of the business owner.

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

### **2.5.13 Impacts under Alternative 2**

Implementing a moratorium is expected to define the number of vessels that may operate at one time in the Area 2C and 3A halibut charter fisheries. While the program is not expected to effectively limit the harvest of charter clients over the next several years, the activity associated with the permits should provide a foundation for future limited access programs. Endorsements or other fishing privileges could be added to the permits that would limit future expansion of the charter sector. These endorsements/privileges could be added to either transferable or non-transferable permits. For example, some type of endorsement could be added to the permit that would limit the total number of trips a vessel could take or the number of clients they could carry in a specified interval of time (e.g., per year).

Using the permit as a base for future management measures is not required by State or Federal regulation or by requirements of the MSMFCA. However, starting the rationalization process with a moratorium is the most politically palatable. That is evident from the process the Council is implementing and the discussion of individuals at the Council meetings. It has been indicated that moving directly from the current regulatory structure to a program that provides some type of individual fishing privilege would be difficult.

The net National benefit and regional impacts that result from a moratorium are expected to differ depending on the program's structure. A moratorium that constrains the availability of charter trips, in the relatively near future, will reduce the losses derived from the commercial sector harvests and consumers, but will limit increases in benefits derived by the charter operators and clients. A moratorium that is ineffective in constraining future growth in charter harvests will result in net National benefits that are similar to those discussed under the status quo section. Regional economic impacts could be altered, depending on who holds the permits, where expenditures are made, and where the permits are fished.

Alternatives included in the proposed moratorium that have the greatest impact on net benefit changes and regional impacts are those options that determine:

- Who qualifies for a permit
- How many permits are issued
- Constraints placed on the number of clients that a vessel may carry
- Transferability of the permits that are issued

Increasing the number of permits that are issued, by selecting a lower number of trips for qualification, will result in more charter capacity under the moratorium. The preferred alternative identifies the

maximum number of clients that were on any trip during the initial qualification period as the number of clients that are allowed to harvest halibut on a trip. Because the maximum number of clients on a trip was used to determine the endorsement for the number of clients that may be carried, it will increase the client capacity of the fleet relative to the average number of clients that were carried on trips (see Table 15). The transferability of permits will also affect the usage of permits and ultimately the amount of halibut that will be harvested by the clients of charter vessels. Transferability is important because it redistributes an initial allocation that gives permits to persons that may not use them as fully as persons that acquire the permits through transfer.

**To compare the net benefit and regional impacts of two example moratorium programs (M-1 and M-2) under the proposed options, the analysts will assume the following. Note that M-2 is structured to represent the Council's preferred alternative selected March 2007.**

Both moratorium programs:

- would issue permits to U.S. citizens or to U.S. businesses with at least 75 percent U.S. ownership
- permits would be issued to ADF&G licensed fishing guide business owner of record
- permits would be designated for use in either IPHC Area 2C or 3A
- permits would be allowed to be stacked up to the use cap (subject to other applicable law)
- leasing of permits would be prohibited, (recognizing enforcing the provision may not be possible).

Additional provisions under the first moratorium program (M-1) would include:

- allowing transfers of permits
- endorsing permits for the highest number of clients on any trip, but not fewer than 4
- qualification for a permit would be based on Option 10.2 and require 20-trips during 2004 or 2005, and the year prior to implementation.
- no use caps would be imposed
- no permit allocations to CQE communities that do not meet the initial allocation requirements.

Additional provisions under the second moratorium program (M-2) would include:

- allowing transfers of permits that were earned by vessels that qualified at trip levels of at least 15 trips
- endorsing permits for the highest number of clients on any trip, but not fewer than 4
- qualification for a permit would be based on Option 10.1 and require 5-trips during 2004 or 2005, and the year prior to implementation. A minimum of 15 trips in both qualifying period by a vessel would be required to earn a transferable permit.
- use caps would be set at 5 permits
- allocations to a CQE, representing a community in which 10 or fewer active<sup>119</sup> charter businesses terminated trips in 2004 and 2005, of 5 requested permits per eligible community in Area 2C and 7 requested permits per eligible community in Area 3A. Overall caps on the number of permits held by CQEs (whether purchased or requested) would be 10 for Area 2C communities and 14 for Area 3A.

### *Impacts of the first moratorium structure (M-1)*

Under M-1, a maximum of 619 permits would be issued to a maximum of 326 individuals or businesses (see Table 16), in Area 2C. That represents 35 fewer permits being issued in 2C, than vessels that fished in 2005. Because a permit may be moved on multiple vessels and businesses did not necessarily use the

<sup>119</sup>An active business is defined as it is in the general program: a business that had at least 10 bottomfish trips per qualifying year.

same vessel all year, the comparison does not necessarily mean the fishing effort is more constrained under the moratorium. In Area 3A, a maximum of 561 permits would be issued to 424 individuals/businesses. That represents 6 fewer permits than charter vessels that fished in 2005. While the number of vessels and businesses are only slightly fewer than fished in 2005, sufficient capacity would still exist to carry from 2 to 3.5 times<sup>120</sup> the number of clients that fished in Area 2C, during 2004 (see Table 20). In Area 3A, the client capacity associated with the permits appears to allow about 1.5 to 3 times as many clients to fish as 2004. These capacity estimates take into account the number of clients endorsed on the permit.

Assuming a constant halibut catch rate, retention rate, and a constant average halibut size under any of the alternatives, an increase in the number of clients carried would lead to a proportional increase in the amount of halibut harvested. The actual relationship between increased charter activity and average catches per client may be higher or lower, and will depend in part on the areas fished, stock abundance, and the skill of the guide and anglers. Based on simplifying assumptions and the upper-bound potential increases in number of clients, the amount of halibut removals by the charter sector could approximately double in Areas 2C and 3A. Based on the various levels of projected growth in Figure 8, it could take more than 10 years for this to occur in both Areas 2C and 3A. The capacity limit would be reached sooner in 2C than 3A, because the 2C charter catches are increasing at a faster rate than 3A, *ceteris paribus*.

Until the charter sector is constrained by the moratorium, impacts on the sectors described under the status quo would be expected to continue. If the moratorium becomes a constraint, trip prices would increase. However, the increased rents would likely motivate charter operators to increase effort by taking more than one trip per day or finding other creative ways to increase effort. This increased competition for trips could, over time, force trip prices back to roughly their original levels<sup>121</sup>. Criddle (2006) states that it is likely that charter operators will find ways to increase total effort, as has been shown over three decades of world-wide experience. As the charter operators increase effort, the economic rents (producer surplus) to the charter sector will be dissipated under a restricted access management program. Compensating variation will continue to increase as more charter clients take fishing trips. Producer surplus and post-harvest surplus in the commercial sector will continue to decline as halibut are redirected from the commercial sector to the charter sector.

Permits under M-1 would be fully transferable to any U.S. citizen, or to any U.S. business that meets the 75 percent U.S. ownership requirement. Unfettered transferability of the permits means they are more likely to end up under the control of a person/firm that would use the permit to a greater extent. Increased usage of the permits means that more client trips would be taken during the season (and, likely, more halibut removed).

The permits generated under Option 10.2 are reported in Appendix 2 by the communities where the charter reported having made at least one landing during the qualifying period. Communities with the most charter activity relative to their commercial halibut activity will generate larger regional economic impacts. Redistribution of charter activity (e.g., permits, effort) will create winners and losers among the communities that are dependent on the halibut sectors for jobs and income. The initial allocation of permits will generate an asset with value for recipients. Persons receiving these permits and the community in which they operate and/or reside will also benefit. If the permit is sold to someone outside

<sup>120</sup> Recall these amounts represent the maximum number of clients that could be carried in a year if every permitted vessel operated one trip per day at full capacity for 55 to 100 days per year.

<sup>121</sup> Criddle et al (2003) found that increasing the price of a charter trip decreased the number of angler-days fished. Their study showed that \$5, \$10, \$15, \$25, or \$50 increase in trip costs decreased angler-days fished by 1.8, 3.6, 5.6, 9.7 and 21.3 percent, respectively.

the community, the individual that owned the permit would generate income from the sale and some of the income may spent with in the community, but the long-term associated benefits from tourist activity and business expenditures would leave the community. It is not possible to predict where the permits will ultimately be used, but movement of permits after the initial allocation is expected as they are purchased by persons that most value them.

No additional permits would be created under M-1 for possible distribution to small, rural communities originally identified under Amendment 66. The Council has expressed concern that implementation of the moratorium structure under M-1 would create an economic barrier for CQEs and rural communities to participate in the further growth of the charter industry.

### *Impacts of the second moratorium structure (M-2)*

Note that M-2 is structured similarly to the Council's preferred alternative, selected in March 2007. Under M-2, a maximum of 689 permits would be issued to a maximum of 380 persons/businesses (see Table 16), in Area 2C. That represents 35 more permits being issued in 2C, than vessels that fished in 2005. In Area 3A, a maximum of 611 permits would be issued to 471 persons/businesses. That represents 34 more permits than charter vessels that fished in 2005. While the number of vessels is only slightly greater than fished in 2005, it appears that sufficient capacity would still exist to carry from 3.0 to 5.0 times<sup>122</sup> the number of clients that fished halibut from a chartered vessel in Area 2C, during 2004 (see Table 20). In Area 3A, the client capacity associated with the permits appears to allow about 2.0 to 3.5 times as many clients to charter fish halibut as 2004. These capacity estimates take into account the number of clients endorsed on the permit, but are highly dependent on the assumption regarding the number of days fished.

Based on the assumptions about fleet capacity, the fleet would take fewer years to reach capacity under M-2, than they would under M-1. Under M-1 it was assumed that capacity would not be reached for over 10 years (before the fleet increases the number of trips per day, or other effort measures not controlled under this amendment), based on historic growth trends in number of client trips. Assuming that the charter fleet will find ways to expand effort, full capacity may not be reached for a much longer time.

M-2 would also create a class of permits that are non-transferable. Based on requiring a vessel take at least 15 trips under Option 10.1 (5 trips) to earn a transferable endorsement, 200 (29 percent) of the 2C permits would be non-transferable. In 3A, 127 (21 percent) of the permits would be non-transferable. Because some of the non-transferable permits would be issued to the 80 persons that receive both types of permits, they would still have the opportunity to sell their transferable permit and more fully utilize their non-transferable permit. They could also hire a captain to fish their non-transferable permit, if they did not want to take clients fishing themselves. They would be required to maintain their guide business license and obtain a logbook for the vessel to use the permit

Placing a cap on the maximum number of halibut clients that may be carried on a trip has little overall impact on the total number of clients that can be carried in a year by the vessel. The cap will reduce the maximum number of clients that can be carried by the fleet in a day, compared to the current U.S. Coast Guard limits and the 6-line limit in IPHC Area 2C, by about 1 percent in Area 2C and 3.5 to 6.5 percent in 3A. However, by basing the cap on the maximum number of clients on the charter vessel in 2004 or 2005, instead of the average number of clients, it increases the total number of clients that may fish during one day by about 600 in 2C and 900 in 3A, *ceteris paribus*.

<sup>122</sup> Recall these amounts represent the maximum number of clients that could be carried in a year if every permitted vessel operated one trip per day at full capacity for 55 to 100 days per year.



The number of permits issued means that this option provides greater opportunity to expand charter harvests. The increased catch will increase compensating variation for charter clients. Charter operators are expected to continue to earn normal profits (no producer surplus). Commercial IFQ fishermen can expect to realize larger decreases in producer surplus and lower QS values in the longer term compared to M-1. Consumers of commercially catch halibut would realize decreases in consumer surplus (lower overall post-harvest surplus), unless alternative sources of supply and an equivalent (or lower cost) were forthcoming (e.g., Canada, IPHC Areas off Alaska besides 2C and 3A).

Regional impacts of the two moratorium alternatives will differ depending on the resulting charter activity in those communities. Table 35 shows a comparison of the number of permits that would be allocated that were historically used to terminate at least one trip in the community. The two columns on the right side of the table shows how many fewer permits would have been issued and the number of businesses receiving those permits if M-1 were selected instead of M-2. Historically some vessels have terminated trips in more than one community<sup>123</sup>. Thus, the sum of the permits in a community does not equal the projected maximum number of permits to be issued.

<sup>123</sup> ADF&G Saltwater logbook data indicate that 41 vessels did not report community information in 2004 or 2005. A total of 376 logbooks reported activity in multiple communities in those years. One vessel reported activity in 7 communities.

**Table 35 Qualifying permits and businesses by moratorium option**

Community	Am. 66 Community	Permits		Businesses		M-1 minus M-2	
		M-1	M-2	M-1	M-2	Permits	Businesses
Afognak		1	1	1	1	0	0
Amook Island		2	2	2	2	0	0
Amook Pass		1	1	1	1	0	0
Anchor Point		50	58	48	55	-8	-7
Anchor River		1	1	1	1	0	0
Angoon	Yes	11	13	7	9	-2	-2
Anton Larsen Bay		3	6	3	5	-3	-2
Auke Bay		15	35	12	29	-20	-17
Bar Harbor		1	1	1	1	0	0
Bartlett Cove		4	5	4	5	-1	-1
Bay Of Pillars		3	3	2	2	0	0
Boardwalk		2	3	2	2	-1	0
Camp Island		1	1	1	1	0	0
Cannery Cove		5	5	2	2	0	0
Cape Chacon		0	3	0	3	-3	-3
Cape Ninilchik		0	2	0	1	-2	-1
Cedars Lodge		5	8	5	7	-3	-2
Chenega	Yes	0	1	0	1	-1	-1
Clover Bay		2	2	1	1	0	0
Clover Pass		9	14	9	13	-5	-4
Coffman Cove	Yes	5	7	5	6	-2	-1
Comfort Cove		0		0	0	0	0
Cordova		3	7	3	6	-4	-3
Craig	Yes	54	72	26	34	-18	-8
Cranberry Creek		1	1	1	1	0	0
Crescent Harbor		1	4	1	4	-3	-3
Dall Island		1	1	1	1	0	0
Deep Creek		87	107	71	90	-20	-19
Dog Bay Harbor		0	1	0	1	-1	-1
Douglas		0		0	0	0	0
Eagle Creek Lodge		1	1	1	1	0	0
Eagle Harbor		0	0	0	0	0	0
El Capitan Lodge		6	7	2	2	-1	0
Elfin Cove	Yes	27	31	15	18	-4	-3
Ellamar		1	1	1	1	0	0
Excursion Inlet		0	2	0	2	-2	-2
False Island		5	5	3	3	0	0
Fishermans Bend		2	3	2	3	-1	-1
Funter Bay		1	2	1	2	-1	-1
Glacier Bay		1	1	1	1	0	0
Gold Coast Lodge		1	1	1	1	0	0
Gull Cove		1	2	1	2	-1	-1
Gustavus	Yes	20	24	17	21	-4	-4
Haines		2	4	2	4	-2	-2
Halibut Cove	Yes	0	1	0	1	-1	-1
Hallo Bay		0	1	0	1	-1	-1
Hanus Bay		0	1	0	1	-1	-1
Happy Valley		8	8	2	2	0	0
Hawk Inlet		1	1	1	1	0	0

Community	Am. 66 Community	Permits		Businesses		M-1 minus M-2	
		M-1	M-2	M-1	M-2	Permits	Businesses
Hidden Basin		1	1	1	1	0	0
Hollis	Yes	0	0	0	0	0	0
Homer		174	196	154	173	-22	-19
Hood Bay		0	1	0	1	-1	-1
Hoonah	Yes	5	12	5	11	-7	-6
Iliamna Bay		0	1	0	1	-1	-1
Iron Creek		1	2	1	1	-1	0
Juneau		15	30	13	22	-15	-9
Kake	Yes	0	1	0	1	-1	-1
Kalinin Bay		0	1	0	1	-1	-1
Kasitsna Bay		1	1	1	1	0	0
Kelp Bay		2	3	1	2	-1	-1
Kenai		0	0	0	0	0	0
Ketchikan		31	53	21	41	-22	-20
Killisnoo		4	5	2	3	-1	-1
Kiluda Bay		1	1	1	1	0	0
Klawock	Yes	13	19	9	13	-6	-4
Knudson Cove		5	16	5	12	-11	-7
Kodiak		25	40	25	40	-15	-15
Kukak Bay		2	3	2	3	-1	-1
Kupreanof Island		0	0	0	0	0	0
Larsen Bay	Yes	8	15	7	8	-7	-1
Little Tutka Bay		1	1	1	1	0	0
Log Cabin Resort		1	1	1	1	0	0
Millers Landing		2	2	1	1	0	0
Morne Island		2	3	2	2	-1	0
Narrows Inn		3	3	3	3	0	0
Naukati		2	3	2	3	-1	-1
Ninilchik		13	16	13	16	-3	-3
Old Harbor	Yes	7	10	5	6	-3	-1
Orr Island		1	1	1	1	0	0
Ouzinkie	Yes	0	1	0	1	-1	-1
Pasagshak Bay		1	1	1	1	0	0
Pauls Bay		0	0	0	0	0	0
Pelican	Yes	4	8	4	7	-4	-3
Petersburg		21	35	21	33	-14	-12
Point Baker	Yes	2	3	1	2	-1	-1
Poohs Landing		1	1	1	1	0	0
Port Alexander	Yes	5	6	5	5	-1	0
Port Althorp		0		0	0	0	0
Port Bainbridge		0		0	0	0	0
Port Chatham		0	0	0	0	0	0
Port Lions	Yes	6	13	6	13	-7	-7
Port Protection	Yes	1	3	1	3	-2	-2
Port St Nicholas		2	2	1	1	0	0
Port Wakefield		1	4	1	2	-3	-1
Port William		1	1	1	1	0	0
Prince Rupert		0	1	0	1	-1	-1
Pybus Point		4	4	3	3	0	0
Raspberry Island		2	3	2	2	-1	0

Community	Am. 66 Community	Permits		Businesses		M-1 minus M-2	
		M-1	M-2	M-1	M-2	Permits	Businesses
Rocky Pass Resort		1	2	1	2	-1	-1
Rocky Point		1	1	1	1	0	0
S Kaigani Bay		5	5	2	2	0	0
Sadie Cove		1	1	1	1	0	0
Saginaw Bay		1	1	1	1	0	0
Salmon Falls		7	17	1	2	-10	-1
Salmon Landing		7	7	4	4	0	0
Saltery Cove		1	1	1	1	0	0
Sarkar Cove		1	1	1	1	0	0
Sea Otter Sound		1	1	1	1	0	0
Seal Bay (Sc)		3	3	2	2	0	0
Sealing Cove		5	6	4	5	-1	-1
Seldovia	Yes	10	12	10	12	-2	-2
Seward		103	136	83	108	-33	-25
Shelter Island		6	7	3	4	-1	-1
Shuyak Island		1	1	1	1	0	0
Silver King Lodge		6	6	6	6	0	0
Silver Salmon		2	2	2	2	0	0
Sitka		142	187	95	127	-45	-32
Skagway		1	3	1	3	-2	-2
Sportsman Cove		9	12	2	3	-3	-1
Spruce Mill New Flt		3	4	1	1	-1	0
Ssbh		5	5	4	4	0	0
Surestrike		0	0	0	0	0	0
Swanson Harbor		1	1	1	1	0	0
Tenakee	Yes	2	4	2	3	-2	-1
Thomas Basin		2	3	2	3	-1	-1
Thorne Bay	Yes	9	11	6	7	-2	-1
Tokeen		0	1	0	1	-1	-1
Tutka Bay		1	1	1	1	0	0
Ugak Bay		3	6	3	3	-3	0
Uganik Bay		2	4	2	2	-2	0
Uyak Bay		2	3	2	3	-1	-1
Valdez		28	46	26	42	-18	-16
Wakefield		0	1	0	1	-1	-1
Warm Springs Bay		7	10	2	3	-3	-1
Waterfall		24	25	1	1	-1	0
Whale Pass (Pow - Se)	Yes	4	6	3	4	-2	-1
Whale Pass (Sc)		0	1	0	1	-1	-1
Whalers Cove		3	3	2	2	0	0
Whiskey Gulch		2	4	1	2	-2	-1
Whitestone Harbor		1	1	1	1	0	0
Whittier		18	25	18	25	-7	-7
Williamsport		0	1	0	1	-1	-1
Wrangell		3	13	3	12	-10	-9
Yakutat	Yes	12	15	9	11	-3	-2
Yes Bay		6	13	2	2	-7	0
Zachar Bay		2	7	1	3	-5	-2

Source: ADF&amp;G Saltwater Logbook data, 2004 and 2005.

Additional permits could be issued to a CQE in Area 2C or Area 3A if the community it represents had 10 or fewer active charter businesses in 2004 and 2005. An active halibut charter business is defined as a business with at least 10 bottomfish trips in each qualifying year. Those criteria result in 18 eligible communities in Area 2C and 14 in Area 3A. These communities could then form a CQE for approval by NMFS, if they have not already, in order to request a limited number of halibut charter permits at no cost. The eligible 2C communities could request up to 5 permits each, and the 3A communities could request up to 7 permits each. Each Area 2C CQE would be capped at a total of 10 permits (whether purchased or received at no cost)<sup>124</sup>, and each Area 3A CQE would be capped at 14 permits. Increasing the number of permits created under the program will add capacity to charter fleet. That capacity could reduce the halibut available to the commercial sector. Charter operators not involved in this program will face additional competition for clients and the harvest resulting from these additional permits will increase catch that is counted against the GHL. Communities that receive additional permits would have the opportunity to develop or expand a halibut charter industry in their community. These communities often have few economic opportunities for residents and the new jobs created could benefit individual residents and businesses located in these communities. It could also adversely impact existing charter firms, if CQE permits result in dividing up the existing pool of available clients. Income and expenditures flowing to the community could increase disposable income of these CQE charter operators, increase revenue to support industries, and increase the tax base for the community.

### Impacts on other fisheries

One of the concerns managers have expressed relative to the moratorium options are the potential impacts to other, already crowded charter fisheries. A limit on the number of halibut charter vessel permits would leave few fishing alternatives for new entrants, other than salmon sport fish guiding services. Eco-tourism based charters may provide additional non-fishing alternatives for potential halibut charter clients. These non-fishing recreation activities may provide attractive substitutes for persons whose primary purpose is not fishing. For example, cruise ship clients may be willing to take a helicopter tour of a glacier, charter a whale watching cruise, etc., instead of going fishing on a charter vessel, and be content with either experience. Alaska residents that want to obtain halibut for their personal consumption would likely be less able to find a satisfactory substitute for the halibut charter trip.

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

The level of impact on State-managed species would depend on how many potential charter clients decided not to fish at all if they are unable to book a halibut charter, and how many would decide to fish anyway, but for other species. Approximately 80% of all angling effort in Area 2C currently occurs in saltwater. Many charter operators offer multi-species fishing trips, thus giving them clear opportunity to shift their client's fishing effort from halibut to other marine species<sup>125</sup>.

The sportfish fisheries in Area 2C have a specific allocation of king salmon from the Alaska Board of Fish (BOF). ADF&G monitors the sport harvest inseason with a comprehensive creel survey and port

<sup>124</sup> The total number of permits held by the CQE does not include permits held by persons in the community. Only permits held by the CQE are included in the total.

<sup>125</sup> No clients will be allowed to retain halibut unless the charter operator holds a valid permit to operate a charter halibut business.

sampling program. Under the provisions of the King Salmon Management Plan, the sport harvest is reduced when the total harvest is projected to exceed this allocation. If a moratorium caused charter vessels to target king salmon to a higher degree than under current conditions, the king salmon harvest *could* increase and harvest restrictions would need to be imposed on all sport sectors earlier in the summer fishing season.

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

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

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

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

Restrictions in the halibut fishery could also divert effort and harvest toward other groundfish stocks for which there are already conservation concerns. ADF&G and the BOF have expressed conservation concerns for Area 3A rockfish, lingcod, and sharks. The BOF has enacted progressively more restrictive harvest regulations for all of these species during the last ten years, including some of the most restrictive bag limits, seasons, and size limits on the West Coast. Increased guided effort on these stocks would exacerbate concerns for the sustained yield of these stocks.

The majority of salmon harvested by sport anglers in Area 3A are taken in freshwater fisheries. Every major salmon stock in Area 3A is already fully allocated. If charter and lodge businesses turned to

freshwater fishing opportunities in response to the moratorium, the increase in effort and harvest would also elevate existing allocation battles between user groups.

Salmon and many species of bottomfish that are targets of sport fishing, also support varying sizes of commercial fisheries, making broader potential conflicts a real possibility, if sufficient charter effort is redirected to these species.

## **2.6 Implementation issues**

### **2.6.1 Permit eligibility**

As previously noted, to qualify for a moratorium permit, a person<sup>126</sup> must demonstrate a minimum number of bottomfish trips as reported in the ADF&G logbook in 2004 or 2005, and the year prior to implementation. For this reason, NMFS will need access to the person's historical logbook and business information from the qualifying period to determine the number of permits issued and associated client and area endorsements. To qualify for a charter moratorium permit, a person would be required to demonstrate the minimum number of bottomfishing trips required to receive a permit and complete a Federal application package. Associated with the qualification criteria is a requirement that persons record bottomfishing effort in the logbook prior to the year the moratorium program is implemented. However, submitting the logbook the year prior to implementation likely would not allow permits to be issued in time for the implementation year for two reasons: (1) a full season of charter logbook information is required to determine eligibility; and (2) NMFS will need time to process applications and issue permits. For this reason, the effective qualifying year could be either one or two years prior to implementation (e.g., either 2007 or 2008). Whether it is 2007 or 2008 depends upon the starting date of the permit application period published by NMFS, however, NMFS has noted that it is most likely 2007.

Federal access to logbook information is necessary for both administrative and enforcement purposes. Until recently, Alaska statute prevented direct access of ADF&G logbook or ADF&G business license information by NMFS or NOAA Office of Law Enforcement (OLE). In 2007, ADF&G sought and obtained a legislative change to the confidentiality statute that would facilitate Federal access to these sources of information. Without this information, NMFS could not directly access State business and logbook information to determine permit qualification.

Charter logbook information would also be required by the NOAA Office of Administrative Appeals (OAA) to adjudicate "hardship claims" and by NOAA OLE to enforce the program. This means that NOAA OLE would need to be authorized by the State to enforce State recordkeeping and reporting requirements. Without this authorization, NOAA OLE does not have the authority to require charter operators to show their logbook to NOAA OLE enforcement officers on request.

#### **2.6.1.1 Application process**

Persons applying for a charter moratorium permit would be required to provide a complete application to NMFS during a designated application period, which would not be less than 90 days. Notice of the application period would be provided in the Federal Register. During the application period, NMFS would evaluate the applications and compare claims on the application with information provided in the logbook. Applicants with an incomplete application or who have made claims that are inconsistent with the logbook record would be provided an evidentiary period of 60 days. During this evidentiary period,

<sup>126</sup> A "person" as defined at 50 CFR 679.2 means any individual (whether or not a citizen or national of the United States), any corporation, partnership, association, or other entity (whether or not organized, existing under the laws of any state, and any Federal, state, local, or foreign government or entities of any such aforementioned governments).

the applicant may present evidence to NMFS demonstrating that the eligibility criteria are met, including information explaining discrepancies with the official logbook record. Upon expiration of the 60-day evidentiary period, an Initial Administrative Decision (IAD), that either grants or denies the applicant the moratorium permit, would be issued by the NMFS Regional Administrator. If the decision is a denial, the IAD indicates the deficiencies in the application, including any deficiencies with the information in the application or evidence submitted in support of the application, and which claims cannot be approved based on the available information. An applicant may appeal an IAD through the NOAA Office of Administrative Appeals. This appeal process and associated issues are discussed in Section 2.6.2.

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

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

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

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

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

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



The Council's preferred alternative (see the discussion of Alternative 2, Issue 6 in Section 2.6.3) requires that halibut charter permit holders may only use their permit onboard a vessel that is identified on an ADF&G saltwater logbook that is 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. Even then, the logbook associated with the new vessel must be assigned to the permit holder. The permit number must be recorded on the logbook for each trip.

The above approach differs from requiring the authorized vessel to be indicated on the permit. If a vessel linkage existed, it would likely take NMFS several days to change the vessel information on the permit and issue an amended permit. This time delay may prevent charter operators from quickly changing vessels as needed due to breakdown or increased client load. In effect, under the preferred approach, a permit can be quickly transferred between vessels without changing information on the permit, as long as both vessels are identified on separate logbooks, both of which are assigned to the permit holder. This issue is discussed in more detail in Section 2.6.3.

#### **2.6.1.4 Transfers**

The Council's preferred alternative would allow the majority of moratorium permits to be transferable (permanently sold), with the exception of permits earned by vessels that did not qualify at trip levels of at least 15 trips and permits issued to CQEs at no cost, under Issue 12. Thus, there is a subset of permits (estimated at 29% of the permits issued in Area 2C and 21% in Area 3A, notwithstanding permits issued to CQEs) that will be designated as non-transferable. The information in this section applies to those permits that the Council deems **transferable**.

Transferable moratorium permits may be transferred between persons without any linkage to a vessel. Transfers allow a person to obtain a moratorium permit up to the use caps, or, if the person does not own any other permits, obtain a group of grandfathered permits upon the sale of an entire business. In either situation, the transferor and transferee would need to complete a notarized transfer application containing contact and business ownership information, as well as sign an affidavit declaring U.S. citizenship, meet the business ownership requirements, and attest that the information on the application is true, accurate, and complete. A transfer approval (through RAM) would cause issuance of a new permit to the transferee and the transferor would surrender their privilege to use the permit. A database will be used by NMFS to track permit holders and insure permits are not issued to a person in excess of the use caps.

If a person does not hold any other halibut charter limited entry permits, a person may receive more permits than is allowed by the use cap by obtaining a group of grandfathered permits. A group of grandfathered permits is composed of several permits issued as a single package to a business during initial issuance. This group of permits may be transferred to another business, and thus, the new owner could exceed the use cap, only if the permits are sold as a group. If any permits are transferred out of the group, the sold permit would lose its grandfathered status and the holder would be subject to the use cap. The remaining permits that were not sold would retain their grandfathered status.

Grandfathered permits would be electronically cataloged by NMFS using a serial number that is associated with the permit holder information and permits within the group. A business would need to provide NMFS with documentation indicating a change in ownership to receive a group of grandfathered permits. Note that a person cannot hold a permit or permits and purchase a group of grandfathered permits. A person can only purchase a 'bundle' of grandfathered permits if they do not already hold any other halibut charter limited entry permits, and after acquiring the grandfathered 'bundle', may not acquire additional permits, while still in possession of the grandfathered permits.

#### **2.6.2 Appeals**

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

The Council has indicated its preference for the issuance of interim permits to an appellant, for appeals submitted by a fishing guide business owner that have some probable basis for success and legitimate documentation. Under the Administrative Procedure Act, an interim permit is not required for an activity (such as fishing) that was not Federally licensed prior to the implementation of a Federal program. For example, interim permits were required in the groundfish LLP program because, prior to program implementation, a Federal license was required to fish in the Federally managed groundfish fishery. This is not the situation for the halibut charter fishery, as there has never been a requirement for a guide or business to obtain a Federal permit authorizing an individual to charter fish for halibut. Guides and businesses involved in the charter halibut fishery are currently licensed by ADF&G. Prior to 2005, charter fishing businesses and guides were registered by ADF&G and charter vessels were licensed by the State of Alaska Commercial Fisheries Entry Commission. Thus, the Council has a choice on whether to recommend issuance of interim permits in the case that a person appeals under the charter halibut permit program; in this case, the interim permit would allow the appellant to continue halibut charter fishing until the appeal is decided by a Final Agency Action.

The advantage to issuing an interim permit is that the appellant is able to continue fishing during the appeals process. However, past experience with other limited entry programs have demonstrated that some appeals occur to obtain an interim permit, and that these appeals may continue for many years (e.g., some groundfish LLP licenses still have not been resolved). Thus, providing interim permits may increase the number of appeals and associated staff time to adjudicate a larger number of appeals. The disadvantage to not issuing interim permits is that persons with justifiable hardship claims may not be able to operate during the appeals process, potentially resulting in a substantial economic hardship on these persons.

The charter moratorium permit provisions currently include an appeals process for situations involving “unavoidable circumstances” with explicit inclusion of medical emergencies, constructive losses, and military service. Because these hardships are difficult to define and include many different kinds of circumstances, a discussion about the specific types of unavoidable circumstances that may be claimed is provided below.

#### **2.6.2.1 Medical hardships**

An exception could be made for documented medical or psychological conditions that prevented a business owner who would have otherwise met certain qualification criteria from charter fishing or hiring a captain to operate the charter vessel. In this situation, the focus of the medical hardship would be consideration of whether the appellant could have hired an operator to guide halibut charter clients. In some situations, the owner may be incapacitated and unable to make a business decision to hire an operator. For example, a business owner could be in a coma, or so severely constrained by a medical or psychological condition that it is not reasonably possible for him or her to arrange for another person to

operate the charter. The Council recommended using similar language to that provided in the groundfish LLP (see Section 2.6.2.5) to describe this type of medical hardship.

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

### **2.6.2.2 Constructive loss**

The Council also selected as part of its preferred alternative a hardship exemption that includes a “constructive loss.” A similar term, “constructive total loss,” is often used by insurance companies to mean a partial loss of such significance that the cost of restoring damaged property would exceed its value after restoration, or the vessel was lost at sea and was not recoverable. For example, a vessel could be damaged to such an extent that repairing it would cost more than the repaired vessel would be worth.

However, NOAA OAA may also apply the term in such a way that a constructive loss includes “vessel unavailability.” Vessel unavailability is a broader exception than a vessel loss because it includes not only vessel destruction or sinking, but also unavailability due to repairs, maintenance, conversions, or construction. For example, vessel unavailability would include a situation in which a charter operator could not operate during a large portion of the fishing season because of repairs needed to the hull of his vessel. In this case the vessel was repairable, and the operator would need to show intent to complete the repairs in a reasonable amount of time. Regulatory language described in Section 2.6.2.5 could be applied to this version of constructive loss which includes vessel unavailability.

Constructive loss would exclude unavailability that was avoidable. For example, an avoidable situation might include confiscation by the courts, IRS, or law enforcement authorities due to violations of the law, or unavailability resulting from the owner’s poor planning or lack of funds. Implicit in this exception is that the vessel must have been physically incapable of being used by anyone for fishing during the qualifying period.

Information is not available that would allow a quantitative estimate of the number of entities affected by constructive loss under the explanations provided above. However, broadening the type of constructive losses considered by NMFS and OAA would likely result in an increase in the number of entities qualifying for a moratorium permit, compared to a more narrow interpretation.

### **2.6.2.3 Military hardships**

The Council also included a military hardship provision that would apply to individuals who were assigned active military duty during 2004 or 2005. Individuals who met this criterion and also: (1) qualify as an ‘active’ charter business (at least 5 trips) during the year prior to implementation of the moratorium program; and (2) can demonstrate an intent to participate in the charter fishery in Area 2C or 3A prior to the qualifying period, could receive a moratorium permit. The Council’s preferred alternative states that these individuals would receive a permit for one area, and the permit would be endorsed for six clients.

### **2.6.2.4 Other hardships**

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

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

The number of unavoidable circumstance claims is typically linked with the level at which the minimum qualification criteria is set and the scope of unavoidable circumstances allowed by regulation. A more restrictive qualification criterion would increase the number of persons that may appeal because they did not have the necessary qualifying history. Furthermore, more restrictive hardship criteria would result in fewer people that could obtain a permit without the required history. The Council's preferred alternative includes a relatively low qualification threshold. However, because data are not available to describe the type and number of hardship claims that could be made, it is not possible to predict the number of entities that could be impacted by a more restrictive hardship definition.

#### **2.6.2.5 Summary of hardship provisions**

**Under its preferred alternative, the Council indicated its preference for: 1) the issuance of interim permits to an appellant for appeals that have some probable basis for success and legitimate documentation, and 2) using the groundfish LLP hardship regulations as guidance to be applied by NMFS, in the implementation of the halibut charter moratorium program.**

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

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

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

#### **2.6.3 Leasing**

The Council's preferred alternative includes a provision under Issue 6 to prohibit leasing in the moratorium program. Leasing is a nebulous term that describes a multitude of arrangements between two or more persons, but generally infers a temporary transfer of a right to possess or use specific property or a property-like privilege (e.g., fishing permit). Leasing arrangements are often designed to generate rent on the property or property-like privilege while allowing the lessee to use the property without the outlay of capital required if the property privilege was transferred. These lease arrangements are often short-term in nature. One type of leasing arrangement that is common in the commercial halibut fishery is the

leasing of halibut individual fishing quota (IFQ). Leasing, in terms of the IFQ Program, occurs when there is a transfer of annual IFQ from the quota share holder to another party. In this situation, the quota share holder retains the quota share and the annual right of receiving IFQ resulting from that quota share, but transfers the annual right to harvest the IFQ to another person. In this way, the person(s) involved in the transfer (conducted through NMFS) would be expected to have an arrangement that allows for mutual gain.

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

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

**The nature of charter businesses also makes it extremely difficult to determine the types of leasing agreements that would be prohibited and those that would be allowed.** Many charter businesses hire a captain to take clients fishing, as this represents a typical charter business model. Contracts with captains are business arrangements that can extend within a year, or over a number of years, and may be terminated at any time. These business arrangements make it difficult to determine with certainty whether permits are being leased to a captain or if the captain is working as an employee of the owner. Given the structure of business arrangements within the halibut charter industry, enforcing a prohibition on leasing would be extremely difficult, at best, and impossible in many situations. Section 2.3.3 provides more information about enforcement issues associated with a prohibition on leasing.

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

Fisheries generally have leasing prohibitions for permits, because of concerns by fishermen about the “absentee landlord” syndrome (Wilen and Brown 2000). In fisheries, this syndrome broadly refers to situations where a permit holder does not personally fish the permit, or have any direct involvement with the fishery. Business arrangements involving owners who are not operating the charter vessel are common for the halibut charter industry. Many charter business owners hire captains or deckhands to operate the charter vessel, whether the vessel is owned by the business or captain. For example, a charter business owner in Atlanta may own a lodge in Southeast Alaska that relies on staff to manage the lodge, market trips, and provide guide services. Thus, while maintaining and managing capital in the sport fishery, this type of charter business owner is not on-site, fishing or working in fishery operations. The moratorium program (Alternative 2) would not eliminate or reduce this type of absentee ownership. Alternative 2 was intended to allow charter businesses to operate the way they do currently, which

includes owning a business and hiring skipper and crew to operate the vessel, and/or operate several vessels under a single business.

The extent of the absentee ownership issue in the charter fishery is difficult to predict prior to program implementation. Looking at similar situations and economic theory for guidance, most mature markets that involve productive assets ultimately allow leasing and short-term contracting. In fact, it is difficult to find many property-like privilege systems in the world that prohibit short-term leasing and only allow “permanent” transfers in order to eliminate absentee landlords. The widespread tolerance of leasing suggest two possibilities: (1) the benefits associated with short term production flexibility are seen by most participants as outweighing the social costs associated with absenteeism; and/or, (2) the basic incentives in many systems work against absenteeism (Wilén and Brown 2000). The latter seems particularly likely when the productive use of the asset requires specialized skills. For example, in the charter fishery, the skills and knowledge associated with catching halibut may discourage absenteeism. However, absenteeism in the charter fishery may be encouraged by specialized skills such as superior marketing, packaging, and bundling skills that better serve the market niche associated with a primary business. Given that many business owners currently operating in the charter fishery do not personally guide clients or are offsite managing the charter fishing business, incentives that currently exist for absenteeism would likely continue under Alternative 2.

#### **2.6.3.2 Options to discourage leasing**

Given the problems associated with enforcing the prohibition on leasing, other types of regulatory controls that do not directly prohibit leasing were considered by the Council. The types of controls that may be considered have the potential to influence behavior by increasing the transaction and opportunity costs associated with business arrangements.

The IFQ Program has several controls in place that increase transaction costs between IFQ users by limiting the use of a vessel. These types of controls include a requirement for a certain level of vessel ownership before IFQ may be fished from that vessel, and a proposed regulation that prevents short-term transfers of vessel ownership (i.e., vessel ownership for at least 12 months). The vessel ownership regulation requires a corporation, partnership, or entity who did not receive an initial issuance of QS to demonstrate 20-percent ownership of a vessel before the IFQ may be fished (50 CFR 679.42). This capital investment imposes an opportunity cost for individuals wanting to use QS/IFQ and thus reduces the incentive for some individuals to enter contractual agreements. To further reduce the number of short-term leasing transactions, a 12-month vessel ownership requirement was recently published as a proposed rule in the *Federal Register*. A vessel ownership requirement is an effective method for limiting some types of short-term transactions; however, a vessel use restriction that requires a unique vessel be registered through RAM is not an option for the charter moratorium program described in Alternative 2. This type of vessel use restriction would require registration of the vessel with NMFS which would substantially reduce the charter fleet’s ability to quickly change vessels in case of breakdowns. In December 2006, the Council considered adding a vessel registration requirement, but decided not to do so, primarily due to the additional burden created.

**The Council’s preferred alternative under Issue 6 includes an explicit provision intended to help both enforce the use cap and discourage certain lease arrangements.** This provision allows halibut charter permit holders to 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 wants to use the permit on a different vessel, he or she must obtain an ADF&G logbook for the new vessel before the permit may be used on that vessel. The logbook could provide linkage between the business holding the moratorium permit and the vessel from which guided fishing occurs, although there is no requirement that the charter business owner also own the vessel from which guided fishing occurs. Implementation of this provision

would require modifying the ADF&G logbook to allow the recording of moratorium permit numbers for each trip.

The State has indicated its ability and willingness to make the required change to the logbook. This change would allow moratorium permits to be linked to a business operating a charter vessel on a specific trip (assuming the business holding the permit also operated the charter vessel). Note that a permit holder could only use their permit onboard a vessel that is identified on an ADF&G logbook assigned to the person holding the permit. The advantage to this enforcement method is that additional reporting requirements imposed on the charter fleet are minimal and enforcement authorities could determine if a business exceeded its use cap<sup>127</sup>. This measure would not increase NOAA OLE's ability to determine if private leasing arrangements occurred between the permit holder and the person using the permit to guide charter clients. However, the logbook information would allow enforcement to "flag" businesses that exceeded the use cap or were used on a vessel not corresponding to the business holding the moratorium permit.

Current ADF&G regulations require that every charter vessel from which guided trips are being conducted must have a logbook onboard and be an ADF&G licensed sport fish business. The logbook effectively links a vessel with the ADF&G business operating a charter vessel and is typically unique to each vessel. A business can obtain a logbook for any vessel it may use to conduct guided trips during any point in the season. Thus, at the beginning of a fishing season, a business could obtain a logbook for each vessel it intends to use. For example, a business that generally uses a single vessel, but has a second spare vessel used only occasionally, could obtain a logbook for the spare vessel at the start of the season. In this example, the logbook for the spare vessel would also be registered to the ADF&G business that was holding the moratorium permit. In some situations, a single vessel is used by two businesses. In these situations, each business would need to have a unique logbook linked to the vessel to allow identification of the business holding a moratorium permit. The 2006 logbook provides this linkage for each trip fished.

In summary, the "no leasing" provision is very difficult to enforce on the charter fishery, and its purpose in the context of the traditional industry structure that characterizes halibut charters in Alaska. The Council's preferred alternative continues to include a prohibition on leasing, and includes provisions that are intended to discourage leasing.

## **2.6.4 Enforcement**

### **2.6.4.1 Client endorsement**

The client endorsement requirement under Alternative 2, Issue 7, is focused on limiting charter operators to a specified number of clients that are allowed to fish for halibut, which effectively imposes a limit on the total number of halibut harvested. Enforcement of a regulation that limits the number of clients allowed to fish would require enforcement officers to determine if a client is fishing for halibut. This poses a significant enforcement challenge, because the moratorium program would be specific to the halibut fishery and not concurrent State fisheries.

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

<sup>127</sup> The use cap is set at the same level as the limit on number of permits that may be owned or controlled by an entity. Tracking the permit number on the logbook will help ensure the same permit is not being reported for multiple logbooks during the same period of time.

number of anglers fishing on the vessel, whichever provides for the fewest number of halibut. A line limit infers that regulations would specify the total number of fishing lines that may be fished at any given time, during a charter halibut trip. Each of these potential enforcement measures are discussed in detail below.

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

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

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

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



An alternative to observing a line that is “fishing,” is it to limit the number of rods on a vessel. Under this limitation, enforcement could check a vessel at any time, and issue a citation if too many rods were onboard the vessel. While this method offers a higher degree of enforceability than observing a line while fishing, it imposes a considerable burden on the charter fleet. A rod limit would greatly reduce an operator’s ability to carry spare rods, rods that are specialized for certain conditions and fishing methods, and alternative target species when a multi-species trip is conducted.

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

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

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

In summary, NMFS recommends a harvest limit based on the bag limit and client endorsement as potentially the best option for enforcing the provisions under Issue 7. This enforcement method would also not restrict other State fisheries or the gear used aboard a vessel. Alternatively, enforcing a limit only on the number of clients onboard a vessel would require a change to the logbook to allow crew to be designated, among others.

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

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

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

#### **2.6.4.3 Leasing**

As stated previously, enforcement of a prohibition on leasing is very difficult for NOAA OLE and GC to investigate and prosecute. There are two primary issues that complicate enforcement: (1) often it is not possible for enforcement to obtain private business contracts that are not submitted to NMFS; and (2) even when business contracts are submitted to NMFS, it is not always possible for NMFS and enforcement to determine that the business arrangement described in the contract is a lease. The first issue cannot be avoided under Alternative 2, because of the myriad small business arrangements that may be arranged by a permit holder. NOAA OLE does not have the capability to enforce private business arrangements outside of agency processes, such as requiring transfers and associated contractual documentation through NMFS. Even if NMFS receives contractual documentation during a transfer, the term “lease” is very difficult to define and contracts can be constructed in such a way that they obfuscate lease arrangements by avoiding key terms that may trigger suspicion by enforcement authorities. Thus, attempting to enforce a prohibition on leasing requires substantial staff resources to investigate and prosecute cases. Additionally, many situations would likely not contain the level of documentation necessary to prosecute a case. Given the inherent historic structure of the charter sector and the enforcement complexities referenced above, a prohibition on leasing permits in the Alaska halibut charter industry may not be justified on efficiency and/or cost-benefit grounds.

#### **2.6.5 Community Quota Entity permits**

The term Community Quota Entity (CQE) was created under GOA Amendment 66, for purposes of the commercial halibut and sablefish IFQ Program. These entities, representing a subset of small, isolated, Gulf coastal communities (35 total communities in Areas 2C and 3A combined), are currently eligible to purchase commercial halibut and sablefish catcher vessel quota share on the open market under Amendment 66. Thus, while regulations describing the CQE program are currently only applicable to the commercial IFQ Program, they could be modified to incorporate the charter halibut moratorium program under the Council’s preferred alternative under Issue 12.

The Council’s preferred alternative includes the criteria by which communities are determined eligible to receive a limited number of halibut charter limited entry permits.<sup>128</sup> However, the Council was aware of the list of communities that would qualify under these criteria prior to final action, and the intent was to list those eligible communities in the implementing regulations. The Council wanted to ensure that the list of communities would be known at final action, in order to understand the exact number of new halibut charter permits that could be issued to CQEs under the program. This approach also prevents the need for NMFS to again ‘qualify’ communities upon implementation. Under the Council’s preferred alternative, 18 Area 2C and 14 Area 3A communities are deemed eligible to receive halibut permits,<sup>129</sup> as long as they form a CQE and meet the remaining requirements selected under Issue 12.

<sup>128</sup> A CQE, representing a community in which 10 or fewer active charter businesses terminated trips in the community in each of the years 2004 and 2005 may request limited entry permits. “Active” charter businesses is defined for this purpose as it is under the Council’s preferred alternative for Issue 10, i.e., at least 5 bottomfish trips.

<sup>129</sup> Eligible communities resulting from the Council’s preferred alternative are as follows: Area 2C – Angoon, Coffman Cove, Edna Bay, Hollis, Hoonah, Hydaburg, Kake, Kassan, Klawock, Metlakatla, Meyers Chuck, Pelican, Point Baker, Port Alexander, Port Protection, Tenakee, Thorne Bay, Whale Pass; Area 3A – Akhiok, Chenega, Halibut Cove, Karluk, Larsen Bay, Nanwalek, Old Harbor, Ouzinkie, Port Graham, Port Lions, Seldovia, Tatitlek, Tyonek, Yakutat.

Under existing Federal regulations, a CQE is required to be a non-profit entity, approved by the governmental structure in the community it represents. CQEs are currently required to disclose business relationships and structure, obtain approval by the Regional Administrator to represent a community, and describe the procedures used to manage and use commercial halibut QS. Thus, CQEs are already required to submit specific information, prior to becoming qualified to represent a community as a CQE, as part of an annual report to NMFS.<sup>130</sup> If the moratorium program is approved by the Secretary, participating CQEs could also be required to submit information relevant to the use of a charter halibut moratorium permit. The Council's preferred alternative requires that the CQE must identify the recipient of the requested permit prior to issuance of the permit by NMFS. This requirement is intended to force the CQE to undertake the process of determining how the permit will be used, and solicit requests from specific businesses prior to requesting the permit from NMFS.

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

Note that permits issued to CQEs would be endorsed by area (2C or 3A), designated as six clients per permit, and be non-transferable. The same client endorsement and use cap enforcement issues discussed in Section 2.6.4.1 apply to permits held by CQEs.

The Council's preferred alternative under Issue 12 would also require an operator, using a CQE permit, to originate or terminate each charter trip in the community represented by the CQE. NOAA OLE staff indicated that to determine a starting or ending point for a trip, they may need to identify the geographic boundaries designating a CQE community, as well as having a regulatory definition for a trip. To define community boundaries, NOAA OLE would use U.S. Census data for incorporated communities and census designated places (i.e., unincorporated communities). To facilitate onsite enforcement, each CQE moratorium permit would have the name of the community where the trip is required to originate or terminate.

## **2.6.6 Program costs**

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

### **2.6.6.1 Enforcement costs**

To provide adequate enforcement coverage for the moratorium system, NOAA OLE would need to have enforcement presence and administrative support for the following communities: Petersburg, Sitka, Juneau, Anchorage, Homer, and Seward. With the exception of Anchorage, all other communities are major charter fishery ports, with Sitka, Homer, and Seward being major landing sites for charter clients fishing for halibut. Enforcement officers based in Anchorage would be used to enforce regulations in Prince William Sound communities, including Valdez, Whittier, and Cordova. These officers may also

<sup>130</sup>See 50 CFR 679.5(l)(8) and 50 CFR 679.41(l)(3), respectively.

be used to meet enforcement needs in Kodiak. NOAA OLE estimates that one enforcement officer at an annual cost of \$150,000 would be needed for each of these ports, with two officers based in Anchorage. The annual cost for seven officers is approximately \$1,050,000. This cost estimate includes the enforcement time required to conduct on-the-water enforcement, collect evidence, and perform other administrative duties. Enforcement staff would either need to be hired or redirected from other management programs to provide this level of coverage.

The enforcement costs for the program are significant due to the large number of charter vessels that operate annually, the low level of current enforcement coverage for the charter fishery, and certain elements in the moratorium program. NOAA OLE would be charged with the task of ensuring the integrity of the permit system is maintained for the moratorium program and any long-term management be linked to the moratorium program.

As shown in Table 16, the estimated number of moratorium permits issued for Area 2C under the preferred alternative would be 689 permits, with the potential for an additional maximum of 72 new permits issued to CQEs. In Area 3A, 611 permits are estimated to be issued under the moratorium, with the potential for an additional maximum of 98 new permits issued to CQEs.<sup>131</sup> NOAA OLE has indicated that a large amount of staff are necessary to enforce permit use on the charter fleet, which took approximately 43,000 trips, annually, in 2004 and 2005 (see Table 7), with the average annual number of bottomfish trips taken by each vessel being 30 trips and 40 trips, respectively. By comparison, approximately 1,400 vessels completed 7,500 IFQ trips in the commercial halibut IFQ fishery. Thus, the charter fishery has approximately 5.7 times more annual bottomfish trips than the halibut IFQ fishery.

In 2006, NOAA OLE inspected 146 of the IFQ trips whereas only 14 charter bottomfish trips were inspected. The USCG indicated at the 2007 IPHC meeting that they did not inspect any charter vessels in 2006. The current low level of coverage in the charter fishery is at least partially the result of other programs requiring enforcement without a corresponding increase in staff. One example is enforcement of the recent halibut subsistence regulations, of which approximately 12,000 subsistence halibut fishermen are subject.

In addition to the issues associated with enforcing the regulation on a very large number of vessels distributed over a large geographical area, certain characteristics of the moratorium program increase the burden on enforcement resources. One issue is that the moratorium permits will be issued to individuals that may transfer the permits across vessels. Thus, the permit holder could change the vessel on which the permit is being used without changing information on the permit through RAM. For this reason, the vessel on which the permit is being used could change daily in some cases. Note that the Council has included a provision that would require that halibut charter permit holders only use their permit onboard a vessel that is identified on an ADF&G logbook assigned to the person holding the permit. Each new vessel on which the permit is used must have an ADF&G logbook, and the permit number must be recorded on the correct logbook for each trip.

These attributes increase the staff time associated with enforcement, because charter vessels will need to be inspected to ensure that a vessel has a valid permit identified on the ADF&G logbook on any fishing day and that the logbook is assigned to the permit holder. In addition, enforcement will have to ensure that the number of clients on board the vessel does not exceed the permit endorsement. Moreover, because charter trips characteristically terminate at a certain time of day (before dinner or before the cruise ship leaves), a single enforcement officer could only inspect a relatively small percentage of vessels in communities with at least moderately sized charter fleets. As a result, multiple enforcement

<sup>131</sup>This assumes every eligible community forms a CQE, has it approved by NMFS, and requests the maximum number of halibut permits.

officers at a single port would be required to cover more vessels. In addition, many ports and lodges are remote, and thus require resources for travel and multiple enforcement officers to provide coverage and meet safety needs.

In the case of the most rural CQE communities, enforcement staff is not stationed near these communities and would thus need to make special arrangements to patrol these areas. Enforcement staff based out of Anchorage would be required to cover Prince William Sound communities and collect evidence. Finally, full time enforcement officers are required for the entire charter fishing season, because of the large amount of time devoted to case investigation, administrative work, and training. Moreover, the Council is currently considering long-term management measures for the charter halibut sector that may build upon the proposed moratorium program. As a result, these enforcement officers could also be applied to other long-term management solutions being developed by the Council and be available to enforce future programs.

Costs required to prosecute cases are considered part of enforcement costs. NOAA GC estimates that one full time attorney (GS-11) at an annual cost of \$100,000 would be required to prosecute violations under the moratorium program. This cost is based on a substantial increase in enforcement staff that will be generating cases that will require prosecution by NOAA GC. Civil administrative prosecution of these cases takes considerable staff resources. Prosecution could include reviewing cases and evidence of any alleged violations, preparation of the necessary documents and pleadings, working with witnesses, conducting hearings, and addressing legal issues and challenges. Given the level of workload expected from the additional enforcement officers, NOAA GC does not have the staff available to maintain current staffing levels for existing programs and also meet all of the needs of the new moratorium program. Given the 2007 Federal budget, additional money would likely be difficult to obtain.

#### 2.6.6.2 Administrative costs

Additional NMFS staff would be required to process applications, provide notification of eligibility, and potentially distribute and collect logbooks. NMFS estimates that one full-time staff person, at an annual cost of \$75,000, would be required to cover administrative needs, including entering permit and logbook information, issuing permits, determining eligibility, and addressing public inquiries.

**Table 36 Federal agency cost estimates for implementing the moratorium program**

Attribute	Estimated Cost	Justification
Six full time enforcement officers	Seven officers at \$150,000 each Total = \$1,050,000	Provide enforcement coverage for Petersburg, Sitka, Juneau, Homer, Seward, and an additional officer based in Anchorage
One GS-11 attorney	\$100,000	Prosecute moratorium permit violation cases
One full time RAM staff person	\$75,000	Process applications and administer program
Logbook processing and production costs (assumes State logbook is used)	Initial year: \$5,000 Annual: approximately \$2,500 – \$5,000	Database/website construction to maintain permit information Database/website maintenance
<b>Total annual cost</b>	<b>\$1,227,500–1,230,000</b>	

Source: NMFS Alaska Region and NOAA Office of Enforcement.

Initial programmer time would also be required to construct the database used to hold personal/business information associated with permit holders, including logbook information about eligibility, permit holder

information, and CQE information. The initial cost estimate for the database to securely store State logbook information and create a website is approximately \$5,000. Annual database maintenance is expected to be minimal, requiring a maximum of one to two weeks of NMFS programmer time at an annual cost of \$2,500–\$5,000.

## 2.6.7 Future logbook requirements

The Council is considering long-term management options that would utilize the charter moratorium/limited entry program to establish a group of persons qualified for either a more refined limited access program or a quota share based system in the future. Thus, long-term management programs for the charter fishery being considered by the Council currently do not use a qualifying period for logbook history that includes years after implementation of the moratorium. However, it may be desirable to collect catch and effort information that is specific to each moratorium permit, upon implementation. The current State of Alaska logbook could be used to collect moratorium-specific information, if it were modified to record catch associated with each moratorium permit. The cost, complexity, and willingness of the State to make this change are currently unknown.

## 2.6.8 Summary of implementation issues

In summary, the Council considered the following enforcement and monitoring issues when selecting its preferred alternative in March 2007:

- **The Council stated its desire to issue interim permits to a licensed fishing guide business owner appealing his/her permit status, if the appeal is judged by the agency to have some probable basis for success and includes legitimate documentation.** Issuance of interim permits may increase illegitimate claims; however, an interim permit would allow businesses with legitimate hardship claims to continue fishing during the appeal process. Without an interim permit, appellants would not be able to operate a halibut charter business, unless they purchase a valid moratorium permit.
- There are difficulties with enforcing the client endorsements provided for under Issue 7. A harvest limit for a vessel that is linked to an angler's bag limit and client endorsement on the moratorium permit is the most enforceable option. The charter moratorium client endorsement would be tied to the IPHC bag limit in such a way that the total number of halibut harvested on the vessel could not exceed the collective daily bag limit for charter anglers endorsed on the permit or aboard the vessel. **At final action, the Council was aware that NMFS would use this approach to enforce the client endorsements selected under Alternative 2, Issue 7, unless directed otherwise.**
- The prohibition on leasing is very difficult to enforce, given the typical business operations of the charter fishery. However, the Council's preferred alternative under Issue 6 includes provisions that could discourage lease arrangements. These include requiring that moratorium permit numbers be recorded in the State logbook for each trip (Section 2.6.3), and that a permit holder could only use their permit onboard a vessel that is identified on a logbook assigned to the permit holder. This information would be used by NOAA OLE to determine if a permit holder exceeded its use cap or used a permit on a vessel with a logbook not registered to the ADF&G licensed business holding the moratorium permit.
- The Council preferred alternative recommends that the extent of constructive loss, medical hardships, and other hardships that should be considered by the NOAA Office of Administrative

Appeals should be based on similar criteria as was used in the groundfish LLP (described in Section 2.6.2.5).

## 2.7 Council's Preferred Alternative

### NOTE TO THE READER:

Section 2.7 provides an analytical overview of the Council's preferred alternative. However, Section 2.7 was completed before the Council knew which year would be its recency year. Thus, while Section 2.7 could allude qualitatively to the impact of the recency year, its quantitative analysis of the estimated numbers of businesses, permits, and endorsements, could only be based on the information available for the known qualification years 2004-2005.

Section 2.8 is a revised and updated version of Section 2.7, supplementing that analysis by taking account of the additional impact of the recency period of 2008 and of the details of NMFS's proposed implementation, as described in the proposed rule (74 *FR* 18178; April 21, 2009). Detailed logbook data for the 2008 season became available to NMFS in late May 2009 and are used there.

While Section 2.7 has been retained for reference purposes, the reader is encouraged to read Section 2.8 for the updated analysis.

The Council selected Alternative 2 as its preliminary preferred alternative at the February 2007 Council meeting and its final preferred alternative at its March/April 2007 meeting. Included in Alternative 2 are Issues 1 – 12. This section provides an overview of the Council's preferred alternative, in order to provide the public and the Council with a brief summary of the issue in its entirety. However, the analyses in the previous sections provide the details of the expected impacts of both the preferred alternative and the range of options considered.

The discussion in this section first describes Issues 1 through 11, which define the structure of the moratorium program. Issue 12 is discussed in the next section – it allows a subset of small, rural, GOA

communities in Areas 2C and 3A to request a limited number of halibut charter permits from NMFS, at no cost, as part of the moratorium program.

### **2.7.1 Summary of Council preferred alternative under Issues 1 - 11**

***Permits would be issued to the ADF&G licensed fishing guide business owners.*** The Council's preference is to issue the moratorium permits to licensed sport fishing business owners, based on historic participation in the fishery. The guide business owner will be issued the moratorium permit, in part, because they are licensed by the State of Alaska and are responsible for reporting logbook data for the charter industry. They are also typically responsible for booking clients and, in many cases, own the charter vessel.

Licensed captains and crew hired to operate vessels would not be included in this initial allocation. The Council elected not to include those individuals in the initial allocation of this program, because of the type of fishing privilege issued and the business structures that exist in the charter industry.

Because the allocation is not market based, the initial distribution of permits will likely not be as economically efficient as a market based system. However, allowing permit transfers, after the initial allocation, will help redistribute the permits to those persons who value them the most.

***Permit applicants would be required to sign affidavit attesting that all legal requirements were met.*** This requirement was developed as part of the procedure for gathering information that is necessary to issue a permit. The goal is to encourage permit applicants to provide true and accurate information on their permit application. It also provides a record of owners stating they are entitled to the permit based on having met the legal requirements for its issuance. It eliminates new, conflicting, or redundant requirements by simply referring to other legal requirements.

Additional requirements to apply and use a permit are discussed under the recordkeeping and enforcement section of this amendment. Any new recordkeeping and reporting requirements will increase the cost of doing business for the charter operators. However, the additional costs associated with signing an affidavit should be offset by the benefits the public received from obtaining the document. NMFS will also incur costs associated with developing, distributing, and verifying information submitted on the affidavit. Those costs are also expected to be relatively small, and by requiring the applicant sign the affidavit, it could reduce other costs associated with enforcement and monitoring.

***Permits<sup>132</sup> may be held by U.S. citizens or U.S. businesses with (at least) 75 percent U.S. ownership of the business. Businesses may receive multiple permits due to charter halibut activity by vessels reported by the businesses in ADF&G logbooks. Initial permit recipients may be "grandfathered" below the U.S. ownership level and above the proposed use caps until any change in ownership of the business occurs.<sup>133</sup>***

The permit condition will add a U.S. ownership requirement to operate a halibut charter business in IPHC Areas 2C and 3A. Currently, the only requirements to own and operate a guide business in the State of Alaska are found in Section 16.40.260 of the Alaska Statutes (AS) and that statute does not specify a U.S. ownership requirement.

Many halibut guide business owners also operate the charter vessel. Those owners are required to comply with State and U.S. Coast Guard requirements for operating a for-hire vessel carrying clients. One

<sup>132</sup> Through initial issuance and transfers

<sup>133</sup> Transferred permits would not be grandfathered below the U.S. ownership cap, even upon sale of a business, but would be grandfathered above the use cap upon sale of the entire business (see Issue 11).



requirement to operate the vessel is that the person must be a resident of the United States, Canada, Mexico, or a resident alien. Owners that do not provide the actual guide services are not required to meet those additional requirements under current laws.

Implementing the permit requirements identified by the Council will ensure that any transfers of permits must be made to U.S. citizens or to U.S. businesses with at least 75 percent U.S. ownership of the business. This regulation will prohibit nonresident aliens and citizens of Canada and Mexico that were not initially issued a permit from owning halibut charter businesses that fish in Area 2C and 3A. Persons grandfathered in under this provision will not be allowed to purchase additional permits. If they sell a permit they would not be allowed to replace that permit in the future. They would also not be allowed to purchase additional permits for the purpose of stacking permits to increase the number of clients they may carry on a vessel.

Nonresident aliens could continue to own and operate halibut charter businesses operating in other areas of the State. Because the moratorium permits apply only to IPHC Areas 2C and 3A, these regulations would not alter the management structure in other areas.

Net national benefits only include the consumer and producer surplus accruing to U.S. residents. Excluding non-residents from purchasing permits may increase net benefits to the Nation, by ensuring that U.S. operators capture any charter producer surplus. It is expected that the producer surplus generated from the halibut charter fishery will be relatively small when barriers to entry are relatively low. Under the Council's preferred alternative, the number of permits issued and the potential for businesses to increase capacity should facilitate a competitive market for clients. Competition for clients will tend to cause operators to bid away producer surplus.

The Council's preferred alternative also states that persons may be issued multiple permits based on the bottomfish trip history (in 2004 or 2005) and halibut history in the year prior to implementation, reported in ADF&G Saltwater Logbooks<sup>134</sup> that were submitted by the charter business in a timely manner. A business that submitted logbook data for two qualified vessels, for example, would be issued two distinct permits. Each of those permits, if transferable, would be transferable independent of the other. Allowing a business to sell some, but not all, of its permits does not add vessels to the charter fleet. Yet, it may allow the charter to increase effort by allowing permits that were not fully used by the original recipient to be used to take more clients fishing (harvest more fish) by the charter operator purchasing the permit.

***Permit would be designated for Area 2C or Area 3A.*** Permits would be issued for IPHC Area 2C or 3A. All permits will be designated for one area or the other. Designating the IPHC area in which a permit may be used will restrict movement of permits from one IPHC area to another. Restricting movement will reduce the potential number of halibut charter vessels that could operate in that area. In the near term, limiting moratorium permits to a specific IPHC area is not expected to have a substantial impact on charter businesses or guided anglers. The number of permits issued for each area is expected to be slightly greater than the number of vessels that operated in recent years.

***Each licensed guide business owner who reported a minimum of 5 bottomfish logbook trips during 2004 or 2005, and 5 halibut trips in the year prior to implementation would be issued a permit(s) based on the number of trips summed for all vessels in his best year of the qualification period, unless an unavoidable circumstance<sup>135</sup> occurred. A business would be limited to the number of permits equal to***

<sup>134</sup> Bottomfish trips/halibut trips are defined as each time a logbook must be completed. For multi-day trips it is at the end of each day and for single day trips it is before halibut and clients are offloaded.

<sup>135</sup> Acceptable unavoidable circumstances will be adjudicated on a case by case basis through the NOAA Office of Administrative Appeals, and include medical emergencies, military exemptions, and constructive losses. These hardship provisions should be implemented using similar criteria used in the groundfish License Limitation Program. The military exemption refers to an individual who was assigned to active military duty during 2004 or 2005, who qualifies as "active"

*the highest number of vessels used in any one year during the qualifying period.*<sup>136</sup> To qualify for a permit the guide business owner must have reported at least 5 bottomfish trips in the 2004 or 2005 ADF&G Saltwater Logbooks, and at least 5 halibut trips in the ADF&G Saltwater Logbooks in the year prior to implementation. The five trips in each period can be from any vessel that the guide business reported activity for in their logbooks. If the guide business reported information for more than one vessel in a year, they could qualify for a permit for each vessel they operated in a year during 2004 or 2005. The maximum number of vessels that the business reported activity for in the logbook could qualify if they had sufficient activity in that year and in the year prior to implementation.

For example, if a registered guide business reported in ADF&G Saltwater Logbooks that 3 vessels took a total of 30 trips in 2004, 5 vessels took 50 trips in 2005, and 4 vessels took 20 trips in the year prior to implementation, they would qualify for 4 permits. The business would qualify for 4 permits, because 5 vessels met the 5-trip qualification requirement in a year during the first period and 4 vessels met the 5-trip requirement in the year prior to implementation. Because a maximum of four vessels qualified in both periods, only four permits would be issued.

Estimates of the maximum number of qualified businesses (and permits issued), under the Council's preferred alternative are reported in Table 37. A maximum of 689 permits would be issued to 380 businesses for IPHC Area 2C. That number of permits would be 35 more than the number of vessels that were reported to have taken bottomfish trips, based on the 2005 ADF&G Saltwater Logbooks. One fewer business would be issued a permit in that area than submitted an ADF&G Saltwater Logbook with bottomfish activity in 2005. In IPHC Area 3A, a maximum of 611 permits would be issued to 471 businesses. A maximum of 34 more permits would be issued under the Council's preferred alternative than reported activity in 2005. The permits would be issued to 21 fewer businesses than participating bottomfish charter business in 2005.

**Table 37**      **Maximum number of permits that would be issued and the number of businesses receiving the permits under the Council's preferred alternative**

IPHC Area	Option 10.1 (5-trips)	
	Permits	Businesses
2C	689	380
3A	611	471

Source: ADF&G Saltwater Logbook data, 2004 and 2005. Note: The number of permits and businesses will be reduced to the extent that those qualified based on 2004 or 2005 activity do not meet the 5 trip requirement in the year prior implementation.

Even though the number of permits issued under the Council's preferred alternative is close to the number of vessels that were used to take charter clients bottomfish fishing in 2005, halibut harvests could still increase in the future under the moratorium. The increases in harvest would primarily come from more fully utilizing the qualified vessels allowed to take clients halibut fishing. To take more clients fishing the charter operator could increase the number of trips taken each year, increase the average number of clients on each trip, or both, subject to their client endorsement. Based on the average number of trips taken by a vessel and the charter season length, it appears that charter operators could easily increase the number of trips, if there is sufficient client demand.

Table 38 shows that vessels earning a permit would only need to take 30 trips in 2C and 38 trips in 3A, when carrying their average number of clients during their best year 2004 or 2005, to take as many clients

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during the year prior to implementation, and who demonstrated an intent to participate in the charter fishery in Area 2C or 3A (prior to the qualifying period).

<sup>136</sup> Example: A business owner operated 3 vessels with 4, 4, and 12 trips, respectively (summed trips = 20) in his best year. He would be issued 1 permit under a 20 trip minimum ( $20/20 = 1$ ); 2 permits under a 10 trip minimum ( $20/10 = 2$ ); or 3 permits under a 5 trip minimum ( $20/5 = 4$ , but the maximum number of vessels in that year is 3).

fishing as fished in 2005. Members of the charter industry have indicated in public testimony that the charter season lasts for about 100 days. Even when accounting for days off, bad weather, and mechanical issues that could arise, it is likely that the number of days fished could double. In addition, some vessels could offer half day trips, and that would further expand effort. The average number of clients carried per trip could also be increased under the moratorium. As stated earlier, if every vessel carried the maximum number of clients allowed under its permit endorsement, the fleet could theoretically carry approximately 600 more clients per day in 2C, and 900 more clients per day in 3A.

**Table 38 Participation in the 2004 and 2005 fisheries compared to Council's preferred alternative**

Year/Option	Total Trips		# of Vessels		Avg. # of client trips taken per vessel		Avg. # of client trips reach 2005 level	
	2C	3A	2C	3A	2C	3A	2C	3A
2005	20,215	23,278	654	567	31	41		
2004	20,920	23,306	624	532	34	44		
<b>5 trips (option 10.1)*</b>	<b>24,580</b>	<b>27,628</b>	<b>689</b>	<b>611</b>	<b>36</b>	<b>45</b>	<b>30</b>	<b>38</b>

Source: ADF&G Saltwater Logbook data from 2004 and 2005.

Imposing some assumptions on catch rates and the size of halibut harvested, it is possible to translate the increased number of trips into increased charter halibut removals. The first assumption would be that the average number of halibut harvested per angler does not change with an increase in trip numbers. The second assumption is that the average halibut size harvested in 2C and 3A during 2004 continues into the future. Based on those assumptions and the estimated number of permits that would be issued under the Council's preferred alternative, theoretically, charter halibut removals could increase by about 300 percent in IPHC Area 2C, if each vessel took 55 trips per year (see Table 39).

If the average number of trips per vessel increased to 100 per year, the removals could, in the limit, increase 500 percent. Imposing those same assumptions in IPHC Area 3A, the removals could potentially increase by about 200 percent (55 trips) to 350 percent (100 trips). Whether or not those assumptions of fish size and catch rates hold, and whether client demand would support substantial expansion of fishing effort, it illustrates that the charter fleet will continue to have the capacity to take more halibut clients fishing, after the moratorium is implemented, than fished during 2005.

**Table 39 Potential increases in total numbers of trips under the Council's preferred alternative**

Annual Number of Trips per Permit	Area 2C	Area 3A
55 Trips	282%	195%
70 Trips	359%	248%
85 Trips	435%	301%
100 Trips	512%	354%

Note: To the extent that the number of permits is reduced by the 5-trip participation requirement in the year prior to implementation, the possibility for increases in the number of trips that could be taken will be reduced.

It is difficult to determine the impact this amendment will have on specific communities. The permits that will be issued, based on historic participation, are not tied to a community. The permits could be used anywhere in the IPHC area listed on the permit. Transferable permits would be issued when a business had vessels that made 15 trips in each of the two periods used to qualify. It is estimated that 75 percent of all permits will be transferable. Because the permit is not attached to a specific community, the person initially allocated the permit could move the business to another community or sell to a person in

another community. In either situation, the jobs and other economic impacts associated with the activities of that business would likely move as well.

Table 40 lists the communities in which the vessels generating a permit reportedly terminated at least one trip during the 2004 or 2005 qualifying year. Some vessels terminated trips in more than one community, so the number of permits listed in the table is greater than the actual number of permits that would be issued. One vessel was reported to have terminated trips in eight different communities. The table was generated to show the reader where charter businesses were historically operating.

The major charter communities are often the same communities that are active in the commercial fishery. Because the communities, in many cases, are the same, increased economic activity by the charter sector in a community will, to some extent, offset decreases in commercial activity, although the distribution among businesses in the community could change significantly (e.g., charter clients are more likely to use hotel, restaurant, tour services, than they are boatyard, bulk marine supply, and stevedore services). Communities that are more reliant on the commercial sector would be harmed by continued reallocation of halibut from the commercial sector to the charter sector. Communities that are more reliant on the charter sector would benefit from allowing the charter sector to grow.

***Transfers (sale) of transferable permits would be allowed up to use cap. Transfers of permits issued for individual vessels that qualified at trip levels less than 15 trips, as reported in the ADF&G logbook, would be prohibited.***

It is important to define the terms “vessel” and “qualify”, as they are being used in this alternative. The term vessel refers to a vessel that was reported in the ADF&G saltwater logbooks as being used to take clients fishing for bottomfish/halibut during the historical participation qualification periods. The two periods used to determine qualification are: 1) 2004 or 2005, and 2) the year prior to implementation of the moratorium. To determine if a transferable permit should be issued, NMFS would look at the first period (2004 or 2005) and count the number of vessels that took at least 15 bottomfish trips in an IPHC area, as reported in the ADF&G Saltwater Logbook, by the guide business operator. The number of vessels that met the 15-trip threshold represents the maximum number of transferable permits that could be issued to the business. If that business had the same number of vessels (or fewer) that took at least 15 halibut trips during second period (the year prior to implementation), they would be issued a transferable permit for each vessel that took 15 halibut trips during the second qualifying period. If the business had more vessels take at least halibut 15 trips during the second period, they would be issued transferable permits equal to the number of vessels that took at least 15 trips during the first period (2004 or 2005). This requirement could lead to increased fishing effort, in the year prior to implementation, as business owners try to ensure that all their eligible vessels qualify for a transferable permit.

For example, a business reported in their logbooks that 3 vessels took at least 15 bottomfish trips during 2004 and 2005. That same business reported in their logbooks that four vessels (none of the vessels were the same as fished in the first period), took 15 halibut trips in the year prior to implementation. That business would be issued three transferable permits under the Council’s preferred alternative. It is important to note that the same vessel did not have to make 15 trips in both periods to generate a transferable permit. If the same vessel was required to fish in both time periods, it could result in a business that replaced an old vessel not qualifying for a transferable permit even though the vessel they operated was over the minimum trip requirement every year. To alleviate problems associated with a business using different vessels during the qualification period, NMFS would simply count the total number of vessels that reported 15 trips in each period used to qualify for a permit. NMFS would then issue transferable permits based on the maximum number of vessels that reached that threshold in both periods.

**Table 40 Communities in which the vessel earning the permit terminated at least one trip**

Community	Am. 66 Permits	Community	Am 66 Permits	Community	Am 66 Permits
Afognak		1 Homer	196	Salmon Landing	7
Amook Island		2 Hood Bay		1 Saltery Cove	1
Amook Pass		1 Hoonah	Yes	12 Sarkar Cove	1
Anchor Point		58 Iliamna Bay		1 Sea Otter Sound	1
Anchor River		1 Iron Creek		2 Seal Bay (Sc)	3
Angoon	Yes	13 Juneau	30	Sealing Cove	6
Anton Larsen Bay		6 Kake	Yes	1 Seldovia	Yes 12
Auke Bay		35 Kalinin Bay		1 Seward	136
Bar Harbor		1 Kasitsna Bay		1 Shelter Island	7
Bartlett Cove		5 Kelp Bay		3 Shuyak Island	1
Bay Of Pillars		3 Ketchikan	53	Silver King Lodge	6
Boardwalk		3 Killisnoo		5 Silver Salmon	2
Camp Island		1 Kiluda Bay		1 Sitka	187
Cannery Cove		5 Klawock	Yes	19 Skagway	3
Cape Chacon		3 Knudson Cove		16 Sportsman Cove	12
Cape Ninilchik		2 Kodiak		40 Spruce Mill New Flt	4
Cedars Lodge		8 Kukak Bay		3 Ssbh	5
Chenega	Yes	1 Kupreanof Island		0 Swanson Harbor	1
Clover Bay		2 Larsen Bay	Yes	15 Tenakee	Yes 4
Clover Pass		14 Little Tutka Bay		1 Thomas Basin	3
Coffman Cove	Yes	7 Log Cabin Resort		1 Thorne Bay	Yes 11
Cordova		7 Millers Landing		2 Tokeen	1
Craig	Yes	72 Morne Island		3 Tutka Bay	1
Cranberry Creek		1 Narrows Inn		3 Ugak Bay	6
Crescent Harbor		4 Naukati		3 Uganik Bay	4
Dall Island		1 Ninilchik		16 Uyak Bay	3
Deep Creek		107 Old Harbor	Yes	10 Valdez	46
Dog Bay Harbor		1 Orr Island		1 Wakefield	1
Eagle Creek Lodge		1 Ouzinkie	Yes	1 Warm Springs Bay	10
Eagle Harbor		0 Pasagshak Bay		1 Waterfall	25
El Capitan Lodge		7 Pelican	Yes	8 Whale Pass (Pow-Se)	Yes 6
Elfin Cove	Yes	31 Petersburg		35 Whale Pass (Sc)	1
Ellamar		1 Point Baker	Yes	3 Whalers Cove	3
Excursion Inlet		2 Poohs Landing		1 Whiskey Gulch	4
False Island		5 Port Alexander	Yes	6 Whitestone Harbor	1
Fishermans Bend		3 Port Lions	Yes	13 Whittier	25
Funter Bay		2 Port Protection	Yes	3 Williamsport	1
Glacier Bay		1 Port St Nicholas		2 Wrangell	13
Gold Coast Lodge		1 Port Wakefield		4 Yakutat	Yes 15
Gull Cove		2 Port William		1 Yes Bay	13
Gustavus	Yes	24 Prince Rupert		1 Zachar Bay	7
Haines		4 Pybus Point			
Halibut Cove	Yes	1 Raspberry Island			
Hallo Bay		1 Rocky Pass Resort			
Hanus Bay		1 Rocky Point			
Happy Valley		8 S Kaigani Bay			
Hawk Inlet		1 Sadie Cove			
Hidden Basin		1 Saginaw Bay			
Hollis	Yes	0 Salmon Falls	17		

Source: ADF&amp;G Saltwater Logbooks, 2004 and 2005.

The term “qualify” in this case means that a business must have had sufficient participation, numbers of trips, by individual vessels (as reported in their ADF&G Saltwater Logbooks) to earn a transferable permit.<sup>137</sup> The same vessel does not need to meet the minimum trip requirement in both periods for the business to earn a transferable permit. But a transferable permit would only be issued if a business submitted ADF&G Saltwater logbooks for a vessel that made 15 bottomfish trips in the first period and the same or a different vessel that made 15 halibut trips in second period. If a business met the criteria, they would “qualify” for a transferable halibut charter permit. If the business had two vessels meet the criteria, they would be issued two transferable permits.

The Council indicated that one reason it proposed allocating non-transferable permits is to make selecting an option that would allow more persons overall to qualify for an initial allocation more palatable. Allowing more persons to initially qualify may reduce the opposition to the program from the sport fishing/charter side, while making some permits non-transferable could reduce opposition to the moratorium from the commercial halibut fishing side. That is, in the short-run, most legitimate charter operators will be eligible to continue to participate in the industry, while in the longer-run, the number of charter permits will decline, by attrition.

Transferability facilitates the development of a market in which permits are traded. After the initial allocation of licenses, market forces would determine access to the fishery. Newcomers would buy permits to enter the fishery, and retirees would be able to derive financial compensation upon exiting the sector. Competition in the market for permits ensures that those most willing or able to buy permits, usually the most efficient and profitable fishermen, would eventually acquire them, whatever the initial distribution. For an industry such as the for-hire sector that is characterized by a high turnover rate, transferability of permits assumes particular importance. The price of permits would partly reflect the value generated from its use. Public testimony at the Council meetings has indicated that participants in the fishery anticipate that permits will initially sell for about \$5,000 each. Until a competitive market for those permits is established, the actual price will be unknown. The value of permits that allow a person to carry more clients is expected to be higher than that of a permit endorsed for fewer clients.

A licensed guide business must have reported 15 trips<sup>138</sup> for any vessel<sup>139</sup> in an ADF&G Saltwater Logbook during each period required for qualification to earn a transferable permit. According to 2004 and 2005 ADF&G Saltwater Logbook data, a maximum of 973 permits would be transferable. The information is listed as a maximum, because the data for the year prior to implementation are not included in the calculations. That additional qualification requirement is expected to somewhat reduce the number of permits. Of those permits, 489 would be issued for Area 2C and 484 would be issued for Area 3A (see Table 41).

In Area 2C, it is estimated that 200 non-transferable permits would also be issued. In Area 3A, 127 non-transferable permits would be issued, based on preliminary estimates. The numbers reported represent the maximum number of transferable permits that could be issued. Businesses that do not report having at least the same number of vessels taking 15 trips in the year prior to implementation, as took 15 trips in 2004 or 2005, would reduce the number of transferable permits.

<sup>137</sup>This requirement is based on the activity of individual vessels; thus, it is different than Alternative 10 where businesses are allowed to sum the number of trips from all vessels that were reported in their ADF&G Saltwater Logbooks to determine qualification.

<sup>138</sup> Bottomfish trips during 2004 or 2005 and halibut trips during the year prior to implementation (likely 2007) as reported in ADF&G Saltwater Logbooks.

<sup>139</sup> The same exact vessel does not need to be used during both time periods to qualify for a permit.

**Table 41** Maximum number of permits that could be issued under the Council's preferred alternative

	Area 2C			Area 3A		
	Transferable	Non-Transferable	Total	Transferable	Non-Transferable	Total
Permits (#)	489	200	689	484	127	611
Permits (%)	71%	29%	100%	79%	21%	100%

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

Note: The number of permits will be reduced if the businesses do not report sufficient landings in the year prior to implementation.

Based on the data that are currently available, permits would be issued to 848 different businesses. Both transferable and non-transferable permits would be issued to 80 businesses. Only transferable permits would be issued to 590 businesses. Only non-transferable permits would be issued to 178 businesses. Because permits held by a business are not linked to one another, the 80 businesses that are issued both types of permits would be allowed to sell their transferable permit(s). The negative impact on their business would, presumably, be greater than the 590 businesses that are issued all transferable permits, but less than the 178 businesses that are issued only non-transferable permits.

When businesses with a non-transferable permit leave the fishery, they cannot sell or give away their permit. This will preclude them from selling their entire business or from passing on their operation to a member of their family or a friend. It could also limit their ability to use the permit as collateral, because the lending institution could not seize, and resell, the permit if the business defaults on a loan.

***Leasing of permits (annual) would not be allowed.***<sup>140</sup> Leasing of permits is generally discouraged in fisheries under Council authority. Prohibitions on leasing stem from a desire to keep persons from holding permits for the sole purpose of generating income from the active participants. Because of the nature of charter fishing businesses (e.g., an operator may run multiple boats, perhaps out of different ports, targeting different species) the traditional reasons for the Council's objections to "leasing", per se, may not readily apply. For example, the "owner-on-board" rationale for restricting leasing in traditional commercial fisheries, is oxymoronic under the charter business model of many operations active in Alaska. Furthermore, tracking whether halibut charter moratorium permits are being leased may be exceedingly difficult and costly. In many cases, a charter business must hire a captain(s) to take clients fishing. Contracts with captains are private business arrangements that can be extended within a year, or over a number of years, and may be terminated at any time with proper notice. The hired captain may or may not own the vessel used to take clients fishing. If the captain owns the vessel and the permit holder hires him to take clients fishing, distinguishing this operation from a lease arrangement may not be possible.<sup>141</sup> These business arrangements may make it difficult to determine with certainty whether permits are being leased to a captain for a year or if the captain is working as an employee of the owner. Given the structure of business arrangements within the halibut charter industry, enforcing a prohibition on permit leases may be difficult, without additional intrusive and potentially burdensome requirements.

Given the above complexity with enforcing a prohibition on leasing, the Council clarified the implementation approach intended under the moratorium. In brief, 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

<sup>140</sup> 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.

<sup>141</sup> Note that the proposed moratorium program does not require that a permit holder own a vessel or be on board the vessel in order to use the permit.

number must also be recorded on the logbook for each trip. While these provisions are not expected to completely prevent leasing, they are intended to deter some private leasing arrangements.

A permit endorsement for the number of halibut clients onboard would be set at the highest number of halibut clients on any trip in 2004 or 2005, but not fewer than 4. Permits issued under the military hardship provision would receive a halibut client endorsement of 6. The Council's preferred alternative would set the halibut client endorsement equal to the highest number of clients fishing on any bottomfish trip taken by the vessel generating the permit in 2004 or 2005, but a permit would not be endorsed for fewer than four clients. ADF&G Saltwater Logbook data, using bottomfish effort information, will be used to determine the number of clients that fished in 2004 and 2005. The intent of this action is to limit the number of clients that may fish for halibut on a trip<sup>142</sup>. People not fishing for halibut may be onboard the vessel for sightseeing, whale watching, or any other purpose besides halibut fishing. The U.S. Coast Guard will continue to limit the total number of people that may be onboard any given charter vessel.

**Table 42**      **Number of halibut clients endorsed on permits**

Maximum Clients	2C	3A
0	5	17
1	3	0
2	21	9
3	30	14
4	207	67
Sum (0-4)	266	107
5	176	64
6	228	337
7	5	19
8	8	18
9	3	4
10	1	5
11	0	5
12	1	5
13	1	3
14	0	6
15	0	3
16	0	8
17	0	6
18	0	3
19	0	2
20	0	3
21	0	3
22	0	1
23	0	2
25	0	3
28	0	1
30	0	1
33	0	1
38	0	1
Total	689	611

Source: ADF&G Saltwater Logbook data from 2004 and 2005.

Based on the above criteria, a total of 266 and 107 permits would be endorsed for 4 clients in IPHC Areas 2C and 3A, respectively. The remaining 423 2C permits and 504 3A permits would be endorsed for 5 or

<sup>142</sup> It is assumed that enforcement will determine compliance of the client endorsement by making sure the number of halibut onboard the vessel is not greater than the bag limit multiplied by the client endorsement.



more clients. Table 42 shows the number of permits in each area that would be endorsed for a specific number of clients. In Area 3A, three permits would be endorsed for 30 or more clients. In Area 2C, only three permits would be endorsed for 10 or more halibut clients. The maximum number of clients endorsed on a permit in Area 2C is 13. The table also shows that Area 3A vessels have historically carried more clients on their largest client trips than Area 2C vessels.

Because the halibut client endorsement is based on the maximum number of clients carried in 2004 or 2005, the average number of clients carried on a vessel can increase. It is projected that the difference in number of clients carried between the average during 2004 or 2005 and the maximum carried those years is 599 clients per day in 2C and 900 clients per day in 3A. Therefore, the Council's preferred alternative would not prevent an increase in the capacity of the fleet. The Council understood those increases could occur, but felt that allowing that increase was preferable to prohibiting vessels from taking the size of groups they have historically carried or perhaps being more restrictive on businesses that took trips with fewer clients during the slower times of the year.

A use cap of 5 permits per entity would be established, with a grandfather provision. The AFA 10% ownership rule for affiliation will be applied to determine the number of permits associated with an entity under the use cap. The Council voted to limit the number of permits that may be used by a halibut charter entity at one time. Charter businesses (and their affiliates) that are allocated permits in excess of the cap would be grandfathered at their initial allocation level. Grandfathered entities would not be allowed to use any new permits until they are below the cap. Based on the data currently available, 18 businesses appear likely to exceed the cap at initial allocation.

The AFA 10% ownership rule for affiliation<sup>143</sup> will be used to determine which permits an entity is using. The AFA 10% ownership and control rule states that “*any entity in which 10 percent or more of the interest is owned or controlled by another individual or entity shall be considered to be the same entity as the other individual or entity.*” Therefore, if a company owns or controls 10% of another company, it is considered to be the same entity when calculating the use cap.

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

Use caps will impose constraints on the number of permits that may be held or used. It is assumed that the persons that would exceed the cap through transfer are the most efficient charter operators. Constraining the most efficient operators' use of permits is expected to reduce permit prices (the most efficient operations could pay the most for permits) and reduce producer surplus of charter businesses. Consumer surplus could also be reduced if these operators could provide clients a trip that generates greater utility than other businesses, at the same price. However, the MSA directs Councils to ensure that entities do not control an excessive share of a fishery.

**Permits may be stacked, up to the use cap.**<sup>144</sup> This provision allows more than one permit to be assigned to a vessel. The advantage of assigning more than one permit to a vessel is that it would allow the vessel to carry the number of halibut clients equal to the aggregate number of halibut clients that the permits are endorsed to carry (subject to USCG vessel restrictions). Licenses may be stacked and

<sup>143</sup>Any entity in which 10% or more of the interest is owned or controlled by another individual or entity shall be considered to be the same entity as the other individual or entity.

<sup>144</sup>A business can use, for example, two licenses (each endorsed for 6 clients) on one vessel, *ceteris paribus*.

unstacked. The ability to stack licenses provides operators the flexibility to increase the number of halibut clients carried on one vessel. Unstacking the licenses allows the guide business to use more vessels that, individually, carry fewer clients<sup>145</sup>.

There may be efficiency reasons to increase the number of halibut clients a vessel may carry. If guide operators find they are operating at an economic disadvantage by only being allowed to carry four clients to fish halibut, it may be a prudent business decision to stack an additional license on the vessel to spread the trip costs over more clients. For example, persons that operated two vessels that qualify (e.g., a main vessel and one that fished only during peak seasons or when the main vessels was under repair), would be allowed to stack both permits on one vessel and increase the number of clients they carry on their primary vessel. Depending on the overall demand and supply of trips, this action could benefit guided anglers and charter operators.

### **2.7.1.1 Summary of overall effects of Issues 1 - 11**

This section provides a qualitative summary of the expected effects of the moratorium program (Issues 1 - 11) on the various affected sectors. The expected effects outlined in this section are bulleted summaries of the discussions provided in earlier sections of the RIR.

General effects:

- The intent of Issues 1 – 11 is to implement a moratorium permit that would control unlimited new entry into the halibut guide business. After the program is implemented, new entrants will be required to obtain a permit that was initially allocated to the charter sector, based on historic participation. The program is not expected to limit the harvest of the halibut charter fleet. Increases in effort would result in increased halibut harvests as a result of using the permits to fish more days during the year, or carry more clients on average than the vessels historically carried.
- The moratorium is viewed as a shorter-term action, likely to be replaced by a subsequent Council action. Thus, the moratorium will likely define the persons who will be eligible for allocations in future programs that are currently being considered. Persons that did not qualify for or acquire a moratorium permit may not be considered as being eligible for future allocations.

Effects on communities:

- Because the permits being issued may be used in IPHC Area 2C or 3A, depending on their specific area designation, they may be used in any community in the larger designated area. The transitory potential of the permits makes it difficult to quantify the impacts on individual communities. In general, increased activity by the charter fleet will benefit communities in which those businesses initiate/terminate charter trips, purchase equipment, services, and supplies. The increased harvest by the charter sector will reduce the harvests of the commercial fishery (if the total amount of halibut available to the two sectors is constant). The reduced commercial harvest will have a negative impact on communities that primarily rely on and support that fishery. However, because the charter and commercial fisheries often operate in the same communities, increased economic activity by one sector will offset decreased economic activity by the other, to some extent, although the distribution within the community will almost certainly change.

<sup>145</sup> A separate logbook must be obtained for each vessel the permit holder uses for halibut fishing. ADF&G currently requires a charter business operator to use a separate logbook for each vessel they use to take clients fishing.

#### Effects on commercial halibut sector:

- Because the maximum number of permits that could be issued in Area 2C (689) and Area 3A (611) is greater than the number of vessels that fished in recent years, the catch by the charter sector will not be constrained. The increased charter harvest will reduce commercial catch in those areas. Because the quantity of halibut harvested has a very limited affect on ex-vessel price, it will also reduce revenues to the commercial sector. Quota share values in 2C and 3A would also be expected to decline, because the expected income stream earned from owning the QS will be reduced. The QS value in Area 3B and further west may slightly increase, if the ex-vessel price of their halibut increases, as a result of this action (although the price effect is, as just reported, expected to be quite small).
- Consumers of commercially caught halibut will realize reductions in consumer surplus if the amount of halibut on the market decreases. It is possible that other halibut sources could make up any U.S. decrease. For example, farm raised halibut production could increase.

#### Effects on charter halibut sector:

- For those entities that qualify for a permit, the moratorium program will reduce competition from new entrants into the business. Competition within the sector will continue, because sufficient capacity is likely to remain in the fishery to allow businesses to take additional clients fishing. Persons that want to leave the fishery may sell their permit, if it is transferable, and receive compensation for leaving the fishery.
- Non-transferable permits will be issued in the case that a vessel's activity generates a permit (under the 5 trip threshold), but the vessel did not take a minimum of 15 trips in the two periods used for qualification. In Area 2C, a maximum of 200 permits would be non-transferable and in Area 3A, a maximum of 127 permits would be non-transferable. The persons issued those permits would not be able to sell or give their permit to another person, including family members. Their permits would only be of value as long as the initial recipient uses them. At such time that those permits leave the fishery, it will reduce competition within the charter fleet and reduce the fleet's potential catch. Note however, that if the moratorium is replaced in the future, non-transferable permits could be transformed into some other fishing privilege that may or may not be transferable.
- Persons that do not qualify for a permit, or those that want to carry more clients or use more than one vessel at one time, will be required to purchase a permit. Those permits will increase the costs of entry. The actual cost of a permit cannot be predicted at this time, however, some members of the industry have stated in public testimony that the cost could be about \$5,000.

#### Effects on guided halibut anglers:

Guided halibut anglers are primarily impacted by the availability of trips and the price they must pay for the trip. The proposed moratorium will not constrain the number of trips annually available based on projected demand over the next 10 years. Because the guide businesses will compete for clients, the relative price of trips will be expected to be set at a level at which guide operators are not earning above normal profits. Other economic, political, regulatory, and biological factors may influence the total trips available, as well.

## 2.7.2 Summary of Council preferred alternative under Issue 12

Overall, the Council's preferred alternative would allow a subset of small, rural, GOA communities in Areas 2C and 3A to request a limited number of halibut charter permits from NMFS at no cost, as part of the moratorium program. NMFS would issue the charter halibut permit to the CQE representing the community, which would designate a skipper with a USCG license to take clients halibut charter fishing, similar to any other business. Halibut charter permits that are requested by and issued to CQEs at no cost would be subject to several specific restrictions. In addition, all 35 Amendment 66 communities would be subject to an overall use cap that differs from the use cap for permit holders in the general program; thus, many communities could purchase a limited number of halibut permits over and above those requested.

### Eligible communities

The Council's preferred criteria to qualify communities are as follows: 10 or fewer 'active' charter businesses terminated trips in the community in each of the years 2004 and 2005, with active defined as  $\geq 5$  bottomfish trips. These criteria qualify 18 communities in Area 2C and 14 communities in Area 3A. Thus, a total of 32 of the 35 Amendment 66 communities would be eligible to request a halibut charter permit(s) from NMFS at no cost under this option, if each of these communities formed a qualified CQE. Eligible communities under the preferred alternative are provided in the following table.

**Table 43**      **Communities eligible to request and receive a limited number of halibut charter moratorium permits at no cost under Issue 12**

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

\*These communities have already formed a CQE and had it approved by NMFS as of January 2008.

It was stated in a previous section that the design of the eligibility criteria would likely disadvantage Amendment 66 communities (relative to other Amendment 66 communities) that are not long established charter ports but whose CQE would not qualify to receive permits because the community either exceeded the number of businesses in one of the two years at issue, or because a business reported the community as the port of landing, but no longer operates there. This is because a business would be counted toward the community's threshold if it reported the community as the port of landing for only one trip in 2004 or 2005. As discussed previously, having a business 'count' towards a specific community does not mean that the business is physically located in the community, nor does it mean the business owner is a resident of the community. It also does not mean that the business terminated all of its trips in that particular year in the community.

This issue is exacerbated by the relatively narrow window of participation history used to determine the beneficiaries of the charter halibut permit program. This may be less of an issue for communities that are well above the selected criteria, but more of an issue for communities that only slightly exceed the designated maximum. Under the Council's preferred alternative, Craig, Gustavus, and Elfin Cove are the

only Amendment 66 communities that would not qualify, based on existing charter activity. Elfin Cove exceeds the criteria (must have 10 or fewer businesses to qualify, with  $\geq 5$  trips, in 2004 and 2005) by two businesses in each year. Gustavus exceeds the criteria by 3 and 4 businesses in 2004 and 2005, respectively; and Craig exceeds the criteria by 16 and 15 businesses in 2004 and 2005, respectively.

Under the Council's preferred alternative, an estimated 689 permits are estimated to be issued under the general program under Option 10.1, using a 5-trip threshold (see Table 16). An estimated 93 of those permits could be issued under the general program to businesses which have reported one of the 18 eligible Area 2C Amendment 66 communities as the port of landing for at least one trip during the 2004 – 2005 qualifying period under Issue 10, Option 10.1 under a 5-trip minimum (Table 44).<sup>146</sup> In sum, about 13% of the total estimated number of permits to be issued for Area 2C would be issued under the general program to businesses that reported an eligible Amendment 66 community as the port of landing for at least one trip during the qualification period, if the business qualified under Option 10.1 using the 5-trip threshold. The remaining 87% of the permits would be issued to businesses that reported one or more of the other 120 ports of landing.

**Table 44**      **Number of estimated permits issued to individual businesses reporting the port of landing as a potentially eligible community under the Council's preferred alternative**

Community qualifying criteria under Council's PA	Estimated number of eligible communities under Issue 12		# of estimated permits issued to businesses under Issue 10, Op. 10.1, using a 5 trip threshold	
	Area 2C	Area 3A	Area 2C	Area 3A
$\leq 10$ businesses; $\geq 5$ trips	18	14	93	68

Likewise in Area 3A under the Council's preferred alternative, an estimated 611 permits are estimated to be issued under the general program. An estimated 68 of those permits would be issued under the general program to businesses which reported one of the 14 eligible Area 3A Amendment 66 communities as the port of landing for at least one trip during the 2004 – 2005 qualifying period under Option 10.1 using a 5-trip minimum (Table 44).<sup>147</sup> In sum, 11% of the total estimated number of permits to be issued for Area 3A under the general program would be issued to businesses that reported an eligible Amendment 66 community as the port of landing for at least one trip during the qualification period, if the business qualified under Option 10.1 using the 5-trip minimum threshold. The remaining 89% of the permits would be issued to businesses that reported one or more of the other 120 ports of landing.

#### Use caps on requested permits

The Council selected a use cap on the number of requested permits of 4 permits per eligible Area 2C community and 7 permits per Area 3A community. The Council deliberated on the limits and ultimately thought that these constituted a reasonable number of permits for an under-developed charter community to receive to start or maintain relatively new businesses. The number of permits represents a compromise between the goal of limiting the number of permits created under the new moratorium program and the goal of providing a sufficient number of permits to create a meaningful opportunity for rural communities. The limit was set lower for Area 2C communities, due primarily to the higher charter

<sup>146</sup>Eighteen Area 2C communities qualify under the Council's preferred alternative; however, only 13 of the 18 communities were reported as the port of landing for a business that is estimated to receive a permit(s) under the general program.

<sup>147</sup>Fourteen Area 3A communities qualify under the Council's preferred alternative; however, only 8 of 14 communities were reported as the port of landing for a business that is estimated to receive a permit(s) under the general program.

halibut effort in Area 2C, relative to the current Area 2C GHL, and the higher number of qualifying communities in Area 2C compared to Area 3A.

Thus, under the Council's preferred alternative, in which 18 Area 2C communities would qualify, the maximum number of new permits that could be created for CQEs representing eligible Area 2C communities is 72 permits. Also under the Council's preferred alternative, in which 14 Area 3A communities would qualify, the maximum number of new permits that could be created for CQEs representing eligible Area 3A communities is 98 permits.

Recall that under the Council's preferred alternative under Issue 10, 689 permits are estimated to be issued in Area 2C and 611 permits in Area 3A under the general program. Thus, applying the Council's preferred alternative under Issue 12, the pool of Area 2C permits could be increased by a maximum of 10%, with those additional permits issued to CQEs. The pool of Area 3A permits could be increased by a maximum of 16%. Note that had the Council selected a higher trip threshold than 5 bottomfish trips in the general program, fewer permits would be issued in the general program. The CQE permits would then have comprised a larger portion of the total pool of permits. Meaning, the effect of creating additional permits for CQEs could have been partially offset by being more conservative on the number of permits issued under the general charter moratorium program. However, the Council opted for a relatively low threshold of activity to earn a permit in the general program, for reasons stated previously in Section 2.7.1.

Finally, recall that each eligible community must form a CQE in order to participate in the program. Under the existing number of eligible CQEs<sup>148</sup> and the preferred alternative for use caps, a maximum of 32 permits could be issued in Area 2C and 56 permits in Area 3A. In addition, it is more likely that those communities with the support services and transportation network available to support halibut charter operations (e.g., regular air service, ferry access, cruise ships, lodges, harbors, etc.) would take advantage of the permit opportunity. Varying levels of support services are in place in the communities with existing CQEs, but most have regular air service with daily flights, bed-and-breakfasts or lodges, fish cutting, cleaning, and sealing services, cultural attractions, and residents with USCG licenses and vessels.

### Overall use caps

The limit on the number of permits that each CQE could hold and use in total, whether requested permits or purchased permits, is: 2 times those selected for the CQE requested permit use cap for each area. In effect, this option results in an overall use cap of 8 permits for Area 2C CQEs, and an overall use cap of 14 permits for Area 3A CQEs. This option is structured such that a community would be allowed to purchase a number of permits equal to those that it can request from NMFS at no cost. The intent behind a higher use cap for CQEs compared to other permits holders is that the CQE could use its permits to support multiple businesses to operate in the community, while an individual business is using its permits to support its own individual operation.

Note that the overall use cap applies to all 35 Amendment 66 communities; it is not limited to the subset of communities that qualify to receive requested permits. The difference is that those communities that are eligible to receive requested permits (the 32 communities listed in Table 43) would be able to request up to half of their overall limit from NMFS at no cost, and the remainder could be purchased up to the overall use cap. The three Amendment 66 communities that do not qualify to receive requested permits under the preferred alternative (Gustavus, Craig, Elfin Cove) could only *purchase* permits up to the Area 2C CQE overall use cap of 8 permits.

<sup>148</sup>Of the 18 eligible Area 2C communities under the Council's preferred alternative, 8 have formed CQEs to-date. Of the 14 eligible Area 3A communities, 8 have formed CQEs to-date.

In total, the 21 Area 2C communities could hold up to 168 permits under the overall use cap options under the preferred alternative. The 14 Area 3A communities could hold up to 196 permits. Note that the way that the overall and requested use caps are structured, up to nearly half of the Area 2C permits (72 permits) could be requested from NMFS at no cost, and up to exactly half of those Area 3A permits (98 permits) could be requested from NMFS at no cost. The remainder of the permits in each area could be purchased up to the overall use cap. Recall that while the tables above are based on the maximum number of eligible communities, each community would also need to form an approved CQE in order to be subject to these higher caps. Currently, there are only 9 communities represented by CQEs in Area 2C and 3A.

Note that the number of estimated permits issued under the Council's preferred alternative in the general program is 689 permits in Area 2C and 611 permits in Area 3A. While an unlikely result, given the range of options for overall use caps for CQEs under the Council's preferred alternative, it is theoretically possible that 14% of the pool of initially issued halibut charter permits in Area 2C could be purchased by CQEs. In Area 3A, given the range of options for overall use caps for CQEs under the Council's preferred alternative, it is theoretically possible that 16% of the initially issued halibut charter permits could be purchased by CQEs and, in this way, redistributed to these rural communities. These comparisons have limited value, however, as there are several implicit assumptions, including the unlikely scenario that all 35 eligible communities would form CQEs and each CQE would *purchase* existing charter permits to the maximum extent allowed.

Finally, the Council's preferred alternative under Issue 12 includes several other restrictions on the use of CQE requested permits:

- The permit is designated for the area in which the community represented by the CQE is located
- The permit is endorsed for 6 clients fishing halibut
- The permit cannot be sold (i.e., permanently 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).

The effects of the above provisions are discussed in detail in Section 2.5.12.4.

### **2.7.2.1 Summary of overall effects of Issue 12**

The following provides a brief, qualitative summary of the expected effects of the provision to allow CQEs to request a limited number of halibut charter permits (creation of new permits) under the moratorium program on the various affected sectors. Thus, the expected effects outlined in this section apply to the range of options included in Alternative 2, Issue 12, the range of which includes the Council's preferred alternative. The growth in the charter industry is centered in the major halibut ports, primarily located on the road system (see Section 2.5.10); however, there are many small, rural, coastal communities with undeveloped or under-developed charter industries and few alternative economic opportunities other than fishing. The intent of the provision is remove a new economic barrier to entry (purchase of a charter halibut limited entry permit) for these small, rural communities by allowing them to receive a free permit(s), held by the CQE and non-transferable, in order to support charter business development. Some of the expected effects are summarized below.

General effects:

- The stated intent is that the moratorium will be an interim program, replaced by a long-term solution in the future. However, a moratorium may serve as a means of pre-selecting the set of beneficiaries in subsequent revisions to a limited entry program or development of a quota share

program. Thus, the stakeholders that are recognized in the distribution of benefits (i.e., permits) in the moratorium program, whether communities or licensed sportfishing businesses, will most likely be the same set of stakeholders that will benefit from the longer-term proposals.

- Absent analysis to determine the ‘preferred’ or ‘optimum’ number of charter halibut permits issued in each area, it is a policy decision by the Council to determine the appropriate balance between the primary goal of the moratorium program to limit new entry, and the conflicting goal of creating new permits, for use by small, rural communities.

#### Effects on communities:

- There is no guarantee that charter businesses that historically operated in a community with a ‘developed’ charter port, as defined by charter activity in a relatively narrow window of time (2004 - 2005), will qualify for permits under the general program, nor that the businesses will continue to operate out of that community’s port in the future. This may serve to disadvantage ineligible Amendment 66 communities, relative to eligible Amendment 66 communities, that are not long established charter ports, but that may have exceeded the number of businesses in one of the two years in the qualifying period.
- Under the criteria considered, a range of 23 to 33 of the 35 Amendment 66 communities in Areas 2C and 3A would qualify to receive halibut charter permits (note that these communities must also form CQEs, 16 of which have been formed in these areas to-date). Under the limits (use caps) considered for the number of requested permits, a maximum of 39 to 133 permits could be issued to CQEs in Area 2C and from 40 to 210 permits in Area 3A.
- The implementation of this provision, as a stand-alone measure, is not anticipated to ‘save’ eligible communities, or generate a comparatively large economic impact. The provision is instead anticipated to support one component of a larger plan to either re-establish or maintain fisheries access, and an associated fisheries-based economic structure, in specified rural communities. CQE-held charter permits may enable residents from these communities, or residents of other communities, to participate in a fishery from which they might otherwise be excluded, due to the cost of purchasing a permit.
- The structure of the CQE program creates higher administrative costs associated with using the permit (going through CQE) than would be generated if the permit was provided directly to community residents from NMFS. However, making the CQE the permit holder, and requiring that the permit is non-transferable, likely better meets the goal of providing long-term benefits to the community in terms of mitigating economic barriers to continued access to the halibut charter fishery and providing an opportunity for the community, as a whole, to further develop the charter industry as a part of its overall economic development plan.

#### Effects on commercial halibut sector:

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



by the number of permits issued under the general charter moratorium program, which depends on the qualification criteria under Issue 10.

#### Effects on charter halibut sector:

- The market for charter permits could be affected by the provision to allow CQEs to hold charter permits, as charter operators seeking to enter the fishery may choose to apply for use of a permit through the community CQE, as an alternative to purchasing their own permit. While the pool of potential buyers may be reduced, the number of permits available for sale on the open market would not be affected (CQE requested permits are not transferable), which may result in downward pressure on the price of permits for charter operators seeking to purchase a permit. This would affect both the existing charter sector and new entrants into the fishery.
- The existing charter sector could also be affected by an influx of new or expanded charter operations through CQE permits, depending upon the level of participation by rural communities. As the CQE is required to use the permit in its member community, charter operators in other communities may not be substantially affected, even with the overall increase in competition. However, there may be some negative effects on existing charter operators in the Amendment 66 communities, as they realize increased competition for clients from new charter operations within their community. In part, however, the eligibility criteria are intended to exclude Amendment 66 communities whose charter halibut market is already relatively developed or saturated. In addition, existing charter operators in communities with the least developed charter industries may benefit from additional operators in the community, as they potentially strengthen the overall market for charter operations (e.g., via increased marketing, back-up charter services, increased incentive to develop support services).
- The requirement that the CQE must use the permit for a business that operates in and/or out of the represented community is fundamental to the overall goal of the program. Absent this requirement, a CQE could determine that retaining a skipper who operates out of a different community is in the community's best interest. Although this approach could still result in benefits to the community (in terms of revenue or employment), the effect could thus be that instead of supporting new businesses operating out of rural communities, the program could support additional businesses operating out of the most common ports of landing. This could result in increased growth in the industry in the relatively few communities whose businesses will receive the majority of limited entry permits allocated under the general moratorium program.

#### Effects on guided halibut anglers:

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

Seward, Ninilchik) to the more rural communities represented by CQEs. Depending on the level of redistribution, halibut charter opportunities for guided anglers that want to purchase a charter trip in the most developed ports could be reduced.

## **2.8 Council's Preferred Alternative (Revised and updated Section 2.7)**

The Council selected Alternative 2 as its preliminary preferred alternative at the February 2007 Council meeting and as its final preferred alternative at its March/April 2007 meeting. Alternative 2 has 12 components or issues.

Section 2.7 provides an analytical overview of the Council's preferred alternative. However, Section 2.7 was completed before the Council knew which year would be the recency year. Thus, while Section 2.7 could allude qualitatively to the impact of the recency year, the quantitative analysis of the estimated numbers of businesses, permits, and endorsements, could only be based on the information available for the known qualification years 2004 and 2005.

Section 2.8 is a revised and updated version of Section 2.7, supplementing that analysis by taking account of the additional impact of the recency period of 2008 and of the details of NMFS's proposed implementation, as described in the proposed rule (74 *FR* 18178; April 21, 2009).<sup>149</sup> Detailed logbook data for the 2008 season became available to NMFS in late May 2009 and are used here.

Section 2.8 follows the general format of Section 2.7. Section 2.8.1 describes Issues 1 through 11, which define the structure of the limited access system. Issue 12, which allows a subset of small, rural, Gulf of Alaska communities in IPHC Areas 2C and 3A to request a limited number of halibut charter permits from NMFS as part of the limited access system, is discussed in Section 2.8.2.

### **2.8.1 Council preferred alternative under Issues 1 - 11**

#### ***Permits would be issued to the ADF&G licensed fishing guide business owners. (Council issue #3)***

The Council's preference is to issue the limited access permits to registered or licensed sport fishing business owners, based on historic participation in the fishery. The guide business owners will be issued the limited access permit, in part, because they are licensed by the State of Alaska and are responsible for reporting logbook data for the charter industry. They are also typically responsible for bookings and, in many cases, own the charter vessel.

Licensed captains and crew hired to operate vessels would not be included in this initial allocation. The Council elected not to include those individuals in the initial allocation of this program, because of the type of fishing privilege issued and the business structures that exist in the charter industry.

The efficiency implications of this approach to permit allocation are unclear. Because the allocation is not market based, the initial distribution of permits may not be as economically efficient as a market based system. However, Libecap (2007) has recently suggested that "Granting rights to incumbents who have experience in the industry appears to be consistent with an assignment to high-value, low-cost users." Allowing permit transfers, after the initial allocation, will help redistribute the permits to those persons who value them the most.

<sup>149</sup> Section 2.8 was added in October 2009.

***Permit applicants would be required to sign an affidavit attesting that all legal requirements were met. (Council issue #4)***

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

Any new recordkeeping and reporting requirements will increase the cost of doing business for the charter operators. However, the additional costs associated with signing an affidavit should be offset by the benefits the public receives from obtaining the document. NMFS will also incur costs associated with developing, distributing, and verifying information submitted on the affidavit. Those costs are also expected to be relatively small, and by requiring the applicant to sign the affidavit, it could reduce other costs associated with enforcement and monitoring.

***Permits<sup>150</sup> may be held by U.S. citizens or U.S. businesses with (at least) 75 percent U.S. ownership of the business. Businesses may receive multiple permits due to charter halibut activity by vessels reported by the businesses in ADF&G logbooks. Initial permit recipients may be “grandfathered” below the U.S. ownership level and above the proposed use caps until any change in ownership of the business occurs.<sup>151</sup> (issue #1)***

The Council recommended that the charter vessel fishery under limited access should be primarily owned and controlled by U.S. citizens. The Council’s authority under the Halibut Act at section 773c(c), however, is limited to developing regulations “...applicable to nationals or vessels of the United States....” Hence, the development of regulations that include non-citizens of the United States is not authorized by section 773c(c) of the Halibut Act. The Secretary, however, has general responsibility and authority to adopt regulations as may be necessary under section 773c(a) and (b) of the Halibut Act. Therefore, the Secretary is exercising this authority in waiving the citizenship requirements for initial issues.

Based on the Council’s recommendation, the Secretary is proposing two different eligibility standards. First, for initial allocation of charter halibut permits, this action proposes no distinction between U.S. citizens and nationals of other countries. Any person that meets the standards for initial allocation described above would be issued a charter halibut permit or permits according to those standards. No citizenship standards would apply to the initial allocation of charter halibut permits to avoid excluding persons who had legitimately participated in the charter vessel fishery during the qualifying and recent participation years and to act in accordance with treaty obligations.

Second, for transfers of charter halibut permits, this action proposes to allow transfers only to U.S. citizens. That is, a transfer to an individual would only be approved if the individual is a U.S. citizen, and a transfer to a corporate entity would be approved only if it is a U.S. business with at least 75 percent U.S. citizen ownership of the business. This proposal adopts the 75 percent U.S. ownership criterion for a U.S. business from the American Fisheries Act (111 Stat. 2681, Oct. 21, 1998), which is a key piece of federal legislation designed to Americanize the fishing fleet operating in U.S. waters. Hence, as non-U.S. citizens leave the fishery, their charter halibut permits either would cease to exist (if the permits were nontransferable) or the permits would be acquired by U.S. citizens or U.S. businesses.

The permit condition will add a U.S ownership requirement to operate a halibut charter business in IPHC Areas 2C and 3A. Currently, the only requirements to own and operate a guide business in the State of

<sup>150</sup> Through initial issuance and transfers

<sup>151</sup> Transferred permits would not be grandfathered below the U.S. ownership cap, even upon sale of a business, but would be grandfathered above the use cap upon sale of the entire business (see Issue 11).

Alaska are found in Section 16.40.260 of the Alaska Statutes (AS) and that statute does not specify a U.S. ownership requirement.

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

Implementing the permit requirements identified by the Council will ensure that any transfers of permits must be made to U.S. citizens or to U.S. businesses with at least 75 percent U.S. ownership of the business. This regulation will prohibit nonresident aliens and citizens of Canada and Mexico, not initially issued a permit, from owning halibut charter businesses that fish in Areas 2C and 3A. Persons grandfathered in under this provision will not be allowed to purchase additional permits. If they sell a permit they would not be allowed to replace that permit in the future.

Nonresident aliens could continue to own and operate halibut charter businesses operating in other areas of the State. Because the limited access permits apply only to IPHC Areas 2C and 3A, these regulations would not alter the management structure in other areas.

Net national benefits only include the consumer and producer surpluses accruing to U.S. residents, so potentially adverse impacts on residents of other countries are not relevant to this cost and benefit analysis. The impact of this provision on U.S. residents is not clear. Non-residents may continue to use non-transferable permits until they withdraw from the fishery at which point the non-transferable permits would expire. While non-residents will have to sell transferable permits to U.S. residents, the permit market demand is likely to be relatively large and competitive. U.S. residents acquiring transferable permits from non-residents can, in general, expect to have to compete against other U.S. residents, and can expect to pay prices generally equal to the expected present value of the producers' surplus that could be generated with the permit. In general, any net benefits generated by the permit would be associated with developments that were not expected when the permit was purchased. The restriction on non-resident ownership could impose costs on permit operators by restricting sources of financing available to U.S. businesses or reducing competition to serve anglers. However, U.S. financial resources, and potential competition for anglers, are probably large in relation to this market, and this impact is likely to be minor. Potential costs or benefits to U.S. producers or consumers generated by the restriction, therefore, are probably small.

***Permit would be designated for Area 2C or Area 3A. (issue #2)***

Permits would be issued for either IPHC Areas 2C or 3A. Permit restrictions will reduce the potential number of halibut charter vessels that could operate in that area. In the near term, limiting limited access permits to a specific IPHC area is not expected to have a substantial impact on charter businesses or guided anglers.

NMFS estimates that it will issue permits to 524 distinct qualifying businesses in Areas 2C and 3A, and that three of those businesses will receive permits in both areas. NMFS estimates that 231 businesses will receive permits in Area 2C and 296 in Area 3A.<sup>152</sup>

<sup>152</sup> These estimates, and others in Section 2.8, were prepared by applying the permit and endorsement allocation rules contained in the action, to logbook data collected by the State of Alaska in 2004, 2005, and 2008. This data set and these rules are those that will eventually be used to identify permit and endorsement recipients. Actual permit and endorsement issuance may differ from these estimates for a number of reasons: (a) some eligible recipients may not apply; (b) on-going editing may lead to data corrections in the period between the preparation of this analysis and the permit allocation process; (c) new information may be brought forward in the allocation process and in associated appeals, that will modify some of the conclusions in this analysis; (d)

*Evidence of participation is ADF&G saltwater logbook entry with bottomfish statistical area, rods, or boat hours [Footnote: Actual halibut statistical area, rods, or boat hours, as reported in the ADF&G logbooks are required to demonstrate participation in the year prior to implementation] . (issue #9)*

*Each licensed guide business owner who reported a minimum of 5 bottomfish logbook trips during 2004 or 2005, and 5 halibut trips in the year prior to implementation, would be issued a permit(s) based on the number of trips summed for all vessels in his/her best year of the qualification period, unless an unavoidable circumstance<sup>153</sup> occurred. A business would be limited to the number of permits equal to the highest number of vessels used in any one year, during the qualifying period.<sup>154</sup> (issue #10<sup>155</sup>)*

The Council recommended participation requirements for permit qualification that take into account historic participation during a qualifying period and during a recent participation period. Participation during both periods would demonstrate a qualifying dependence on the charter vessel fishery for halibut. Charter halibut permits would be awarded only to persons who participated as owners of a charter halibut business that was licensed by the ADF&G. The proposed rule would adopt the Council's recommendation and award permits to applicants that participated as ADF&G licensed fishing guide business owners in a qualifying period and a recent participation period.

The qualifying period would be the sport fishing season established by the IPHC in 2004 and 2005. The sport fishing season in both of those years was February 1 through December 31.

The recent participation year would be the year prior to implementation of this proposed action. In recommending this action, the Council was not certain exactly what year this proposed action, if approved, would be implemented; hence, the year prior to that also was unknown. The Council contemplated that the year prior to implementation could be 2007 or 2008. NMFS expects to implement this program in 2009. Thus, the final rule for this action, if adopted, will specify 2008 as the year prior to implementation.

To qualify for a permit, an applicant must have reported at least five logbook trips during the qualifying period and five logbook trips during the recent participation period. The Council wanted to ensure that

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this analysis does not take account of special circumstances; (e) this analysis assumes that individuals choose their "best" year so as to maximize the number of permits they receive in total, not the number of transferable permits they receive; applicants may choose different strategies. To elaborate this last point, the proposed rule allows applicants to choose whether they want to count the number of trips and vessels they used in 2004 or 2005. NMFS initially calculated the numbers of qualifying businesses and permits in two ways. NMFS made one calculation on the assumption that the business would choose the year that maximized the number of permits it received, and it made a second calculation on the assumption that the business would choose the year that maximized the number of transferable permits it received. The numbers of permits issued varied very little in response to this change in assumptions about how a business would make its decision. There was no difference in permit numbers in Area 3A, and only a three permit difference in Area 2C. Therefore, for simplicity, only one set of results is reported: the result of assuming that businesses select the year so as to maximize their total number of permits.

<sup>153</sup> Acceptable unavoidable circumstances will be adjudicated on a case by case basis, through the NOAA Office of Administrative Appeals, and include medical emergencies, military exemptions, and constructive losses. These hardship provisions should be implemented using similar criteria used in the groundfish License Limitation Program. The military exemption refers to an individual who was assigned to active military duty during 2004 or 2005, who qualifies as "active" during the year prior to implementation, and who demonstrated an intent to participate in the charter fishery in Area 2C or 3A (prior to the qualifying period).

<sup>154</sup> Example: A business owner operated 3 vessels with 4, 4, and 12 trips, respectively (summed trips = 20) in his best year. He would be issued 1 permit under a 20 trip minimum ( $20/20 = 1$ ); 2 permits under a 10 trip minimum ( $20/10 = 2$ ); or 3 permits under a 5 trip minimum ( $20/5 = 4$ , but the maximum number of vessels in that year is 3).

<sup>155</sup> Issue 10 has been modified slightly to note that, based on Issue 9, the qualification for the recency period is based on halibut, rather than bottomfish, trips. The modification also makes it clear that five trips are needed during the qualification period of 2004-2005 and in the recency year. These changes were present in the original analysis of Section 2.7, and have been carried over here.

permits are initially issued only to persons who were active in the charter halibut fishery at or above a minimal level in both periods. The Council concluded that a five-trip level of participation showed active participation in the charter halibut fishery. The purpose of requiring active participation in both periods is to make sure that the applicant is an historical participant and a recent participant in the charter halibut fishery.

Charter halibut permits would not be awarded to persons who purchased a charter fishing business that met some or all of the participation requirements but who themselves do not meet the participation requirements. The Council did not recommend that NMFS award permits based on business purchase agreements and, therefore, it did not analyze criteria to recognize such agreements. Hence, NMFS does not propose to recognize private agreements for the following reasons: (a) a person who met all the participation requirements for a transferable permit could apply for the permit and transfer it to another person, if that is required by their private agreement; (b) a person who meets only the requirements for a nontransferable permit, should not be able to transfer that permit; and (c) awarding a permit based on one person meeting the participation requirements in the qualifying period and another person meeting the participation requirements in the recent period would increase the total number of permits which would be contrary to the Council's intent. NMFS concluded that if one person did not participate in both periods—the qualifying period and the recent participation period—that person should not receive a charter halibut permit in the initial award of permits. To enter the fishery, that person would have to buy a permit from a person that met the participation requirements in both periods.

If an applicant for a charter halibut permit meets the minimum participation requirements during a qualifying year and the recent participation year, NMFS would determine the number of permits the applicant would receive under each combination of qualifying years, and how many of those, if any, would be transferable permits.

If an applicant qualified for any permits, NMFS would issue to the applicant the number of permits equal to (a) the applicant's total number of bottom fish logbook fishing trips in a qualifying year, divided by 5, or (b) the number of vessels that made those trips, whichever number is lower. The Council recommended that the number of permits issued to a charter fishing business would be "based on the number of trips summed for all vessels in [its] best year of the qualification period." Further, "[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." NMFS interprets this to mean that the number of permits would be the number of bottomfish logbook trips in 2004 or 2005 divided by five or the number of charter vessels operated by a business during 2004 or 2005, whichever number is lower.

Although the Council motion refers to an applicant's "best year of the qualification period," the Council was silent on how an applicant's "best year" is determined. NMFS proposes that the applicant should select his or her best year. Thus, the proposed rule uses the term "applicant-selected year" rather than the applicant's "best year." The "applicant-selected year" means the year in the qualifying period—2004 or 2005—that the applicant selects for NMFS to use in determining how many permits the applicant will receive and whether the permits will be transferable or non-transferable. NMFS proposes that the applicant select the applicant's best year because applying the rules for the number of permits and transferable permits could have different results. For example, an applicant may receive a greater number of permits using the applicant's participation in one year but a greater number of transferable permits using the applicant's participation in another year. Because the year selected could make a difference, the applicant should choose which outcome is more important to the applicant.

To determine the number of permits an applicant may be awarded and whether those permits are transferable or nontransferable, NMFS would create the official charter halibut record. This record would contain the information about participation in the charter halibut fishery that NMFS would use to evaluate

applications for charter halibut permits. NMFS would derive the official record from ADF&G logbook records. For each applicant, NMFS would make two determinations for each of the two qualifying years based on the official record. First, NMFS would determine the number of trips that the applicant reported, divide that number by five, and round it down to the nearest whole number. Second, NMFS would determine the number of vessels that made those trips. NMFS would then inform the applicant of these numbers for the years 2004 and 2005.

The applicant would select 2004 or 2005 as the year that NMFS should use to determine the applicant's permits. Using the year selected by the applicant, NMFS would award the applicant the number of permits for which they qualify. For example, assume an applicant in his or her selected qualifying year reported 23 logbook trips using three vessels. One vessel made 16 trips, another vessel made five trips, and another vessel made only two trips. Under the proposed rule, NMFS would calculate  $23 \div 5 = 4.6$  which would be rounded down to four. NMFS would choose the lesser of one-fifth of the number of trips, or the number of vessels. In this case, the number of vessels was three. Hence, the applicant would be awarded three permits.

A limit on the number of permits equal to the number of vessels used in the applicant-selected year is necessary to prevent expansion in the number of vessels that could operate simultaneously in the charter halibut fishery, if this program is approved. If the number of permits was based only on the number of trips, divided by five, the number of permits could exceed the number of vessels that participated before adoption of this limited access program, which would be antithetical to the purposes of this program.

Estimates of the number of qualified businesses and of the permits to be issued under the Council's preferred alternative, are reported in Table 45.<sup>156</sup> An estimated 502 permits would be issued to 231 businesses for IPHC Area 2C and an estimated 418 would be issued to 296 businesses for Area 3A. Table 45 implies that, although there are fewer businesses in Area 2C than in Area 3A, they will receive a larger average number of permits. The reason is that businesses in Area 2C tend to operate larger numbers of vessels. As noted earlier, 524 businesses would qualify for permits in one or both areas.

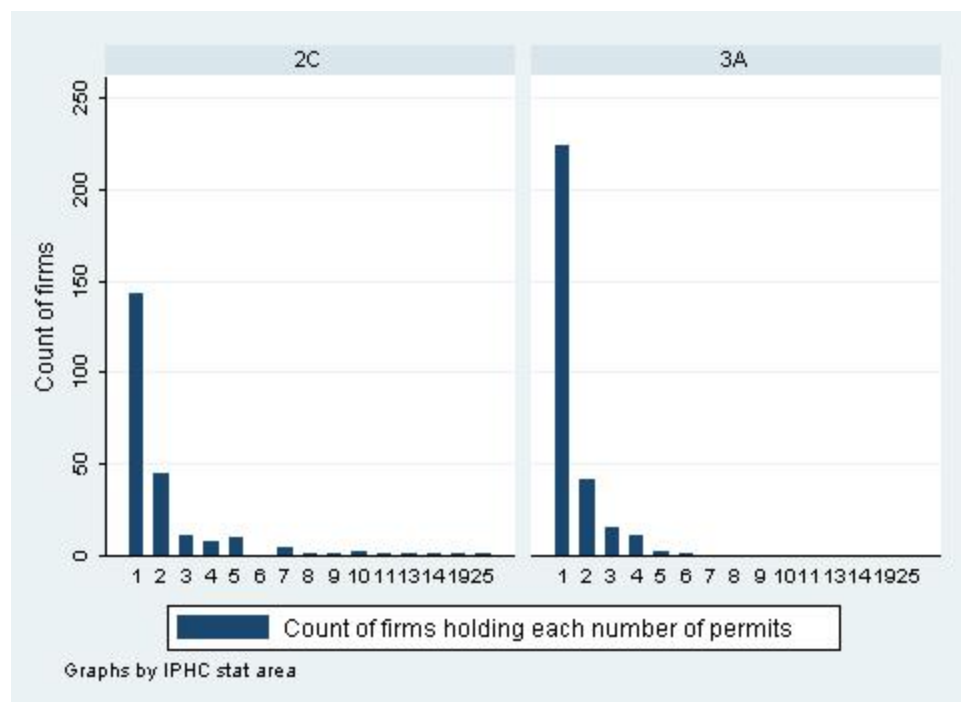
**Table 45**      **Estimated number of permits that would be issued and the number of businesses receiving the permits under the Council's preferred alternative**

IPHC Area	Permits	Businesses
2C	502	231
3A	418	296

Source: ADF&G Saltwater Logbook data, 2004, 2005, and 2008. These estimates reflect activity in the recency year 2008.

Figure 12 compares the estimated numbers of permits to be issued to individual qualifying businesses in Areas 2C and 3A.

<sup>156</sup> The estimated number of qualified businesses, permits, and endorsements, may differ from those ultimately issued. It is possible, for example, that not everyone that appears to be eligible will apply. Conversely, persons who do not appear to be eligible may have unavoidable circumstances which will ultimately lead to permit issuance.



**Figure 12** Estimated distribution of initial holdings of total permits (transferable plus non-transferable) among qualifying businesses in Areas 2C and 3A.

The numbers of permits to be issued are smaller than the numbers of vessels that operated in 2008. As shown in Table 46, 722 vessels were reported to have taken bottomfish trips, based on the 2008 ADF&G Saltwater Logbook. In Area 2C, 502 permits will be issued to 231 businesses. Similarly, in Area 3A an estimated 418 permits will be issued to 296 businesses. There were 605 active vessels in Area 3A in 2008.

It is not vessels that are being permitted. Businesses are receiving permits to operate vessels. While vessels will have to carry a permit on board whenever they are operating as guided charter vessels, any given permit could be used on multiple vessels during a season, or even during a period as short as a single day. Conversely, if permits were stacked on a vessel, as they may be, several permits could be associated with a single vessel. Thus the number of permits is not strictly comparable to the number of vessels, since in any given year.

**Table 46** Participation in the fisheries in the qualifying and recency years

	2C				3A			
Year	Person-trips	Vessel-trips	Vessels	Trips/Vessel	Person-trips	Vessel-trips	Vessels	Trips/Vessel
2004	70,476	19,736	613	32	117,748	22,833	529	43
2005	77,279	20,872	646	32	133,250	23,181	564	41
2007	109,382	27,479	727	38	151,152	25,378	640	40
2008	105,270	26,162	722	36	136,743	23,213	605	38

Source: ADF&G Saltwater Logbook data from 2004, 2005, 2007 and 2008. Although 2007 is not a qualifying or recency year, the information has been made available by ADF&G and it has been used here for context.

A large proportion of the businesses providing guided charters in 2008 will not qualify for permits. In Area 2C, 173 of the guided businesses that showed evidence of bottomfish fishing in 2008 would not qualify to receive an Area 2C guided charter permit under the limited access system. One hundred and fifteen (115) of these had five or more trips in 2008, and 71 had fifteen or more trips in 2008. For comparison, there were 231 qualifying businesses in Area 2C. Thus, 43% of the businesses active in



2008 would not qualify for permits. In Area 3A, 154 of the guided businesses that showed evidence of bottomfish fishing in 2008 would not qualify to receive an Area 3A guided charter permit under the limited access system. One hundred and eleven (111) of these had five or more trips in 2008, and 81 of these had fifteen or more trips in 2008. For comparison, there were 296 qualifying businesses in Area 3A. Thus, 34% of the businesses active in 2008 would not qualify for permits.

These businesses either did not meet the qualification period thresholds recommended by the Council (2004-2005), or operated during that period, but did not operate in 2008 over the recency thresholds recommended by the Council.

Businesses that operated in 2008, but failed to qualify, may have been unaware of the qualification criteria for this action. The Council chose the control date in December 2005, and incorporated it into its final action in April 2007. It was published in several issues of the Council's newsletter, and by NMFS in the *Federal Register* in February 2006 (71 FR 6442). Operations making significant, irrecoverable, investments in the business would have had a strong incentive to inquire into the regulatory status of the fishery, as an important element of due diligence. Other operations, making less significant and largely recoverable investments (using an existing vessel to explore the potential of the industry) may have had smaller incentives to do so. However, the existence of these incentives and the Council and Secretarial publication of the control date, do not preclude the possibility that some operations failed to fully understand the implications of Council activity.

Businesses that were aware of the criterion, and that nevertheless entered the fishery after the qualification period, may have believed that there was a significant chance that the Council or the Secretary ultimately would not impose the requirement of having fished in the qualification period, or they may have structured their operations in light of the upcoming limited access permit requirement. In either case they would have anticipated that there would be a significant chance they would either have to cease operations if the control date was part of the final program, or that they would have to buy the requisite permits, work as a hired skipper or subcontractor to a firm that held permits, or access community halibut charter permits through a CQE program.

It is difficult to determine the impact this amendment will have on specific communities. The permits that will be issued, based on meeting the eligibility criteria, are not tied to a community. The permits could be used anywhere in the IPHC area listed on the permit. Because the permit is not attached to a specific community, the person initially allocated the permit could move the business to another community or, if the permits are transferable, sell to a person in another community. In either case, the jobs and other economic impacts associated with the activities of that business would likely move as well.

Table 47 lists the communities in which the vessels generating a permit reportedly terminated at least one trip during 2008. Some vessels terminated trips in more than one community, so the number of vessels listed in the table is greater than the actual number of active vessels generating permits.<sup>157</sup> The table was generated to show the reader where charter businesses were historically operating.

<sup>157</sup> The total number of vessels in Table 45 is not comparable to the sum of vessels active in Areas 2C and 3A in 2008, because not all of the vessels that were active would have been associated with qualifying businesses.

**Table 47 Communities in which the vessel earning the permit terminated at least one trip in 2008**

Community	A66	Vessels	Community	A66	Vessels	Community	A66	Vessels
ALDERWOOD RETREAT		1	HOONAH	Y	9	PYBUS POINT LODGE		3
AMOOK ISLAND		1	ICY STRAIT POINT		3	RASPBERRY ISLAND		3
AMOOK PASS		1	IRON CREEK		1	RAVENCROFT LODGE		2
ANCHOR POINT		43	JUNEAU		23	ROCKY BAY LODGE @ CAPE CHACON		1
ANCHOR RIVER		1	KAKE	Y	2	ROCKY POINT		1
ANGOON	Y	10	KASITSNA BAY		1	S KAIGANI BAY		5
ANTON LARSEN BAY		3	KEKU STRAIT		2	SAGINAW BAY		2
AUKE BAY		23	KELP BAY		3	SALISBURY SOUND		1
BARTLETT COVE		15	KETCHIKAN		55	SALMON FALLS		12
BAY OF PILLARS		2	KILLISNOO		6	SEA OTTER SOUND		2
BLANK		1	KLAWOCK	Y	21	SEAL BAY (SC)		4
CANNERY COVE		2	KNUDSON COVE		8	SEALING COVE		1
CEDARS LODGE		1	KODIAK		30	SECURITY BAY		1
CHENEGA BAY	Y	4	KUKAK BAY		2	SELDOVIA	Y	6
CHUM COVE		1	LARSEN BAY	Y	11	SEWARD		96
CLOVER BAY		3	LIMESTONE BAY		2	SHELTER COVE LODGE		1
CLOVER PASS		7	LITTLE TUTKA BAY		1	SHELTER ISLAND		7
COFFMAN COVE	Y	6	LOG CABIN RESORT		1	SILVER KING LODGE		2
CORDOVA		5	LOWELL POINT		3	SILVER SALMON		2
CRAIG	Y	60	MORNE ISLAND		1	SITKA		147
CRESCENT HARBOR		3	NARROWS INN		1	SPORTSMAN COVE		7
DEEP BAY		1	NAUKATI		1	TENAKEE SPRINGS	Y	3
DEEP COVE		2	NICHOLS BAY		2	THOMAS BASIN		1
DEEP CREEK		83	NINILCHIK		21	THOMAS BAY		2
DOVE ISLAND LODGE		4	OLD HARBOR	Y	6	THORNE BAY	Y	1
EL CAPITAN LODGE		11	ORR ISLAND		1	UGAK BAY		3
ELFIN COVE	Y	24	OUZINKIE	Y	2	UGANIK BAY		4
ELLAMAR		1	PARKS CANNERY		2	UNLISTED		3
FALSE ISLAND		6	PELICAN	Y	7	VALDEZ		25
FARRAGUT BAY		1	PETERSBURG		22	WARM SPRINGS BAY		7
FIREWEED LODGE		1	PHONOGRAPH COVE		1	WATERFALL		27
FIVE FINGER LIGHTHOUSE		1	POINT BAKER	Y	2	WHALE PASS (POW - SE)	Y	7
FRESHWATER BAY		1	PORT ALEXANDER	Y	6	WHALERS COVE		5
FUNTER BAY		1	PORT ASHTON LODGE		1	WHISKEY GULCH		7
GAMBIER BAY		2	PORT LIONS	Y	10	WHITTIER		17
GULL COVE		1	PORT PROTECTION	Y	2	WILLIAMSPORT		2
GUSTAVUS	Y	22	PORT ST NICHOLAS		6	WRANGELL		5
GUT BAY		2	PORT WAKEFIELD		2	YAKUTAT	Y	10
HAINES		1	PORT WALTER		2	YES BAY		13
HAPPY VALLEY		12	PORTAGE BAY (SE)		1	ZACHAR BAY		4
HIDDEN BASIN		2	PYBUS BAY		2			
HOMER		120	PYBUS POINT		5			

Finally, while the proposed measures would tend to limit the number of permits, halibut harvests could still increase in the future, under limited access. Increases in harvest could come from intensely utilizing permits. Charter operators could increase the number of trips taken each year with a given permit, increase the average number of anglers on each trip, subject to their endorsement, or both.

***Acquisition of transferable permits would be allowed up to use cap. Transfers of permits issued for individual vessels that qualified at trip levels of fewer than 15 trips, as reported in the ADF&G logbook, would be prohibited.***

The Council's preferred alternative also states that persons may be issued multiple permits based on the bottomfish trip history (in 2004 or 2005) and halibut history in the year prior to implementation, reported in ADF&G Saltwater Logbooks<sup>158</sup> that were submitted by the charter business in a timely manner. A business that submitted logbook data for two qualified vessels, for example, would be issued two distinct permits. Each of those permits, if transferable, would be transferable independent of the other. Allowing a business to sell some, but not all, of its permits does not add vessels to the charter fleet. Yet, it may allow the charter industry to increase effort by allowing permits that were not fully used by the original recipient to be used to take more anglers fishing (harvest more fish) by the charter operator purchasing the permit.

<sup>158</sup> Bottomfish trips/halibut trips are defined as each time a logbook must be completed. For multi-day trips it is at the end of each day and for single day trips it is before halibut and clients are offloaded.

Although the proposed limited access system could result in some consolidation in the charter vessel sector, a concern about too much consolidation caused the Council to recommend that a person should be prevented from holding more than five permits as a result of transfers. Hence, five permits would be the excessive share limit and NMFS would not approve a transfer that would result in a person holding more than five permits. Two important exceptions to this excessive share limit, however, would allow a person to hold more than five permits. First, a person that is the initial recipient of more than five permits would be able to continue to hold all of the permits for which the person initially qualified. No approval would be granted for additional permits to be transferred to a person holding more than five permits under this exception.

Also, this exception would not apply 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). In this event, NMFS would consider a successor-in-interest or a changed corporate structure to be a different entity from the one that was the initial recipient of the permits, and the exception to the excessive share limit would not apply to the new entity. Upon notification of a change, NMFS would (1) invalidate transferable charter halibut permits held by the permit holder and provide notification that the permit holder must divest the permit; and (2) revoke non-transferable charter halibut permits held by the permit holder.

Under the second exception, NMFS would approve a transfer that resulted in a person holding more than five permits, receiving the transfer if the person meets the following three conditions:

- The existing permit holder that holds more than five permits under the first exception would be transferring all of the transferable permits that were initially issued;
- The existing permit holder would be transferring all assets—such as vessels owned by the business, lodges, fishing equipment, etc.—of its charter vessel fishing business along with the permits; and
- The person that would receive the permits in excess of the excessive share limit does not hold any permits at the time of the proposed transfer.

In making this recommendation, the Council reasoned that these exceptions would not increase the number of charter vessel businesses beyond those existing at the start of the limited access program. Allowing the transfer of a group of permits in excess of the excessive share limit, along with an entire business, would be simply substituting one business for another one and would not add to the overall charter fishing sector. These exceptions essentially “grandfather” businesses that would receive more permits, at the initial allocation of permits, than the excessive share limit would otherwise allow. Further, these exceptions allow the transfer of this grandfather right to a new business. A transfer of anything less than all the permits and assets, however, would end the grandfather right and the person receiving the transfer would be required to hold five or fewer permits at the time the transaction was completed or the transfer would not be allowed by NMFS.

The Council and NMFS recognize that a corporate entity at the excessive share limit of five permits may be closely affiliated with another corporate entity that is under the limit, and could apply to receive a transferred permit. To prevent a permit holder from exceeding the limit by affiliation, this action proposes to apply the 10 percent ownership criterion used for implementing the American Fisheries Act and defined at 50 CFR 679.2. Under this definition, two entities are considered the same entity, if one entity owns or controls 10 percent or more interest in the other entity.

After determining the total number of permits, NMFS would determine which permits are transferable and which are nontransferable. An applicant would receive a transferable permit for each vessel that made at least 15 trips in the applicant-selected year, and at least 15 trips in the recent participation year.

The rest of the applicant's permits, if any, would be non-transferable permits.

Applicants that do not have the minimum of 15 logbook fishing trips in each period, but qualify for one or more permit(s) with a minimum of five logbook fishing trips, would receive only non-transferable permit(s). Hence, in the earlier example of an applicant with 23 logbook trips using three vessels, that applicant would receive three permits. Based on the 15-trip minimum criterion, however, this applicant would receive only one transferable permit and the other two permits would be non-transferable.

This two-tiered qualification criterion would create two types of permits: a non-transferable permit that would cease to exist when the entity that holds the permit no longer exists and a transferable permit that would have value as an asset that could be transferred to another business when the permit holder decided to leave the fishery. The Council recommended transferable permits to establish a market-based system of allocating access to the fishery after the initial allocation of permits. Persons wanting to enter the charter halibut fishery could obtain permits from persons leaving the fishery. The Council concluded this would be more reasonable and efficient than a continual permit-application-and-permit-award process conducted by the government.

This part of the Council's recommendation reflects a balance between the Council's objective to reduce fishing effort and its objective to minimize disruption to the charter fishing industry. Requiring a high minimum number of logbook fishing trips would result in a sudden reduction of charter halibut operations, because many existing charter vessel operators would not be able to qualify. On the other hand, requiring a low minimum number of logbook fishing trips would result in little or no reduction in potential harvesting capacity. The two-tiered qualification criterion is designed to allow a business with relatively less participation in the charter halibut fishery to continue its operation, while reducing potential harvesting capacity over time, by not allowing that permit to be transferred to another entity. It also establishes a participation level below which charter operators are not compensated for leaving the fishery.

It is important to define the terms "vessel" and "qualify", as they are being used in this alternative. The term vessel refers to a vessel that was reported in the ADF&G saltwater logbooks as being used to take clients fishing for bottomfish/halibut during the historical participation qualification periods. The two periods used to determine qualification are: 1) 2004 or 2005, and 2) the year prior to implementation of the limited access system. To determine if a transferable permit should be issued, NMFS would look at the first period (2004 or 2005) and count the number of vessels that took at least 15 bottomfish trips in an IPHC area, as reported in the ADF&G Saltwater Logbook, by the guide business operator. The number of vessels that met the 15-trip threshold represents the maximum number of transferable permits that could be issued to the business. If that business had the same number of vessels (or fewer) that took at least 15 halibut trips during second period (the year prior to implementation), they would be issued a transferable permit for each vessel that took 15 halibut trips during the second qualifying period. If the business had more vessels take at least halibut 15 trips during the second period, they would be issued transferable permits equal to the number of vessels that took at least 15 trips during the first period (2004 or 2005).

For example, assume a business reported in its logbooks that 3 vessels took at least 15 bottomfish trips during 2004 and 2005. Assume that same business reported that four vessels (none of the vessels were the same as fished in the first period), took 15 halibut trips in the year prior to implementation. That business would be issued three transferable permits, under the Council's preferred alternative. It is important to note that the same vessel did not have to make 15 trips in both periods to generate a transferable permit. If the same vessel was required to fish in both time periods, it could result in a business that replaced an old vessel not qualifying for a transferable permit, even though the vessel they operated was over the minimum trip requirement every year. To alleviate problems associated with a business using different vessels during the qualification period, NMFS would simply count the total number of vessels that reported 15 trips in each period used to qualify for a permit. NMFS would

then issue transferable permits based on the maximum number of vessels that reached that threshold in both periods.

The term “qualify” in this case means that a business must have had sufficient participation, numbers of trips by individual vessels (as reported in their ADF&G Saltwater Logbooks) to earn a transferable permit.<sup>159</sup> The same vessel does not need to meet the minimum trip requirement in both periods for the business to earn a transferable permit. But, a transferable permit would only be issued if a business submitted ADF&G Saltwater logbooks for a vessel that made 15 bottomfish trips in the first period and the same or a different vessel that made 15 halibut trips in second period. If a business met the criteria, they would “qualify” for a transferable halibut charter permit. If the business had two vessels meet the criteria, they would be issued two transferable permits.

The Council indicated that one reason it proposed allocating non-transferable permits is to make selecting an option that would allow more persons overall to qualify for an initial allocation more palatable. Allowing more persons to initially qualify may have reduced the opposition to the program from the sport fishing/charter side, while making some permits non-transferable could have reduced opposition to the limited access system from the commercial halibut fishing side. That is, in the short-run a larger number of charter operators would be eligible to continue to participate in the industry, while in the longer-run, the number of charter permits will decline, by attrition.

After the initial allocation of licenses, market forces would determine access to the fishery. Newcomers would buy permits to enter the fishery, and retirees with transferable permits would be able to derive financial compensation upon exiting the sector. Competition in the market for permits ensures that those most willing or able to buy permits, usually the most efficient and profitable fishermen, would eventually acquire them, whatever the initial distribution. For an industry such as the for-hire sector that is characterized by a high turnover rate, transferability of permits assumes particular importance. Public testimony at the Council meetings has indicated that some participants in the fishery anticipate that permits will initially sell for about \$5,000 each. Until a competitive market for those permits is established, the actual price will be unknown. The value of permits that allow a person to carry more anglers should be higher than the values of permits endorsed for fewer anglers, all else equal.

Using data from the qualification period and the recency period, NMFS estimates that 347 transferable permits would be issued for Area 2C, and 319 would be issued for Area 3A (see Table 48). NMFS estimates that 155 non-transferable permits would be issued in Area 2C, and 99 in Area 3A.

**Table 48 Estimated number of transferable and non-transferable permits that could be issued under the Council's preferred alternative**

	Area 2C			Area 3A		
	Transferable	Non-Transferable	Total	Transferable	Non-Transferable	Total
Permits (#)	347	155	502	319	99	418
Permits (%)	69%	31%	100%	76%	24%	100%

Source: ADF&G Saltwater Logbook data, 2004, 2005, and 2008.

Note: The number of permits will be reduced if the businesses do not report sufficient landings in the year prior to implementation.

In Area 2C, 47 businesses would receive both transferable and non-transferable permits; 133 businesses would receive only transferable permits; 51 businesses would receive only non-transferable permits. In

<sup>159</sup>This requirement is based on the activity of individual vessels; thus, it is different than Alternative 10, where businesses are allowed to sum the number of trips from all vessels that were reported in their ADF&G Saltwater Logbooks to determine qualification.

Area 3A, 30 businesses would receive both transferable and non-transferable permits; 217 businesses would receive only transferable permits; 49 businesses would receive only non-transferable permits.

Because permits held by a business are not linked to one another, the businesses that are issued both types of permits would be allowed to sell their transferable permit(s).

When businesses with a non-transferable permit leave the fishery, they cannot sell or give away their permit. This will preclude them from selling their entire business or from passing on their operation to a member of their family or a friend. It could also limit their ability to use the permit as collateral, because the lending institution could not seize, and resell, the permit if the business defaults on a loan.

**Permit Endorsements for number of halibut clients aboard. Highest number on any trip in 2004 or 2005, with a minimum endorsement of four. Permits issued under the military hardship provision would receive a halibut client endorsement of six. (issue #7)**

Each charter halibut permit would have an angler endorsement number. The angler endorsement on the permit would be the maximum number of anglers who are catching and retaining halibut that a vessel operator can have on board the vessel during a fishing trip. The angler endorsement would not limit the number of passengers that a charter vessel operator could carry, only the number who may catch and retain halibut.

The Council recommended that the angler endorsement on an applicant's permits would be the highest number of clients that the applicant reported on any logbook fishing trip in 2004 or 2005, subject to a minimum endorsement of four. The proposed rule adopts that recommendation, except that it uses the term "angler" rather than "client." The term "angler" includes all persons, paying or non-paying, who use the services of the charter vessel guide to actively engage in fishing for halibut. The charter halibut permit, once issued, would limit the number of charter vessel anglers—paying or non-paying persons who use the services of a charter vessel guide—who may catch and retain halibut. Thus, under the proposed rule, the angler endorsement on the permit would be the highest number of anglers who caught and retained halibut, reported on any of the applicant's logbook fishing trips in 2004 or 2005.

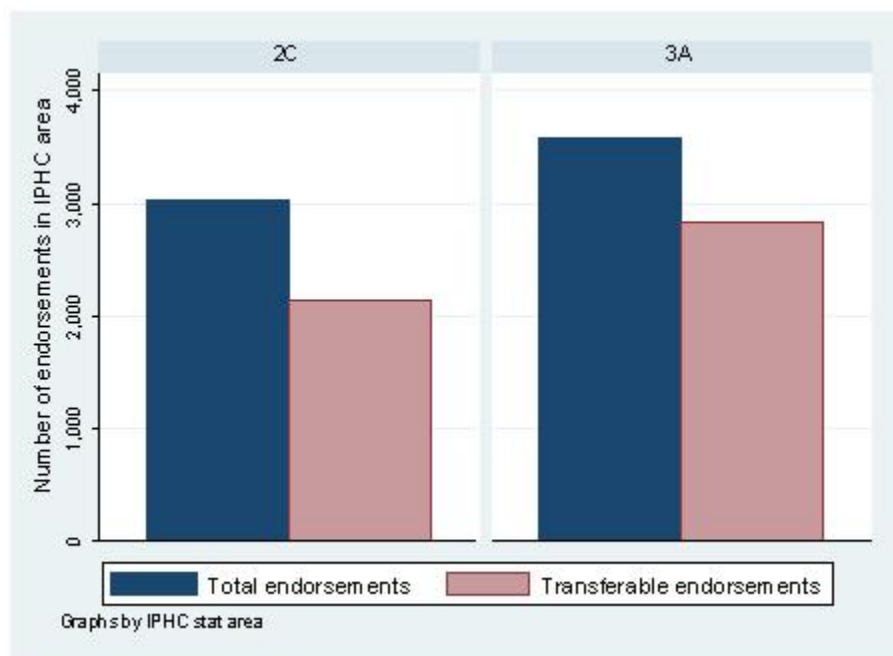
The rationale for the proposed angler endorsement is that this proposed action is designed to limit the number of charter vessels participating in the charter halibut fishery; not to prevent all expansion of effort by charter vessel operators. This provision allows permit holders to increase their effort somewhat by increasing the number of anglers that permit holders take on some charter vessel fishing trips, assuming that vessel operators did not take their historical maximum number of anglers out on every trip in the qualifying period. This expansion would be constrained by factors such as the maximum number of anglers recorded in an ADF&G logbook during 2004 or 2005, the size of the charter vessel using the permit, the market for charter trips, and any safety or other regulations that limit the number of persons that may be on board a vessel.

The rationale for the minimum angler endorsement number of four, regardless of a lower number reported for an applicant's logbook fishing trip, is that this provision would not increase the number of permits in the fishery, and an angler endorsement of fewer than four may not allow economically viable fishing trips.

The applicant-selected year, as it is described above, would not apply to the determination of angler endorsements for the number and type of permits. NMFS would endorse the permits with an angler endorsement equal to the highest number of anglers on any of the applicant's logbook trips in 2004 or 2005, except as noted above for a minimum angler endorsement. This would be consistent with the Council's motion. Thus, the applicant's selected year—2004 or 2005—that NMFS would use to

determine the number and type of permits may not be the same year that NMFS would use to determine the angler endorsement number on those permits. For example, an applicant may select 2004 for purposes of determining the number and type of permits, but the highest number of anglers recorded on any trip during the qualification period may have occurred in 2005. In this case, NMFS would award the applicant the number and type of permits based on the applicant's 2004 trips and would endorse the permits with an angler endorsement number based on a 2005 trip. Permits issued under the military hardship provision would receive a halibut angler endorsement of 6.

Figure 13 shows the estimated total endorsements and total transferable endorsements estimated to be issued in each IPHC area. Tables 49 and 50 provide more detailed breakouts.



**Figure 13** Estimated total endorsements and total transferable endorsements issued by IPHC area.

**Table 49** Area 2C estimated endorsements

Endorsement level	Nontransferable permits	Transferable permits	All Permits	Transferable endorsements	All Endorsements
4	37	31	68	124	272
5	31	64	95	320	475
6	70	164	234	984	1404
7	1	36	37	252	259
8	9	25	34	200	272
9	3	6	9	54	81
10	1	18	19	180	190
12	2	2	4	24	48
13	1	0	1	0	13
14	0	1	1	14	14
<b>Grand Total</b>	<b>155</b>	<b>347</b>	<b>502</b>	<b>2152</b>	<b>3028</b>

Source: ADF&G Saltwater Logbook data from 2004, 2005, and 2008.

As shown in Table 49, it is estimated that some Area 2C vessels will receive more than six endorsements, despite the six line limit in place in Area 2C under state regulation. State of Alaska regulations at 5 AAC 47.036(c) stipulate that the maximum number of fishing lines that may be fished from a vessel engaged in sport fishing charter activities is equal to the number of paying clients on board the vessel. The number of fishing lines may not exceed six lines in Area 2C, as specified in 5 AAC 47.030(b). Thus, according to state regulations in place at the time of this analysis (please consult state regulations for current requirements), no more than six lines can be in the water fishing. However, the data show that in some cases, trips were made with larger number of anglers. If the guide's Coast Guard endorsement allows a vessel to carry more than six anglers, an operation can do so, as long as no more than six are fishing at the same time. Thus, logbooks for some trips show more than six anglers. However, this doesn't necessarily mean that anything illegal occurred.

Vessels that do receive more than six endorsements in Area 2C, will only be able to have six lines in the water at a time, pursuant to State of Alaska regulations in place at the time of the analysis (please consult state regulations for current requirements).

**Table 50 Area 3A estimated endorsements**

Endorsement level	Nontransferable permits	Transferable permits	All Permits	Transferable endorsements	All endorsements
4	8	13	21	52	84
5	19	25	44	125	220
6	50	163	213	978	1278
7	5	30	35	210	245
8	0	18	18	144	144
9	0	2	2	18	18
10	2	3	5	30	50
11	1	3	4	33	44
12	1	5	6	60	72
13	0	4	4	52	52
14	1	5	6	70	84
15	0	1	1	15	15
16	2	7	9	112	144
17	4	1	5	17	85
18	3	7	10	126	180
19	0	5	5	95	95
20	1	4	5	80	100
21	0	4	4	84	84
22	0	1	1	22	22
23	0	6	6	138	138
25	2	5	7	125	175
30	0	1	1	30	30
33	0	2	2	66	66
38	0	4	4	152	152
<b>Grand Total</b>	<b>99</b>	<b>319</b>	<b>418</b>	<b>2834</b>	<b>3577</b>

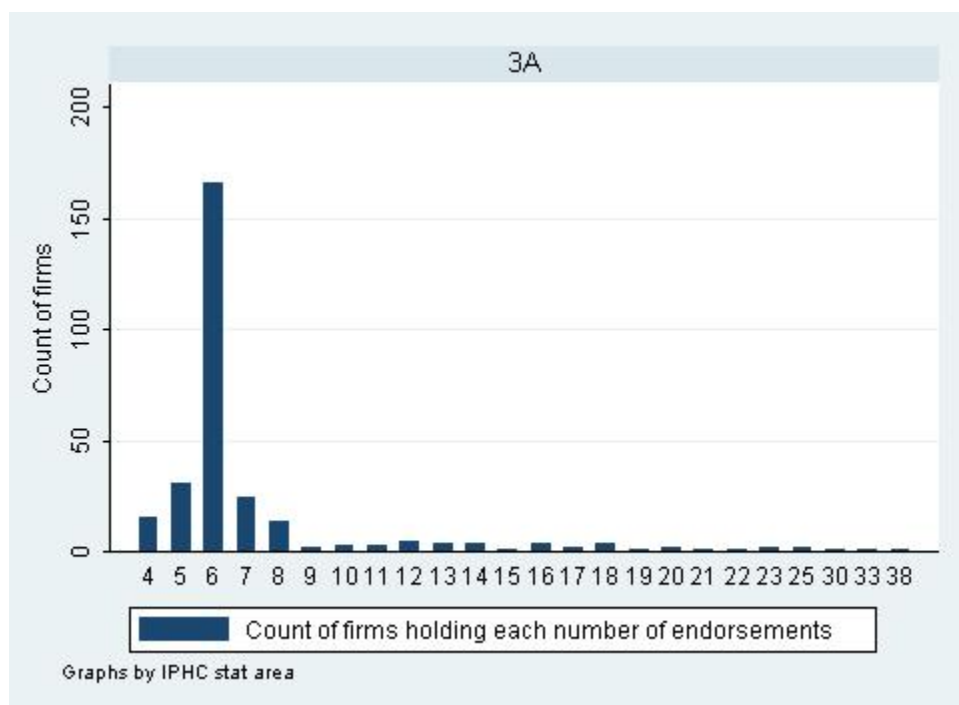
Source: ADF&G Saltwater Logbook data from 2004, 2005, and 2008.

The distribution of endorsement levels for qualifying businesses in Areas 2C and 3A is shown in Figures 14 and 15. Endorsements received by businesses tend to be higher in Area 3A than in Area 2C. Figures 12 and 15 highlight regional differences in guided charter business models: lodges using large numbers of small vessels appear to be more common in Area 2C; large party boats are more common in Area 3A.





**Figure 14 Firms by endorsement level in Area 2C.**



**Figure 15 Firms by endorsement level in Area 3A.**

Can the guided charter industry accommodate current levels of angler demand under limited access, and will it be able to accommodate potential increases in demand? This is not simply a question of physical capacity, but of whether or not an increase in demand can be accommodated under limited entry at levels

of incremental costs that are close to those that would occur under the status quo. In general, it appears that this is likely to be the case.

Ultimately, this is a question about the supply curve for an angler-trip in the guided charter fleet, with and without limited entry. NMFS does not have empirical information about how this curve will shift. However, a qualitative analysis suggests it is not likely to change significantly with limited entry. An evaluation of this question has been deferred until now, because of the need to present the background material on transferable and non-transferable permits, and on endorsements. The next few paragraphs first discuss physical capacity, and then the impact on costs.

Two measures of potential output under the limited access system are especially important: the number of potential trips by vessels (vessel-trips hereafter) under different circumstances, and the number of potential trips by anglers (angler-trips). The two measures are related by the average number of anglers per vessel. The number of anglers per vessel will depend on the business practices of each firm, and on the constraints imposed by the firm's endorsement status. It is also possible to distinguish between the numbers of vessel- or angler-trips the fleet might supply in the short run (before the expiration of any non-transferable permits) and in the long run (after the expiration of all the non-transferable permits).

Table 51 shows the numbers of vessel-trips that must be associated with each permit under limited access in Areas 2C and 3A, to produce the same number of total industry vessel-trips estimated to have occurred in 2008. As shown in the table, in the short-run, permits in Area 2C would have to be used to support an average of 52 vessel-trips to reach the aggregate number of trips supplied in 2008. In the long run, these permits would have to support an average of 75 vessel-trips. Active vessels averaged 36 trips in 2008.

Each of the 418 permits in Area 3A would have to support an average of 56 vessel-trips to reach the aggregate number of trips supplied in 2008. In the long run, each would have had to support an average of 73 vessel-trips. Active vessels averaged 38 trips in 2008.

The short- and long-run estimates are trips per permit, not trips per vessel. A permit may be used on more than one vessel, even during the same day. If a permit was used for 37 trips on each of two vessels during a season, it would support 73 vessel-trips (the long-run average necessary in Area 3A to generate as many vessel-trips as were taken in 2008).

Members of the charter industry have indicated in public testimony that the charter season lasts for about 100 days. Even accounting for days off, bad weather, and mechanical problems, it is likely that the number of days fished per vessel could increase significantly. Moreover, many of the vessels take trips that are shorter than a day, and many vessels may be able to make two trips in a day. As noted, permits can support activity by multiple vessels. All of these considerations suggest that the number of vessel-trips indicated in Table 51 are within the capacity of the guided harvest fleet under limited access, all else equal.<sup>160</sup>

<sup>160</sup> The year 2008 was chosen as the basis for this analysis of capacity since it is the recency year used in the rule, and since it is the most recent year with complete logbook-based information on guided charter fishing activity. Activity in 2008 may have been affected by the recession that began in December 2007. Information on numbers of vessel-trips from Table 43 shows a 5% decline from 2007 in vessel-trips in Area 2C and a 9% decline in Area 3A. Person-trips drop 4 percent in 2C and 9.5 percent in 3A. However, in both areas 2008 vessel-trips and person-trips were above 2004 and 2005 levels. Halibut guided charter halibut harvest declined by about 15 percent between 2007 and 2008 in Area 3A, but rose by about 5 percent in Area 2C. Factors that may affect demand in 2010 and later include the one-fish bag limit adopted in Area 2C in 2009, and the ongoing impacts of the 2007-2009 recession (the third quarter 2009 Survey of Professional Forecasters, reported by the Federal Reserve Bank of Philadelphia, projects unemployment of 8 percent or more through 2012, <http://www.phil.frb.org/research-and-data/real-time-center/survey-of-professional-forecasters/2009/survq309.cfm>). Both of these factors are likely to depress demand for guided charters. Fuel prices rose to high levels during the summer of 2008. This may have affected guided charter 2008 halibut production on the supply side. Fuel prices have since declined.

**Table 51 Average numbers of trips per permit needed to reach 2008 vessel-trip levels under limited access**

		2008	Short run	Long run
Area 2C	Vessel-trips	26,162	26,162	26,162
	Number vessels or permits	722	502	347
	<b>Average</b>	<b>36</b>	<b>52</b>	<b>75</b>
Area 3A	Vessel-trips	23,213	23,213	23,213
	Number vessels or permits	605	418	319
	<b>Average</b>	<b>38</b>	<b>56</b>	<b>73</b>
Notes: Short run estimates based on all transferable and non-transferable permits; long-run estimates based on all transferable permits only. 2008 averages are estimates of 2008 activity per vessel, short- and long-run averages are per permit activity needed to produce 2008 vessel-trip levels. Season length is reported to be 100 days.				

The preceding table does not take account of potential community charter halibut permits. In Area 2C, there may potentially be an additional 72 community permits. In Area 3A, there may potentially be an additional 98. The average number of vessel-trips that must be supported by a permit drops, if these permits are issued. The new vessel-trip estimates are shown in Table 52 and may be compared to those in the preceding table. The potential availability of these community permits makes it more likely that the fleet will be able to accommodate potential increases in demand for trips, with sufficient time and investment. As treated elsewhere, many of the communities that may be eligible to receive community permits are not current or even recent, participants in the halibut charter fishery. Many do not have the basic infrastructure, at present, to support a tourist-based charter sector (e.g., efficient, reliable, cost-effective transportation from tourist travel hubs; hotel, restaurant capacity; passenger loading docks). Even if capital can be found, it may require time for such a community to construct, acquire, or adapt its asset based to support an active commercial charter fishing sector.

**Table 52 Average numbers of trips per permit needed to reach 2008 vessel-trip levels under limited access (accounting for potential CQE permits)**

		2008	Short run	Long run
Area 2C	Vessel-trips	26,162	26,162	26,162
	Number vessels or permits	722	574	419
	<b>Average</b>	<b>36</b>	<b>46</b>	<b>62</b>
Area 3A	Vessel-trips	23,213	23,213	23,213
	Number vessels or permits	605	516	417
	<b>Average</b>	<b>38</b>	<b>45</b>	<b>56</b>
Notes: Short run estimates based on all transferable and non-transferable permits; long-run estimates based on all transferable permits only. 2008 averages are estimates of 2008 activity per vessel, short- and long-run averages are per permit activity needed to produce 2008 vessel-trip levels. Season length is reported to be 100 days. Permit counts assume that 72 CQE permits are issued in Area 2C and that 98 are issued in Area 3A. Thus the table assumes that all the CQE permits are issued. This may not happen.				

The rate at which non-transferable permits leave the industry cannot be predicted. Permits issued to a business which has multiple permits and a long expected life-time may stay in the fishery for many years. A business that receives a single non-transferable permit may extend the life of the permit by hiring a series of guides to use it. It is possible that individuals operating sole-proprietorships, who leave the region, could retain ownership of a non-transferable permit, but turn day to day management over to a permit management firm, similar to the real-estate management firms that often take care of the day to day leasing and maintenance of rental property and homes. Given these considerations, it seems likely that at least some non-transferable permits will remain in the Area 2C and 3A fisheries after 10 years.

An alternative measure of fishery capacity is the total number of anglers authorized under charter endorsements. Individual permits will differ considerably in the number of anglers they may authorize.

The minimum number of endorsements per permit is four. The maximum endorsement level in Area 2C is estimated to be 14, while some party boats in Area 3A may be endorsed for as many as 38 anglers (see Figures 14a and 14b). Endorsement numbers pertain only to the maximum number of charter anglers that may catch and retain halibut during a given trip. They are not an *authorization* to carry passengers (halibut anglers or otherwise). That authority is governed by U.S. Coast Guard regulations, among other laws.

In 2008, Area 2C trips averaged about 4.0 anglers, while Area 3A trips averaged about 5.9. The average endorsement for all permits (transferable and non-transferable) in Area 2C is estimated to be about 6.0 anglers, while the average endorsement for all permits in Area 3A is estimated to be about 8.6 anglers. The average endorsement on transferable permits in Area 2C is estimated to be about 6.1 anglers, while the average endorsement on transferable permits in Area 3A is estimated to be about 8.9 anglers.

Table 53 summarizes estimates of the average number of vessel-trips required to provide the same number of angler-trips as in 2008, assuming either: (a) party size was equal to the average angler party size in 2008, or (b) party size was equal to the average endorsement on the permits that would be issued. Separate estimates are provided for the short run (for all permits including transferable and non-transferable) and for the long-run (only considering transferable permits). The number of vessel trips a permit must support in the short- and long-runs estimated using 2008 average party sizes, are the same as those in Table 51. This is consistent, since Table 51 incorporates average party sizes implicitly. The number of trips needed drops if party sizes are increased to the levels permitted by permit endorsement levels. This also makes sense.

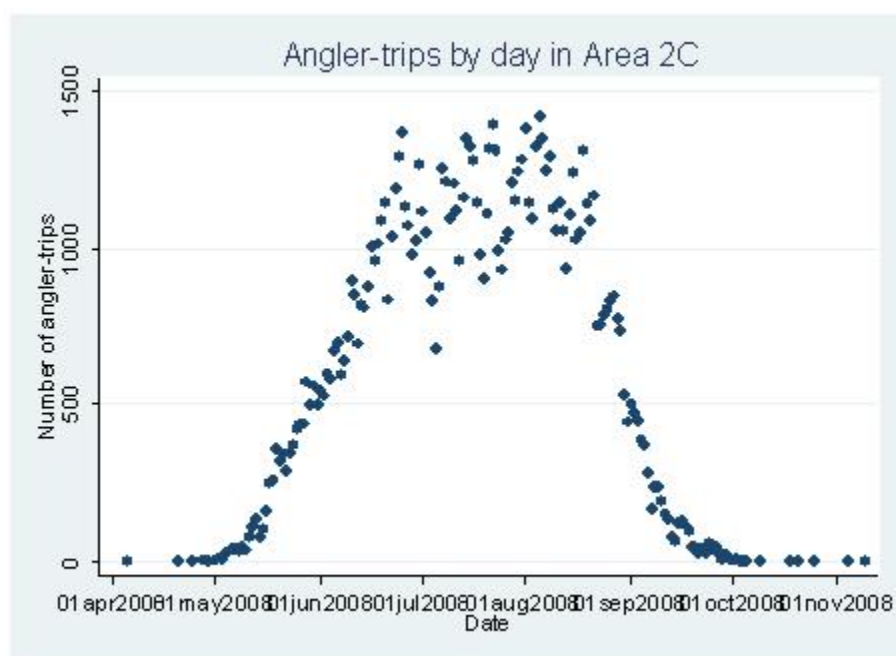
**Table 53 Average numbers of trips per permit needed to reach 2008 angler-trip levels under limited access**

		Area 2C		
		2008	Short-run	Long-run
2008 party size	Angler-trips	105,270	105,270	105,270
	Party size	4.02	4.02	4.02
	Number vessels or permits	722	502	347
	<b>Number vessel-trips</b>	<b>36</b>	<b>52</b>	<b>75</b>
Ave. end. party size	Angler-trips		105,270	105,270
	Party size		6.03	6.11
	Number vessels or permits		502	347
	<b>Number vessel-trips</b>		<b>35</b>	<b>50</b>
		Area 3A		
		2008	Short-run	Long-run
2008 party size	Angler-trips	136,743	136,743	136,743
	Party size	5.89	5.89	5.89
	Number vessels or permits	605	418	319
	<b>Number vessel-trips</b>	<b>38</b>	<b>56</b>	<b>73</b>
Ave. end. party size	Angler-trips		136,743	136,743
	Party size		8.56	8.88
	Number vessels or permits		418	319
	<b>Number vessel-trips</b>		<b>38</b>	<b>48</b>
Notes: 2008 party size is estimated average party size in 2008; "Ave. end. party size" is an average party size equal to the average number of endorsements on the permits. Note that there is a difference between the average number of endorsements per permit in the short run and in the long run. In the long run only transferable permits are left and this is the average endorsement level for transferable permits. The number of trips is the average number of trips per permit necessary to generate the 2008 level of angler trips given the permit and endorsement allocation. Party size in the average endorsement comparison is the average of transferable and non-transferable endorsements per permit for the short-run and the average of transferable endorsements in the long-run. The long-run analysis assumes no firm with a transferable permit has any non-transferable permits.				

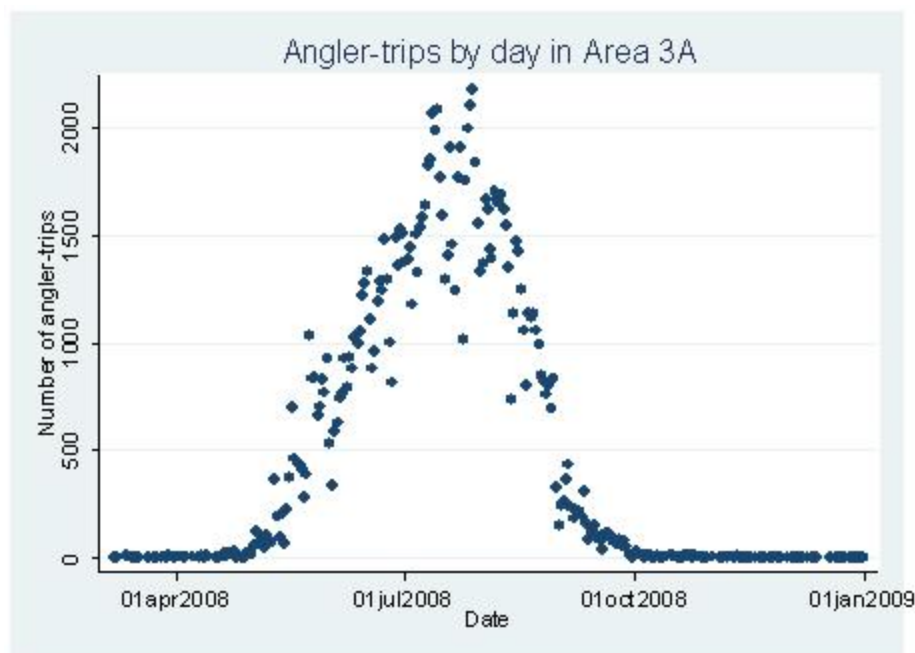
This table does not address the potential impact of endorsements on community halibut charter permits. This impact has been discussed quantitatively in the context of permit-trips (see Table 52). It is uncertain, because it is not clear that all the CQE permits will be issued or successfully employed. Rather than add another table, it is simply noted that the existence of these permits should reduce the estimated numbers of vessel-trips required to accommodate 2008 angler-trip levels, as provided in the preceding table.

The preceding analysis is an aggregate seasonal analysis. However, the guided charter industry doesn't service its customers in equal numbers on each day of the season. Trip activity begins to increase in May; numbers of customers increase rapidly through May and June, peaking in July, and then decreasing in August and September. The industry may have the capacity to meet aggregate seasonal demand, but the question may be raised whether the industry has the ability to meet peak demand under the limited entry program. A review of vessel- and angler-trip data for 2008, indicates that the answer is "yes."

Figures 16 and 17 show the number of angler-trips provided by day over the course of the 2008 season for Areas 2C and 3A.



**Figure 16 Angler-trips per day in Area 2C during 2008**



**Figure 17 Angler-trips per day in Area 3A during 2008**

In Area 2C, an estimated 502 permits will be issued. Average trip size in 2008 was an estimated 4.02 anglers. Thus, assuming one trip per day per permit, the fleet would have the ability to provide 2,018 angler-trips in a day. As shown in Figure 16, there are fewer than 1,500 angler-trips a day on the peak days, during the peak period. During many of the days during the peak period, there are considerably fewer. Thus, the fleet appears to have the capacity to meet existing peak demand in the short-run all else equal.

In the long-run, there would be an estimated 347 permits and the fleet would have a daily capacity of about 1,395 anglers. The number of anglers only exceeded this total on two days in 2008 (with an estimated 1,399 and 1,423 angler-trips). However, note that this comparison does not take account of the potential for permits to be used to support more than one vessel-trip per day, for the industry to shift customers between days within the peak season (many days during the peak season have significantly lower than peak demand), to increase angler party sizes, or of the possible issuance of 72 additional community halibut charter permits to CQEs. Thus, the fleet is likely to have the capacity to meet existing demand in the long-run, as well.

The situation is similar in Area 3A, where an estimated 418 permits, with party sizes equal to the estimated 5.89 angler 2008 average, could accommodate 2,462 persons a day in the short-run. In the long-run, the 319 transferable permits could accommodate 1,879 anglers. This number was only exceeded on eight days in 2008, and is 304 fewer than the number of angler trips (2,183) on the peak 2008 day. The considerations mentioned above also apply in this instance. Thus, this fleet appears to have the capacity to meet existing demand.

If one assumes that 2008 represents the ‘typical’ demand for halibut charter trips, it seems likely from this that the fleets could accommodate growth in peak demand, as well. In each area, many of the days during the peak July period fall below peak levels. Thus, in July, in Area 2C, there were nine days with fewer than 1,000 angler-trips in 2008. In Area 3A, there were 11 days with fewer than 1,500 angler-trips. These considerations, and the others discussed above, suggest that the limited access fleet could accommodate at least some increases in demand, *ceteris paribus*.

From the foregoing discussion, it appears that the fleet will have the physical capacity to meet the existing demand for angler trips and the ability, at least to some extent, to expand to meet increased demand. However, it will not be able to meet existing demand or increased future demand exactly as it has in the past. Under limited access, demand can be met by increasing the number of active vessels (as under the status quo); however, the requirement that a vessel carry a permit will limit this ability. This constraint on fleet practices raises the possibility that increases in demand can only be met by supplying additional angler-trips at higher incremental costs and, thus, higher prices than in the absence of limited access.

The information that would be necessary to estimate the cost of supplying additional angler-trips in the absence of limited access, or of estimating how it would change with the introduction of limited access, is not available. However, there are reasons for believing that incremental costs of adding angler-trips, at the margin, will not differ much between the status quo and limited access.

Individual permits can be used more or less intensively, by changing the average number of anglers on a vessel-trip, or by changing the average number of vessel-trips associated with a given permit. Changes in the average number of anglers on a given trip are likely to produce relatively modest changes in the operator's costs for a vessel-trip. On the one hand, the business may invest more resources in marketing and scheduling trips, to increase the average angler load. Each additional angler also creates additional costs for food and materials, but these would be incurred under non-limited access conditions, as well, if the angler was carried on another vessel. The main costs of a vessel-trip are probably largely fixed (not dependent on the number of anglers on a specific trip) and include the labor time of the skipper, guide, and crew, and fuel. These would be divided among more anglers, as the number of anglers on a boat increases. Thus, increases in the number of anglers would tend to be associated with smaller fixed costs per angler for a given vessel-trip. On balance changes in the number of anglers may not have a large impact on the businesses incremental expenditures for an angler-trip, over the allowed range.

Increases in the average party size may be associated with a reduced willingness of anglers to pay for an angler-trip. This may be especially true if operators combine separate fishing parties of anglers to increase the number of persons on a vessel-trip. All things equal, it is likely that smaller trips, without mixed parties, are likely to be more attractive to many customers. The reduction in the price that operators may be able to charge for an angler-trip is a cost to the vessel operator of including additional anglers on a vessel-trip. These will be dictated by prevailing market conditions and cannot be estimated *a priori*.

Changes in the numbers of boats supported by a given permit are likely to have little impact on incremental angler-trip costs. The program limits the numbers of permits that may be issued, not the number of boats that may be used for fishing. A vessel engaged in guided charter operations must have one of the permits on board, but, as noted, the permit is not endorsed to a specific vessel. The permit can be used on more than one vessel, even during a single day, so long as it is only used on one vessel at a time. Thus, a single permit could be used to support trips by two separate vessels during the course of a single day. There are also large numbers of persons and vessels in Alaska that can enter or leave the business at relatively low cost. Boat ownership is widespread in coastal communities. Many coastal residents fish for halibut recreationally or commercially, so local knowledge about halibut fishing conditions is widespread in the different towns. The State places few obstacles in the way of entry into this business, although U.S. Coast Guard and Jones Act requirements must be met, prior to "hiring-out" as a legitimate charter vessel operation. Skippers of charter vessels must also meet specific competency requirements, before obtaining a license to carry paying passengers.

***Leasing of permits (annual) would not be allowed.<sup>161</sup>***

Leasing of permits is generally discouraged in fisheries under Council authority. Prohibitions on leasing stem from a desire to keep persons from holding permits for the sole purpose of generating income from the active participants.

Because of the nature of charter fishing businesses (e.g., an operator may run multiple boats, perhaps out of different ports, targeting different species) the traditional reasons for the Council's objections to "leasing", per se, may not readily apply. For example, the "owner-on-board" rationale for restricting leasing in traditional commercial fisheries is inconsistent with the charter business model of many operations active in Alaska.

Furthermore, tracking whether halibut charter limited access permits are being leased may be exceedingly difficult and costly. In many cases, a charter business must hire a captain(s) to take anglers fishing. Contracts with captains are private business arrangements that can be extended within a year, or over a number of years, and may be terminated at any time. The hired captain may or may not own the vessel used to take anglers fishing. If the captain owns the vessel, and the permit holder hires him to take anglers fishing, distinguishing this operation from a lease arrangement may not be possible.<sup>162</sup> These business arrangements may make it difficult to determine with certainty whether permits are being leased to a captain for a year or if the captain is working as an employee of the owner. Given the structure of business arrangements within the halibut charter industry, enforcing a prohibition on permit leases may be difficult, without additional intrusive and potentially burdensome requirements.

The proposed rule does not have a prohibition against leasing, although the Council recommended one. The proposed rule does not contain a comprehensive prohibition on leasing, because such a prohibition would not lead to a permit holder being on board the vessel or having any direct physical interaction with the clients, while they are actively participating in any given charter cruise. Under the proposed rule, a permit holder would not have to own a vessel or operate a vessel. A permit holder could legitimately allow a vessel operator to use the permit holder's permit as authority for the vessel operator to take anglers out charter halibut fishing, even though the permit holder does not own or operate the vessel and has nothing directly to do with the charter vessel fishing operation. The vessel operator may pay the permit holder for the right to use the permit or the permit holder may pay the vessel operator to take out anglers organized by the permit holder. As noted, the charter industry has a variety of business models and the way some of these business models function is substantially similar to a lease between the permit holder and the vessel operator.

Further, as noted, it would be difficult to enforce a prohibition on leasing. NMFS would have to collect additional information attendant to a transfer. Simply prohibiting a transfer called "a lease" would result in the prohibition being enforced only against legally unsophisticated persons who did not draft their document to avoid such a term. For NMFS to examine the substance of any transaction would be difficult, time-consuming, and could undermine the principle that the permits are relatively freely transferable.

In light of this difficulty, the Council recommended three specific measures to discourage leasing:

<sup>161</sup> 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.

<sup>162</sup> Note that the proposed limited access system does not require that a permit holder own a vessel or be on board the vessel in order to use the permit.



- Prohibit the charter halibut permit from being used on board a vessel, unless that vessel is identified in an ADF&G Saltwater Charter Logbook;
- Require that a charter vessel operator have on board the vessel an ADF&G Saltwater Charter Logbook issued in the name of the charter halibut permit holder; and
- Require the authorizing charter halibut permit number to be recorded in the ADF&G Saltwater Charter Logbook for each trip.

This action proposes all of these Council recommendations as part of the requirement to have the Saltwater Charter Logbook on board. The requirement to identify the vessel in the logbook is intended to be consistent with an existing State of Alaska requirement that a charter vessel operator have on board the vessel an ADF&G Saltwater Charter Logbook. This logbook must be specific to the vessel on which it is used.

**Use caps, with grandfather provision. The AFA 10% ownership rule for affiliation will be applied to determine the number of permits associated with an entity under the use cap. Option 5 – a five permit use cap – is selected. (issue #11)**

A use cap of 5 permits per entity would be established, with a grandfather provision. The AFA 10% ownership rule for affiliation will be applied to determine the number of permits associated with an entity under the use cap. The Council voted to limit the number of permits that may be used by a halibut charter entity at one time. Charter businesses (and their affiliates) that are allocated permits in excess of the cap would be grandfathered at their initial allocation level. Grandfathered entities would not be allowed to use any new permits, until they are below the cap. Based on the data currently available, 14 businesses in Area 2C, and 1 in Area 3A, appear likely to exceed the cap at initial allocation.

The AFA 10% ownership rule for affiliation<sup>163</sup> will be used to determine which permits an entity is using. The AFA 10% ownership and control rule states that “*any entity in which 10 percent or more of the interest is owned or controlled by another individual or entity shall be considered to be the same entity as the other individual or entity.*” Therefore, if a company owns or controls 10% of another company, it is considered to be the same entity when calculating the use cap.

Information is not currently available to determine which entities the 10% rule for affiliation joins together. To make that determination, each entity will need to submit to NMFS information about their ownership structure at the time of permit application. They will also be required to notify NMFS any time their ownership structure changes. Tracking these structures will increase the reporting requirements for industry and the administrative costs for NMFS.

Use caps will impose constraints on the number of permits that may be held or used. It is assumed that the persons that would exceed the cap through transfer are the most efficient charter operators. Constraining the most efficient operators’ use of permits is expected to reduce permit prices (the most efficient operations could pay the most for permits) and reduce producer surplus of charter businesses. Consumer surplus could also be reduced, if these operators could provide anglers a trip that generates greater utility than other businesses, at the same price. However, the Halibut Act directs Councils to ensure that entities do not control an excessive share of the halibut fishery.

<sup>163</sup>Any entity in which 10% or more of the interest is owned or controlled by another individual or entity shall be considered to be the same entity as the other individual or entity.

### **Permits may be stacked, up to the use cap.<sup>164</sup> (issue #8)**

A vessel operator would be able to stack permits. For example, if a vessel operator has two charter permits on board, one with an angler endorsement of four and one with an endorsement of six, then the vessel operator could have a maximum of 10 charter vessel anglers on board, each of whom are catching and retaining halibut, if doing so does not conflict with other laws. If other provisions of law, such as safety regulations or operation for hire regulations, prevent 10 anglers from being on board the vessel, the charter halibut permits would not allow the vessel operator to violate those provisions of law (e.g., subject to USCG vessel restrictions).

Licenses may be stacked and unstacked. The ability to stack licenses provides operators the flexibility to increase the number of halibut anglers carried on one vessel. Unstacking the licenses allows the guide business to use more vessels that, individually, carry fewer anglers.<sup>165</sup>

There may be efficiency reasons to increase the number of halibut anglers a vessel may carry. If guide operators find they are operating at an economic disadvantage by only being allowed to carry four anglers to fish halibut, it may be a prudent business decision to stack an additional license on the vessel to spread the trip costs over more anglers. For example, persons that operated two vessels that qualify (e.g., a main vessel and one that fished only during peak seasons or when the main vessels was under repair), would be allowed to stack both permits on one vessel and increase the number of anglers they carry on their primary vessel. Depending on the overall demand and supply of trips, this action could benefit guided anglers and charter operators.

### **Summary comments**

This section provides a qualitative summary of the expected effects of the limited access system (Issues 1 through 11) on the various affected sectors. The expected effects outlined in this section are bulleted summaries of the discussions provided in earlier sections of the RIR.

#### **General effects:**

- The intent of Issue 1 through Issue 11 is to implement a limited access permit program that would restrict entry into the halibut guide business. The program is not expected to limit the harvest of the halibut charter fleet. Increases in effort could result in increased halibut harvests as a result of using the permits to fish more days during the year, or carry more anglers, on average, than the vessels historically carried.
- The limited access system is viewed as a shorter-term action, likely to be replaced by a subsequent Council action. Thus, the limited access system will likely define the persons who will be eligible for allocations in future programs that are currently being considered. Persons that did not qualify for or acquire a limited access permit may not be considered as being eligible for future allocations.

#### **Effects on communities:**

- Because the permits being issued may be used in IPHC Area 2C or Area 3A, depending on their specific area designation, they may be used in any community in the larger designated area. The

<sup>164</sup> A charter business may use, for example, two licenses (each endorsed for 6 clients) on one vessel to allow up to 12 clients to harvest and retain halibut, if this does not conflict with other laws.

<sup>165</sup> A separate logbook must be obtained for each vessel the permit holder uses for halibut fishing. ADF&G currently requires a charter business operator to use a separate logbook for each vessel they use to take clients fishing.

transitory potential of the permits makes it difficult to quantify the impacts on individual communities. In general, increased activity by the charter fleet will benefit communities in which those businesses initiate/terminate charter trips, purchase equipment, services, and supplies. If guided charter operations do increase harvests under this program the harvests of the commercial fishery will be reduced (if the total amount of halibut available to the two sectors is constant). The reduced commercial harvest will have a negative impact on communities that primarily rely on and support that fishery. However, because the charter and commercial fisheries often operate in the same communities, increased economic activity by one sector will, to some extent, offset decreased economic activity by the other although the distribution within the community will almost certainly change.

#### Effects on commercial halibut sector:

- If guided charter harvests increase under this program, the increased charter harvest will reduce commercial catches. Because the quantity of halibut harvested has a very limited affect on ex-vessel price, this would reduce revenues to the commercial sector. Quota share (QS) values in Areas 2C and 3A would also be expected to decline, because the expected income stream earned from owning the QS will be reduced. The QS value in Area 3B and further west may slightly increase, if the ex-vessel price of their halibut increases, as a result of this action (although the price effect is, as just reported, expected to be small).
- Consumers of commercially caught halibut could realize reductions in consumer surplus, if the amount of halibut on the market decreases. It is possible that other halibut sources could make up any U.S. decrease in supply. For example, farm raised halibut production could increase, British Columbia halibut fisheries could increase exports to fill U.S. demand etc.

#### Effects on charter halibut sector:

- For those entities that qualify for a permit, the limited access system will reduce competition from new entrants into the business. Competition within the sector will continue, because sufficient capacity is likely to remain, post-implementation, to allow businesses to take additional anglers fishing. Persons that want to leave the fishery may sell their permit, if it is transferable, and receive compensation for leaving the fishery. In Area 2C, an estimated 502 permits would be issued. In Area 3A an estimated 418 permits would be issued.
- Non-transferable permits will be issued to owners of vessels meeting the five trip threshold, but used for fewer than 15 trips, in the two periods used for qualification. In Area 2C, an estimated 155 permits would be non-transferable and in Area 3A, an estimated 99 permits would be non-transferable. The persons issued those permits would not be able to sell or give their permit to another person, including family members. Their permits would only be of value as long as the initial recipient uses them. At such time that those permits leave the fishery, it will reduce competition within the charter fleet and reduce the fleet's potential catch. Note however, that if the limited access system is replaced in the future, non-transferable permits could be transformed into some other fishing privilege that may or may not be transferable.
- Persons that do not qualify for a permit, or permit holders that want to carry more anglers or use more vessels at one time, will be required to purchase a permit. The acquisition of those permits will increase the cost of entry. The actual cost of a permit cannot be predicted at this time, however, some members of the industry have stated in public testimony that the cost could be about \$5,000. In Area 2C, an estimated 173 of the businesses operating in 2008 would not receive permits, and in Area 3A, an estimated 154 would not receive permits.

Effects on guided halibut anglers:

- Guided halibut anglers are primarily impacted by the availability of trips and the price they must pay for the trip. The proposed limited access system is not expected to constrain the number of trips, annually available, below 2008 levels, and should allow for the industry to meet at least some modest increased demand. Because the guide businesses will compete for anglers, the relative price of trips will be expected to be set at a level at which guide operators are not earning above normal profits. Other economic, political, regulatory, and biological factors may influence the total trips available, as well.

## 2.8.2 Council preferred alternative under Issue 12

In developing its charter vessel limited access policy, the Council was faced with a goal of constraining development of the charter vessel fishery for halibut, on one hand, while, on the other hand, recognizing the potential importance of this fishery to the economic development of some rural communities. The Council recommended, and this action proposes to allow for, a special community charter halibut permit<sup>166</sup> that would be issued, upon application, to Community Quota Entities (CQEs) representing communities that do not currently have a fully developed charter halibut fleet.

The CQE provision was developed by the Council, originally to help rural communities become more involved in the commercial fisheries for halibut and sablefish (84 FR 23681, April 30, 2004). In that context, CQEs are already defined at 50 CFR 679.2. The Council recommended that existing or future CQEs could serve a similar purpose in developing the charter vessel sector in certain rural communities.

Under the proposed action, a CQE representing a community or communities in Area 2C could receive a maximum of four community charter halibut permits per community the CQE represents. A CQE representing a community or communities in Area 3A could receive a maximum of seven community charter halibut permits for each eligible community it represents. The larger number of community permits that would be allowed in Area 3A reflects the larger resource base in that area. A community charter halibut permit would have an angler endorsement of six and would be non-transferable to other CQEs or to private entities. However, a community charter halibut permit could be used by more than one business within the community, although not at the same time.

This action proposes to limit the communities eligible for community charter halibut permits to those that have an emerging, but not a fully developed charter vessel fleet, since they could most benefit from the permits and from the economic benefits of new charter businesses. This is consistent with the Council's rationale.

The Council recommended that eligible communities are those CQE communities (listed in Table 21 to part 679) within which 10 or fewer "active" charter vessel businesses terminated charter vessel trips in each of the qualifying years (2004 and 2005). The term "active" means at least five logbook fishing trips per year. The five-trip criterion is based on the basic qualification proposed for a charter halibut permit of five logbook trips in each of two years. Communities with more than 10 active charter vessel businesses were considered "developed" enough to not require the benefit of the community permit program.

<sup>166</sup> The term "community charter halibut permit" identifies a substantively different permit than the other "transferable charter halibut permits" and "non-transferable charter halibut permits" that will be issued. The discussion in this section will describe the ways in which these three permits may differ. CQEs that are eligible for this program may hold both community and transferable permits. CQEs that are not eligible to receive community permits may still acquire transferable permits.

Communities with no active charter vessel businesses were not considered likely prospects for developing future charter vessel businesses. In addition, the Council specifically named the communities that would meet these criteria. Therefore, this action proposes eligibility of the specific communities named by the Council, based on relevant criteria established by the Council. To add or subtract a community from the proposed list would require separate Council action and a regulatory amendment.

The list of communities proposed to be eligible for community charter halibut permits under a CQE are a subset of those listed in Table 21 to part 679. The eligible communities are listed in Table 54.

**Table 54 Communities eligible to request and receive a limited number of halibut charter limited access permits under Issue 12**

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

\*These communities have already formed a CQE and had it approved by NMFS, as of January 2008.

The design of the eligibility criteria might disadvantage eligible CQE communities (relative to other CQE communities) that are not long established charter ports, but whose CQE would not qualify to receive permits, because the community either exceeded the number of businesses in one of the two years at issue, or because a business reported the community as the port of landing, but no longer operates there. This is because a business would be counted toward the community's threshold, if it reported the community as the port of landing for only one trip in 2004 or 2005. As discussed previously, having a business 'count' towards a specific community does not mean that the business is physically located in the community, that the business owner is a resident of the community, or that the business terminated all of its trips in that particular year in the community.

This issue is exacerbated by the relatively narrow window of participation history used to determine the beneficiaries of the charter halibut permit program. This may be less of an issue for communities that are well above the selected criteria, but more of an issue for communities that only slightly exceed the designated maximum. Under the Council's preferred alternative, Craig, Gustavus, and Elfin Cove are the only Amendment 66 communities that would not qualify, based on existing charter activity. Council staff determined that Elfin Cove exceeds the threshold in the criteria (must have 10 or fewer businesses to qualify, with  $\geq 5$  trips, in 2004 and 2005) by two businesses in each year. Gustavus exceeds the threshold by 3 and 4 businesses in 2004 and 2005, respectively; and Craig exceeds the threshold by 16 and 15 businesses in 2004 and 2005, respectively.

In addition to the community charter halibut permits available to a CQE under this proposed action, a qualifying CQE could also acquire transferable charter halibut permits through purchase, as described earlier. Therefore, this action proposes a unique excessive share limitation, recommended by the Council to apply specifically to CQEs as potential permit holders. The limitation for a CQE representing Area 2C communities would be four community charter halibut permits per eligible community. Additional permits that the CQE may acquire by transfer would be limited to an additional four per eligible

community for Area 2C. Hence, the overall limit of permits that such a CQE may hold would be eight per eligible community for Area 2C.

This overall area-wide limit would apply to all community charter halibut permits issued to a CQE or to community charter halibut permits in combination with charter halibut permits acquired through transfer. For example, a CQE representing two eligible communities in Area 2C could request and receive four community charter halibut permits for one community and four community charter halibut permits for the other community. The CQE could receive an additional four charter halibut permits acquired by transfer for each community. The total number of permits—eight community charter halibut permits, plus eight charter halibut permits acquired by transfer—would be the limit for the CQE to hold in Area 2C. However, if the CQE subsequently represents another community in Area 2C, the limit would change, based on the number of communities that the CQE represents in that area. These CQE limits do not preclude individuals in the CQE communities from acquiring permits in addition to those held by the CQE.

CQEs in Area 3A may be issued seven community halibut charter permits for each community they represent, and may purchase seven additional transferable permits for each community. The CQE could thus hold 14 permits (seven community halibut charter permits and seven transferable permits) for each community it represented.

The proposed limit on the number of community charter halibut permits that can be held by a CQE is intended to assist the development of an emerging charter halibut fishery in eligible communities, without undermining the purpose of the limited access system proposed by this action. Also, the Council recommended that a charter vessel fishing trip for halibut that is authorized by a community charter halibut permit would be required to either begin or end within the community designated on the community charter halibut permit. The purpose of this requirement is to assure that the charter vessel anglers on such a fishing trip have an opportunity to use the goods and services of the community. This requirement would apply only to community charter halibut permits and not to any additional charter halibut permits that a CQE may acquire by transfer.

Under the Council's preferred alternative, in which 18 Area 2C communities would qualify, the maximum number of new community charter halibut permits that could be created for CQEs representing eligible Area 2C communities is 72 permits. Also under the Council's preferred alternative, in which 14 Area 3A communities would qualify, the maximum number of new permits that could be created for CQEs representing eligible Area 3A communities is 98 permits.

Recall that under the Council's preferred alternative, 502 permits are estimated to be issued in Area 2C and 418 permits in Area 3A under the general program. Thus, applying the Council's preferred alternative under Issue 12, the pool of Area 2C permits could be increased by a maximum of about 14%, with those additional permits issued to CQEs. The pool of Area 3A permits could be increased by a maximum of 23%.

These estimates of the numbers of community charter halibut permits that could be issued may exceed the numbers actually issued, however. Each eligible community must be represented by a CQE in order to participate in the program and not all eligible communities have established CQEs. With the existing number of eligible CQEs<sup>167</sup> and the preferred alternative for use caps, a maximum of 32 permits could be issued in Area 2C and 56 permits in Area 3A. In addition, it is more likely that those communities with the support services and transportation network available to support halibut charter operations (e.g.,

<sup>167</sup>Of the 18 eligible Area 2C communities under the Council's preferred alternative, 8 have formed CQEs as of August 2008. Of the 14 eligible Area 3A communities, 8 have formed CQEs. (This is the most current information on the RAM website, accessed September 14, 2009)

regular air service, ferry access, cruise ships, lodges, harbors, etc.) would take advantage of the permit opportunity. Varying levels of support services are in place in the communities with existing CQEs.

While an unlikely result, given the range of options for overall use caps for CQEs under the Council's preferred alternative, it is theoretically possible that 72 permits, or 14% of the pool of initially issued halibut charter permits in Area 2C could be purchased by CQEs. In Area 3A, given the range of options for overall use caps for CQEs under the Council's preferred alternative, it is theoretically possible that 98 permits, or 23% of the initially issued halibut charter permits could be purchased by CQEs and, in this way, redistributed to these rural communities. These comparisons have limited value, however, as there are several implicit assumptions, including the unlikely scenario that all 32 eligible communities would be represented by CQEs and each CQE would *purchase* existing charter permits to the maximum extent allowed.

Finally, the Council's preferred alternative under Issue 12 includes several other restrictions on the use of CQE requested permits:

- The permit is designated for the area in which the community represented by the CQE is located
- The permit is endorsed for 6 anglers fishing halibut
- The permit cannot be sold (i.e., permanently 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).

### 2.8.2.1 Summary of overall effects of Issue 12

The following provides a brief summary of the expected effects of the provision to allow CQEs to request a limited number of halibut charter permits (creation of new permits) under the limited access system on the various affected sectors. Thus, the expected effects outlined in this section apply to the range of options included in Alternative 2, Issue 12, the range of which includes the Council's preferred alternative. The growth in the charter industry is centered in the major halibut ports, primarily located on the road system; however, there are many small, rural, coastal communities without charter sectors and few economic opportunities other than fishing. The intent of the provision is to remove a new economic barrier to entry (i.e., the requirement that one purchase a transferable charter halibut limited access permit) for these small, rural communities by allowing them to receive a permit(s) upon request. These permits would be held by the CQE (although they will be non-transferable), in order to support charter business development. Some of the expected effects are summarized below.

General effects:

- The stated intent is that the limited access system will be an interim program, replaced by a long-term solution in the future. However, a limited access system may serve as a means of pre-selecting the set of beneficiaries in subsequent revisions to a limited access system or development of a quota share program. Thus, the stakeholders that are recognized in the distribution of benefits (i.e., permits) in the limited access system, whether communities or licensed sportfishing businesses, will most likely be the same set of stakeholders that will benefit from the longer-term proposals.
- The Council's decisions in structuring the program balanced the primary goal of the limited access system, to limit new entry, and the conflicting goal of creating new permits, for use by small, rural communities.

#### Effects on communities:

- There is no guarantee that charter businesses that historically operated in a community with a ‘developed’ charter port, as defined by charter activity in a relatively narrow window of time (2004 - 2005), will qualify for permits under the general program; nor is there a guarantee that the businesses will continue to operate out of that community’s port in the future. This may disadvantage ineligible Amendment 66 communities (relative to eligible Amendment 66 communities) that are not long established charter ports, but that may have exceeded the number of businesses in one of the two years in the qualifying period. However, the Council sought not to impact existing permit holders in communities with saturated markets.
- Under the criteria considered, 32 of the 35 Amendment 66 communities in Areas 2C and 3A would qualify to receive halibut charter permits (note that these communities must also form CQEs). Under the limits (use caps) considered for the number of requested permits, 72 community halibut charter permits could be issued to CQEs in Area 2C, and 98 in Area 3A.
- The implementation of this provision, as a stand-alone measure, is not anticipated to ‘save’ eligible communities, or generate a comparatively large economic impact. The provision is instead anticipated to support one component of a larger plan to either re-establish or maintain fisheries access, and an associated fisheries-based economic structure, in specified rural communities. CQE-held charter permits may enable residents from these communities, or residents of other communities, to participate in a fishery from which they might otherwise be excluded, due to the cost of purchasing a permit.
- The structure of the CQE program creates higher administrative costs associated with using the permit (going through CQE) than would be generated if the permit was provided directly to community residents, by NMFS. However, making the CQE the permit holder, and requiring that the permit is non-transferable, likely better meets the goal of providing long-term benefits to the community, in terms of mitigating economic barriers to continued access to the halibut charter fishery and providing an opportunity for the community, as a whole, to further develop the charter industry as a part of its overall economic development plan.

#### Effects on commercial halibut sector:

- The Pacific halibut resource is fully utilized by subsistence/personal-use, unguided and guided sport, and commercial fishermen in IPHC Areas 2C and 3A, and the open-ended reallocation from the commercial halibut sector to the charter halibut sector continues to exist. While the overall limited access system action is not expected to slow charter halibut harvests such that the GHL is not exceeded in the short-term, the overall program may limit long-term growth and may provide a foundation upon which measures to more effectively limit charter harvests can be built. Creating additional permits to be held by CQEs, in part, would conflict with the goal to limit new effort in the charter halibut sector, and could potentially result in further negative impacts on the commercial halibut sector and the communities that benefit from the commercial fishery. This effect may be partially offset by the number of permits issued under the general charter limited access system, which depends on the qualification criteria under Issue 10.

#### Effects on charter halibut sector:

- The market for charter permits could be affected by the provision to allow CQEs to hold charter permits, as charter operators seeking to enter the fishery may choose to apply for use of a permit through the community CQE, as an alternative to purchasing their own permit. While the pool of potential buyers may be reduced, the number of permits available for sale on the open market would not be affected (CQE requested permits are not transferable), which may result in



downward pressure on the price of permits for charter operators seeking to purchase a permit. This would affect both the existing charter sector and new entrants into the fishery.

- The existing charter sector could also be affected by an influx of new or expanded charter operations made possible through CQE permits, depending upon the level of participation by rural communities. As the CQE is required to use the permit in its member community, charter operators in other communities may not be substantially affected, even with the overall increase in competition. However, there may be some negative effects on existing charter operators in the Amendment 66 communities, as they realize increased competition for anglers from new charter operations within their community. In part, however, the eligibility criteria are intended to exclude Amendment 66 communities whose charter halibut market is already relatively well developed or saturated. In addition, existing charter operators in communities with the least developed charter industries may benefit from additional operators in the community, as they potentially strengthen the overall market for charter operations (e.g., via increased marketing, back-up charter services, increased incentive to develop support services).
- The requirement that the CQE must use the permit for a business that operates in and/or out of the represented community is fundamental to the overall goal of the community charter halibut program. Without this requirement, a CQE could determine that retaining a skipper who operates out of a different community is in the community's best interest. Although this alternative approach could still result in benefits to the community (in terms of revenue or employment), it could also result in a program that supported additional businesses operating out of the most common ports of landing, rather than out of the rural communities identified by the Council. If that happened, the result could be increased growth in the industry in the relatively few communities whose businesses will receive the majority of limited access permits allocated under the general limited access system. It is worth noting that there are economic and logistical reasons why some communities have well developed charter sectors and others do not. This program will not alter these facts.

#### Effects on guided halibut anglers:

- Effects on the guided halibut angler are primarily related to the '*potential*' increased opportunities that could be made available and the associated effect on price. As this provision could create a number of new permits that would not otherwise exist under the general program, there may be potentially more charter operations and guided angler opportunities, than if Issue 12 was not selected. Guided anglers may benefit from an overall increase in the supply of charter opportunities and the geographic diversity and attributes of the fishing experience available in more rural areas. An increased supply of permits may also result in downward pressure on the price of a charter trip for a guided angler.
- Establishing an overall use cap for CQEs (applicable to requested and purchased permits) that is higher than the cap on requested permits alone, would allow CQEs to purchase a number of permits over and above the number of permits they request from NMFS. As CQEs would be purchasing permits from the existing pool of initial permits issued, a possible effect is that some redistribution of permits could occur from ports with the highest historical charter activity (Sitka, Juneau, Homer, Seward, Ninilchik) to the more rural communities represented by CQEs. Conversely, some residents of rural communities may sell transferable permits and use CQE permits to conduct their businesses.

There are so many factors at play here, and experience with a mixed market/CQE program in a sport fishing setting is so limited, precisely how this aspect of the charter halibut entry permit program ultimately evolves represents one of many empirical questions associated with this action.

## 2.9 Summary

Table 55 provides a summary of the costs and benefits that are expected to result from the two alternatives considered. Overall, the status quo will continue to allow new entry into the charter fishery. Client demand will continue to determine the number of trips taken. Prices for charter trips will be set in a competitive market based on the forces of supply and demand. Persons taking trips with fewer clients will operate inefficiently and waste resources. Those wasted resources are additional expenditures that may benefit suppliers of charter businesses.

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

**Table 55 Summary of costs and benefits by alternative**

Issue	Alternative 1. No Action (status quo)	Alternative 2. Moratorium 1 (M-1)	Alternative 2. Moratorium 2 (M-2) (Council's Preferred Alternative)
Summary of the Alternatives	No Action (status quo). Continue current management structure of the halibut charter fishery, including the GHL program approved by the Council	<p>Persons holding permits must be U.S. citizens or businesses with at least 75 percent U.S. ownership. (grandfather initial recipients)</p> <p>Permits issued to ADF&amp;G licensed fishing guide business owner</p> <p>Permits would be designated for use in either IPHC Area 2C or 3A</p> <p>Permits would be allowed to be stacked to increase the number of clients that may be carried on the vessel.</p> <p>Leasing of permits would be prohibited, but enforcing the provision may not be possible.</p> <p>Allow transfers of permits</p> <p>Endorse permits for the highest number of clients on any trip, but not less than 4</p> <p>Qualification for a permit would be based on Option 10.2 and require 20-trips during 2004 or 2005 and the year prior to implementation</p> <p>No use caps would be imposed</p> <p>No permit allocations to CQE communities that do not meet the initial allocation requirements</p>	<p>Persons holding permits must be U.S. citizens or businesses with at least 75 percent U.S. ownership (grandfather initial recipients)</p> <p>Permits issued to ADF&amp;G licensed fishing guide business owner</p> <p>Permits would be designated for use in either IPHC Area 2C or 3A</p> <p>Permits would be allowed to be stacked to increase the number of clients that may be carried on the vessel.</p> <p>Leasing of permits would be prohibited, but enforcing the provision may not be possible</p> <p>Allow transfers of permits that were earned by vessels that qualified at trip levels of at least 15 trips</p> <p>Endorse permits for the highest number of clients on any trip, but not less than 4</p> <p>Qualification for a permit would be based on Option 10.1 and require 5-trips during 2004 or 2005 and the year prior to implementation. A minimum of 15 trips in a year during both periods used for qualification would be required to earn a transferable permit.</p> <p>An individual that was assigned to "active" military during 2004 or 2005 and demonstrated an intent to participate in the 2C or 3A halibut charter fishery, who is a licensed guide operator that reported 5 halibut charter trips in ADF&amp;G Saltwater Logbooks in the year prior to implementation would qualify for a permit.</p> <p>Use caps would be set at 5 permits</p> <p>Allocations to CQEs, representing communities in which 10 or fewer</p>

Issue	Alternative 1. No Action (status quo)	Alternative 2. Moratorium 1 (M-1)	Alternative 2. Moratorium 2 (M-2) (Council's Preferred Alternative)
			active charter businesses terminated trips in 2004 and 2005. Limit of 5 requested permits per community in 2C and 7 requested permits in 3A. Overall (purchased or requested) CQE use caps would be 10 permits per 2C community and 14 per 3A.
Impacts on resource management	None	<p>Could provide a foundation for future management actions that better limit growth in charter harvests of halibut.</p> <p>This moratorium is not expected to constrain client trips. A moratorium that does not prevent clients from taking halibut trips will have no impact. However, if the moratorium is constraining in the future, it could result in increased effort for other species like salmon, rockfish, and ling cod.</p>	Impacts are similar to M-1, but the charter fleet will have more permits at the initial allocation and would have a greater growth potential.
Impacts on producer surplus in the commercial sector	Growth in the halibut harvests by charter clients will continue to increase. Because changes in quantity of halibut sold in the commercial market have little impact on ex-vessel prices (inelastic ex-vessel demand), producer surplus in the commercial IFQ fishery will decline as the amount of halibut they harvest decreases.	Impacts will be similar to the status quo. However, if the moratorium is ever constraining (at current growth rates a minimum of more than 10 years from 2006), it could slow the decline in producer surplus.	Impacts will be similar to the status quo. However, if the moratorium is ever constraining (expected to take longer than M-1), it could slow the decline in producer surplus.
Impacts on post-harvest surplus (consumer surplus of commercial halibut).	Will decline as the amount of Alaskan halibut on the market decreases. Post-harvest surplus is expected to substantially contribute to the net benefits derived from commercial harvests.	Will decline as the amount of Alaskan halibut on the market decreases. Post-harvest surplus is expected to substantially contribute to the overall commercial surplus. To the extent that the moratorium ever limits growth in the charter sector, the reductions in post-harvest surplus will be constrained.	Similar to M-1.

Issue	Alternative 1. No Action (status quo)	Alternative 2. Moratorium 1 (M-1)	Alternative 2. Moratorium 2 (M-2) (Council's Preferred Alternative)
Commercial QS values in Areas 2C and 3A	Decreases in harvest amounts will not be offset by ex-vessel price increases. QS values will decline due to the expected decrease in the revenue stream of the shares.	Decreases in harvest amounts will not be offset by ex-vessel price increases. QS values will decline due to the expected decrease in the revenue stream of the shares. Decreases would be moderated, if the moratorium constrains harvests in the long-term. However, the moratorium is not expected to constrain harvests.	Similar to M-1.
Commercial QS values in Areas 3B - 4E	Minimal positive impact. Because the change in quantity sold has little impact on ex-vessel price, increased halibut harvests by the charter sector are expected to slightly increase ex-vessel prices and QS values in these areas.	Minimal positive impact. If the moratorium does not constrain charter harvests, the impacts will be the same as the status quo. Price increases will be constrained if the moratorium limits charter catch.	Minimal positive impact. If the moratorium is a constraint in the future, it will limit the increase in QS values. The magnitude of the increase should fall between those expected from the status quo and M-1.
Benefits to guided anglers (Compensating variation)	Compensating variation will increase. The marginal compensating variation for an additional charter client will be greater than zero, but much less than the average compensating variation (\$83 resident and \$119 non-resident) reported by Criddle et al. (2003). They found that compensating variation per trip was increasing at a decreasing rate.	Impacts similar to status quo. Any reductions in the number of clients taking trips will reduce compensating variation.	Similar to M-1. Limiting the transfer of some permits will prohibit about 178 businesses from selling permits they are issued. An additional 80 businesses would be allowed to sell some permits. Limiting a person's ability to sell permits (assuming they cannot "lease" the permit) will constrain effort and those permits would have no value when the owner leaves the fishery.
Charter operators benefits (producer surplus)	Charter operators are expected to earn normal profits (no producer surplus) in the long-term. Producer surplus could be earned for a short time, but free entry into the business would ensure that competition would drive charter prices back to the level where normal profits are earned.	Limiting the number of vessels that may operate would help limit competition from new entrants in the fishery, but competition from existing permit holders is expected to keep businesses from earning above normal profits.	Limiting the number of vessels that may operate would help limit competition from new entrants in the fishery, but competition from existing permit holders is expected to keep businesses from earning above normal profits. Limiting the transfer of some permits will prohibit about 178 businesses from selling permits they are issued. An additional 80 businesses would be allowed to sell some permits. Limiting a person's ability to sell permits (assuming they cannot "lease" the permit) will constrain effort and those permits would have no value when the

Issue	Alternative 1. No Action (status quo)	Alternative 2. Moratorium 1 (M-1)	Alternative 2. Moratorium 2 (M-2) (Council's Preferred Alternative)
			owner leaves the fishery. Use caps could prevent some businesses from expanding their operations, potentially reducing the market price of the permits.
Regional impacts	<p>In the lower Cook Inlet, a 10 percent increase in participation resulted in an 18 percent increase in compensating variation and a 5 percent increase in expenditures, personal income, and jobs. As participation increases, expenditures, personal income, and jobs are expected to increase, but at a decreasing rate. Those impacts cannot be directly applied to other areas of the state, but do provide information on the magnitude of impacts that could be expected.</p> <p>Redistributing charter activity from one area to another would change the benefits derived by the community, but overall net National benefits would not be expected to change.</p> <p>Because charter and commercial firms that target halibut operate from many of the same communities. Losses in regional expenditures and jobs associated with the commercial fleet will be to some extent offset by increased expenditures and job from the charter industry. Individuals and companies within the communities that rely on one sector could be impacted to a greater extent.</p>	Same as status quo.	Same as status quo. Allowing 23 – 33 small, rural communities to request additional permits could increase economic activity in those areas. The effectiveness of the program will depend on the communities' ability to attract charter clients.
Costs to Federal government	No change in costs	Implementing the program is expected to require 6 additional enforcement officers, 1 additional attorney, and 1 additional RAM staff. The anticipated cost increase is about \$1.23 million.	Same costs as M-1.

Issue	Alternative 1. No Action (status quo)	Alternative 2. Moratorium 1 (M-1)	Alternative 2. Moratorium 2 (M-2) (Council's Preferred Alternative)
Estimated net benefits to the Nation	Quantitative estimates of Net National Benefits are not available. The difference between long-run charter angler surplus and the post-harvest surplus will determine whether an increased harvest by the charter sector will increase or decrease net National benefits.	Same as status quo.	Same as status quo.
Program objectives	Does not address issues of unconstrained growth of the halibut charter fleet or the amount of halibut they harvest. The GHL imposes a target harvest amount, but the tools currently used to limit charter growth have not constrained catches to the GHL.	Limits the number of charter vessels that may operate. Not expected to limit the number of clients that fish or to constrain charter harvests to the GHL. Provides a platform to build a more restrictive program in the future. Defines the beneficiaries in future allocation programs.	Impacts are similar to M-1. More vessels and businesses would qualify under this structure. Allocating non-transferable permits will decrease the number of permits over time and could increase the complexity of future management actions that build on this program.
Unguided anglers	<p>Minimal impacts. Unguided angler harvests are not constrained by the charter harvests under the status quo. They will be allowed to continue to increase their harvest levels that are primarily constrained by bag limits and number of trips. They will continue to share fishing areas with charter operators, so increased charter trips could slightly increase competition for fishing areas. Alternatively, unguided fishermen may follow guided vessels for safety reasons or to obtain information on fishing areas. Allowing more charter vessels in the fleet could benefit unguided anglers in those cases.</p> <p>The compensating variation of the unguided anglers would be expected to increase at a decreasing rate as the number of unguided trips increases.</p>	Impacts similar to the status quo. Reductions in the number of charter vessels on the fishing grounds could reduce competition for fishing grounds. Those conflicts are expected to be minimal under any alternative.	Impacts similar to the status quo. Reductions in the number of charter vessels on the fishing grounds could reduce competition for fishing grounds. Those conflicts are expected to be minimal under any alternative.

Issue	Alternative 1. No Action (status quo)	Alternative 2. Moratorium 1 (M-1)	Alternative 2. Moratorium 2 (M-2) (Council's Preferred Alternative)
Personal use/subsistence	No impact. Unless personal use and subsistence users are unable to access halibut as a result of increased charter harvests (which is not expected to occur), no impact on their harvest is expected.	Same as status quo.	Same as status quo.
E.O. 12866 significance	Does not appear to be significant.	Does not appear to be significant.	Does not appear to be significant.



## 3.0 FINAL REGULATORY FLEXIBILITY ANALYSIS

### 3.1 Introduction

The proposed action would limit the number of businesses that may operate in the halibut charter industry in IPHC Areas 2C and 3A. This FRFA reviews the impact of the action on directly regulated small entities such as small businesses, non-profits and governments, and meets the statutory requirements of the Regulatory Flexibility Act (RFA) of 1980, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (5 U.S.C. 601-612).

### 3.2 The purpose of a FRFA

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

On March 29, 1996, President Clinton signed the Small Business Regulatory Enforcement Fairness Act. Among other things, the new law amended the RFA to allow judicial review of an agency's compliance with the RFA. The 1996 amendments also updated the requirements for a final regulatory flexibility analysis, including a description of the steps an agency must take to minimize the significant economic impact on small entities. Finally, the 1996 amendments expanded the authority of the Chief Counsel for Advocacy of the Small Business Administration (SBA) to file amicus briefs in court proceedings involving an agency's violation of the RFA.

In determining the scope, or 'universe', of the entities to be considered in a FRFA, NMFS generally includes only those entities that can reasonably be expected to be directly regulated by the proposed action. If the effects of the rule fall primarily on a distinct segment, or portion thereof, of the industry (e.g., user group, gear type, geographic area), that segment would be considered the universe for the purpose of this analysis. NMFS interprets the intent of the RFA to address negative economic impacts, not beneficial impacts, and thus such a focus exists in analyses that are designed to address RFA compliance.

Data on cost structure, affiliation, and operational procedures and strategies in the fishing sectors subject to the proposed regulatory action are insufficient, at present, to permit preparation of a "factual basis" upon which to certify that the preferred alternative does not have the potential to result in "significant adverse impacts on a substantial number of small entities" (as those terms are defined under RFA).

Because, based on all available information, it is not possible to 'certify' this outcome, should the proposed action be adopted, a formal FRFA has been prepared and is included in this package for Secretarial review.

### 3.3 What is required in a FRFA

Under 5 U.S.C., Section 604(a) of the RFA, each FRFA is required to contain:

- (1) a succinct statement of the need for, and objectives of, the rule;
- (2) a summary of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a summary of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments;
- (3) a description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available;
- (4) a description of the projected reporting, recordkeeping and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; and
- (5) a description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

### 3.4 What is a small entity

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

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

The SBA has established size criteria for all major industry sectors in the United States, including fish harvesting and fish processing businesses. A business involved in fish harvesting is a small business if it is independently owned and operated and not dominant in its field of operation (including its affiliates) and if it has combined annual receipts not in excess of \$4.0 million, for all its affiliated operations worldwide. A seafood processor is a small business if it is independently owned and operated, not dominant in its field of operation, and employs 500 or fewer persons on a full-time, part-time, temporary, or other basis, at all its affiliated operations worldwide. A business involved in both the harvesting and processing of seafood products is a small business if it meets the \$4.0 million criterion for fish harvesting operations. Finally, a wholesale business servicing the fishing industry is a small business if it employs 100 or fewer persons on a full-time, part-time, temporary, or other basis, at all its affiliated operations worldwide.

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

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

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

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

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

### **3.5 Need for, and objectives of, the rule**

A comprehensive history of management of the guided sport fishery for halibut was presented in the proposed rule for this action published April 21, 2009 (74 FR 18178). This description focused on the history and rationale leading to the Council’s development of limited access management for the charter vessel fishery and its recommendation of this limited access system in 2007. In brief, the principal concern was overcrowding of productive halibut grounds due to the growth of the charter vessel sector. The Council found that the charter vessel sector was the only halibut harvesting sector that was exhibiting growth in IPHC Areas 2C and 3A. Other harvesting sectors have specified catch limits that cause fishery closures when reached or are relatively stable over time. The Council recommended this limited access system to provide stability for the guided sport halibut fishery and decrease the need for regulatory

adjustments affecting charter vessel anglers while the Council continues to develop a long-term policy of allocation between the commercial and charter vessel sectors. In doing so, however, the Council was also concerned with maintaining access to the halibut charter fishery by small, rural, coastal communities. To address this, the Council recommended establishing a separate program to allow these communities to enter the halibut charter fishery.

### 3.6 Public comments

The proposed rule was published in the *Federal Register* on April 21, 2009 (74 FR 18178). An Initial Regulatory Flexibility Analysis (IRFA) was prepared and described in the classifications section of the preamble to the rule. The public comment period ended on June 5, 2009. NMFS received 166 submissions containing 157 separate comments. Comments were categorized into seven topical categories, including: (1) Fairness and legal authority; (2) Conservation; (3) Economic impacts; (4) Moratorium elements; (5) Other management measures; (6) Data quality; and (7) Other issues.

All comments and responses are contained in the final rule for this action. The relevant economic impacts comments are reported in this section of the FRFA.

Comment 15: Charter boats should be limited in Southeast Alaska. Too many vessels and operations are not owned by Alaskans and these operations grew quickly while fishing opportunities were available. This is particularly true for operations with six to 30 vessels (large operations) rather than small operations with one to three vessels. The large operations fill fish box after fish box with no regard for the resource and hire help from down south and pay low wages. As most of their captains are from down south as well, and I question whether they are qualified to be guiding in a very unforgiving environment. Why are we rewarding this behavior by giving them "forever" rights and exclusivity to the fishery?

Response: Sport fishing lodge operations with a large number of charter vessels are as legitimately in business as are operations with a small number of charter vessels. Both types of charter vessel operations provide a recreational service. The growth in operations referred to by the comment may have been associated with growth in tourism and cruise ship visits to Southeast Alaska; however, NMFS does not have information that identifies the specific reasons for growth in charter vessel operations.

The assertion that many charter vessel operations are not owned by Alaskans or that some operations hire non-Alaska residents is not relevant to this final rule. The Halibut Act prohibits the Secretary from approving halibut regulations that discriminate between residents of different states. This rule applies to all applicants for charter halibut permits and permit holders, regardless of their place of residence. Wages paid to the staff of charter vessel operations and the required qualifications for charter vessel operators are outside the scope of this action.

Finally, this rule does not create permanent exclusive rights to operate in the charter halibut fishery. A permit is a privilege that can be revoked if the permit holder violates specified conditions of the law. In addition, holders of transferable charter halibut permits are expected to transfer some permits to new entrants to the charter halibut fisheries. NMFS expects that over time, transferable permits will migrate to those operators and areas where they will be most efficiently used. Non-transferable permits may be used by the charter vessel operators to whom they are initially issued but may not be transferred to another operator. These permits will expire when a permit holder dies, if an individual, or if certain criteria are met, if a business entity.

Comment 39: My community has a community quota entity program and is entitled to use it under the final rule but does not have the financial resources to use it effectively.

Response: Specified Area 2C communities may receive up to four community charter halibut permits per community and specified Area 3A communities may receive up to seven permits per community issued to CQEs. Some costs are likely, however, in establishing and administering CQEs. Growth of a charter halibut fishery beyond the free CQE permits provided by this rule, however, would require the purchase of transferable charter halibut permits. When NMFS originally authorized CQEs to acquire commercial halibut or sablefish quota share under the IFQ program, the State of Alaska responded by modifying its fisheries loan programs to provide financing for the purchase of halibut and sablefish quota share by CQEs. The State may adapt this program for loans to allow CQEs to acquire charter halibut permits. Also, CQEs eligible to receive community charter halibut permits may consider joint venture arrangements with private sector partners to share the costs of forming and operating a CQE.

Comment 40: For many years there has been significant discussion and motions regarding charter IFQs, moratoriums, limited entry programs, etc. These discussions and motions, in some cases passed and rescinded, have caused confusion in the charter halibut industry. This confusion has likely caused charter operators to hold on to businesses that they would have retired from or would have sold long ago. This affected the natural management of charter operations and is a factor that you have not considered.

Response: The Council and NMFS considered speculative participation in the charter vessel industry when developing this rule. Uncertainty about the intent of the Council and uncertainty about the potential criteria, may have led some individuals to participate in the fishery at levels that they hoped would qualify them for a future permit, when they might otherwise not have operated. This type of speculative activity could have led to increased effort levels in the guided sport fishery. The publication of a control date of December 9, 2005 (71 FR 6442, February 8, 2006), was intended to discourage such speculative behavior. The use of minimum participation thresholds to qualify for permits and for transferable permits should further reduce the control of permits by speculative operators.

The Council subsequently developed and recommended this limited access system using 2005 as the last year in which at least minimal participation in the charter halibut fishery will qualify a person for a charter halibut permit. The Council took over a year to develop this program and listened to substantial public testimony. Anyone entering the charter halibut fishery during this time should have been well aware of the speculative risk of doing so.

Comment 41: There has been a steady decline in the number of halibut charter vessels in Valdez. For example, in 1995 there were approximately 35 halibut charter boats operating out of Valdez. Last summer there were fewer than 20. This is not due to the lack of customers, but to the long distances we are being forced to travel to find quality halibut fishing grounds for our clients, and the cost to operate a vessel under these circumstances. The proposed moratorium will cripple the economy for seasonal businesses that rely on tourist and locals alike to come to Valdez and go fishing. If anything you should make provisions to allow a small expansion of charter vessels in Valdez. Similarly, another comment stated that aside from the CQE provision, some growth, particularly in places like Kodiak, Yakutat, and Whittier should be allowed.

Response: Valdez, Kodiak, Yakutat, and Whittier, Alaska, are in IPHC Area 3A. A charter halibut permit endorsed for Area 3A may be used anywhere within that area. This rule allows for market-based responses to changing fishing conditions in different parts of Area 3A. As halibut fishing conditions or business conditions fluctuate, holders of Area 3A charter halibut permits could enter or leave the charter halibut fishery based in any Area 3A community. Hence, no special allowance for expansion of the charter halibut business is necessary as this rule will not inhibit such expansion. NMFS expects also that holders of charter halibut permits will shift their operations to the communities where the demand for guided angling is greatest and can be served most profitably.

Comment 43: This action will limit the number of guided charter operations and the ability of this industry to meet the demand for guided charter fishing. The limit on supply of guided angling opportunities will mean that fewer persons will be able to take advantage of guided services and that the cost of these services will increase. This will reduce the benefits to anglers and prompt some anglers, who would otherwise have used guide services, to substitute less attractive guided or non-guided fishing activity. Reduced guided angler activity will have adverse economic impacts on the guided industry and on regions of Alaska where guides are based. There will be fewer jobs and less income, and this will hurt local businesses that depend on revenue generated by charter operations.

Response: Although the number of vessels with charter halibut permits operating under this rule is limited, their passenger carrying capacity exceeds current 2008 levels of participation. The numbers of charter halibut permits and associated endorsements issued under this rule create significant opportunities for charter halibut operations to expand their capacity to meet existing and higher levels of angler demand for guided halibut fishing.

Opportunities likely exist for charter vessel operators to increase the number of anglers they carry under this rule. NMFS expects that, if charter vessel angler demand warrants, charter vessel operators will increase investments in their fishing vessels to increase their fishing efficiency, the average number of clients they carry (subject to the endorsement and other licensing restrictions), and the number of days each season that their vessels operate.

The Analysis (see ADDRESSES) indicates that the number of permits issued under this rule will allow permitted vessels to meet 2008 levels of charter trips by increasing the average number of trips they make in Area 2C from 36 to 52, and in Area 3A from 38 to 56. These levels of increased activity are within the capacity of the charter halibut fleet that will have permits under this rule. Further increases in numbers of trips also are possible. Members of the charter vessel industry indicated in public testimony to the Council that the charter fishing season lasts for about 100 days. Many of these trips would be half day trips so that multiple trips might be made per day. Even after assuming for days off due to bad weather and mechanical breakdown, it is likely that the number of days fished could double. Hence, it is not apparent that this rule will result in constraining operations of charter vessels with charter halibut permits or in constraining guided angling opportunities (see also response to Comment 21).

As discussed in the Analysis, NMFS expects, over a wide range of demand conditions, that increasing the number of passengers in a trip, or increasing the number of trips in a season, can be done at relatively constant incremental cost. This suggests that charter halibut permits under this rule can meet demand without price increases.

Comment 44: Halibut are a common property resource and everyone is entitled to make a living off a resource that belongs to no one person or group. Management is necessary but it should not stifle capitalism. This limited entry program is solely about taking more away from the general public who have a right to this resource. Guided angler caught halibut are worth five times as much to the state and fisherman as a commercial fish. Management should seek to maximize the value of the fish.

Response: NMFS agrees that the Pacific halibut resource in Areas 2C and 3A is a common property resource. As such, all resource users should be benefitted by fishery management policies implemented by NMFS without regard to which use maximizes the value of each fish. This action does not change the allocation of halibut between sport or commercial users. The U.S. Government is authorized to regulate access to this resource consistent with the Halibut Act and other applicable law. This action creates a limited set of access rights or privileges for a resource that cannot support unlimited access. Any citizen of the United States will be free to enter the guided angling business in Alaska and to guide charter vessel anglers in harvesting halibut by purchasing the relevant permits. NMFS estimates that about 231 charter

vessel businesses will qualify for charter halibut permits in Area 2C and about 296 charter vessel businesses will qualify for charter halibut permits in Area 3A. Many of these businesses will qualify for transferable charter halibut permits, and a robust market for these permits is expected to develop. Therefore, this rule is not likely to stifle capitalism.

The public's access to the halibut resource is not diminished by this rule. The general public may access this resource as it does now through purchases of halibut in commercial markets (e.g., grocery stores, restaurants), and through non-guided and guided sport fishing. The intent of this rule is to stabilize the growth of charter vessel operations in the guided sport fishery for halibut. Relative to the present, this rule will not diminish charter vessel angler opportunity in the foreseeable future. Instead, it is designed to restrict the entry of additional charter halibut operations.

Comment 45: The analysis in the EA/RIR/IRFA is inadequate. There is no information about the adverse impacts this action will impose on a large percentage of the operations in the fleet. It does not include information about operations that entered the business in the years from 2006 to 2009. The IRFA does not provide adequate information on the impact to operations that will not receive permits under this rule. It should include information on lost revenue or expenses to all entities involved. Not allowing small businesses starting after 2005 to compete in the fishery is inconsistent with the Regulatory Flexibility Act.

Response: The Analysis (see ADDRESSES) estimates numbers of operations affected by this action, and examines the costs and benefits of the action accruing to different sectors. Much of the Analysis is qualitative, reflecting the limited information that exists on the charter vessel business generally and on the angler demand.

The Council's recommendation to the Secretary looked primarily at charter vessel businesses that were active during the qualifying years of 2004 and 2005. These were the participants that the Council sought to confirm in their business patterns when it made its decision to recommend this action in 2007. An "Active" charter business was determined to be one that made at least five logbook trips in at least one of the two qualifying years and at least five logbook trips in the recent participation year (2008). This two-tier qualification requirement was designed to assure that limited access permits were allocated to historically active charter businesses that were still active when the program was implemented. The five-logbook-trip minimum was chosen in part because it is a relatively low standard of activity. A charter vessel business with less than five logbook trips in a year is not likely in most instances to generate a significant annual income. The Council's Analysis that was made available to the public for review with the proposed rule (74 FR 18178, April 21, 2009) did not consider the effect of the participation requirement in 2008 because that year had not yet occurred at the time of Council action. However, the Council was aware that the numbers of businesses receiving permits under this rule would be no more than those that were active in 2004 or 2005, and likely would be somewhat less as some firms active in 2004 and 2005 left the charter business during 2006 and 2007.

The Council and Secretary reasonably assumed that the number of businesses that would enter the fishery during 2006 through 2009 would be small. Such businesses contemplating entry into the charter halibut fishery during those years should have been aware of the control date of December 9, 2005, set by the Council and published by the Secretary on February 8, 2006 (71 FR 6442). Being put on notice of potentially not qualifying for initial allocation of charter halibut permit(s), businesses entering the fishery after the control date should have structured their operations on the assumption that they may be in the charter halibut business temporarily. Alternatively, these businesses could have planned on purchasing one or more transferable charter halibut permits after they were issued. Other than assuming this outcome, no basis existed for estimating the number of businesses that would make a post-control date entry decision.

More recently, NMFS has prepared a supplementary analysis, with estimates of the number of businesses that are expected to qualify for charter halibut permits based on the 2004 and 2005 qualifying years and the recent participation year of 2008. The RIR and RFA analyses have been updated to reflect this new information (see ADDRESSES). In summary, the updated analyses indicate that about 231 businesses are expected to qualify for charter halibut permits in Area 2C and about 296 are expected to qualify in Area 3A. An estimated 115 businesses were active (i.e., at least five logbook trips) in Area 2C in 2008 but not during either of the qualifying years indicating that these businesses may have entered the charter halibut fishery during the period 2006 through 2008. The comparable estimate of new entry businesses in Area 3A is 111.

Comment 46: Will the government offer a compensation package of vocational retraining, financial aid, or other compensation to guided charter operators who will not be able to continue in this business? This compensation may be appropriate since these persons will no longer be able to honor private agreements with clients, and will lose the value of vessels purchased for the fishery.

Response: No compensation is planned or provided in this rule for persons that do not qualify for a charter halibut permit. No right of compensation can be assumed by businesses that exist on the basis of free access to a public fishery resource.

Comment 47: By designating certain permits as non-transferable, the proposed rule seeks to create a second class of charter operators who can operate but cannot transfer their permit. No analysis has been made of the losses involved in selling surplus charter halibut fishing assets without a permit. A regulation designed solely to benefit the commercial sector to the disadvantage of a small number of charter operators is unconscionable. This classification of charter permit holders does not meet the requirements of the Halibut Act and should be removed from the rule.

Response: As discussed under the heading “Consistency with Halibut Act,” this rule was determined to meet the requirements of the Halibut Act. The purpose and rational basis of this rule are described above and in the preamble of the proposed rule published April 21, 2009 (75 FR 18178).

The non-transferable permits provision of this rule provides a temporal buffer to reduce the overall impact of this rule on persons that demonstrated relatively low levels of activity. Qualifying businesses will be issued transferable permits for vessels that made 15 or more logbook trips in one of the qualifying period years and in 2008. Participation in the charter halibut fishery during these years at between five and 15 logbook trips indicates a relatively low level of participation in the guided charter business. However, these businesses will qualify for non-transferable charter halibut permit(s). Businesses that receive an initial allocation of non-transferable permits will be able to continue their charter halibut operations as they previously had done, or may increase their participation in the charter halibut fishery by acquiring additional permits by transfer.

Holding non-transferable permits does not destroy the total value of business assets. A person or business with non-transferable permits may transfer ownership of vessels, fishing equipment, and real estate associated with the business to other persons that wish to enter the business and acquire charter halibut permits by transfer. Alternatively, the assets of a charter business could have value to persons that do not need charter halibut permits because their business plan does not involve the harvest of halibut. A business issued non-transferable permits may also purchase transferable permits.

Comment 48: If this proposal is approved it will set a precedent and could potentially affect thousands in the charter industry. I have been told by NMFS that there are no other charter limited entry programs currently in effect in the United States.



Response: This rule does not establish the first limited entry management of charter vessels. A moratorium for charter vessels and headboats operating in federal waters of the Gulf of Mexico was effective beginning on June 16, 2003 (67 FR 43558, June 28, 2002).

Comment 50: The proposed rule states the intended effect of this program is to curtail growth of fishing capacity in the guided sport fishery for halibut. This rule will not only curtail growth, it will eliminate it without compensation. Based on the qualifying criteria, the immediate effect will reduce the fleet size by an estimated 10 percent now, and over time as non-transferable permits are retired, an additional 15 percent of the current fleet will cease to exist. This does not include the "private agreement" and "same vessel" clauses that will eliminate even more vessels. Although there may be enough capacity in the fleet to meet current demand, with such a large reduction during peak periods anglers in the future may not be able to find an available charter.

Response: NMFS has supplemented the Council's earlier analyses using new information on charter halibut participation levels in 2008, the recent participation year (see Section 2.8 of the Analysis at ADDRESSES). The supplementary analysis takes into account the anticipated effect of the recent participation year reducing the number of charter halibut permits issued below a number based solely on participation in the qualifying years of 2004 and 2005.

Based on the earlier analysis and its supplement, the charter halibut industry will have sufficient capacity to meet existing angler demand and to meet some increases in that demand (see responses to Comments 21 and 43).

Comment 51: The proposed control date for qualifying for the limited entry halibut charter vessels is December 9, 2005. I respectfully request the control date be moved up until at least 2008 so companies that started after 2005 can qualify for a permit. If our company is unable to obtain a limited entry halibut permit for our charter vessel, our lodge would be forced to go out of business. Presently we have employees, vendors, and tourists from around the world and that would all be adversely affected if we were forced to close. Local, state, and federal governments would also be adversely affected due to the loss of revenue from utilities fees, fuel taxes, payroll taxes, bed taxes, various license fees, and of course payroll taxes. With the present economic conditions, a number of charter fishing boat and lodge operators will be forced out of business this year regardless of the limited entry proposal. The 2004-2005 qualifying period is not only damaging to the economy, but is also extremely damaging to the charter businesses that have started operating since 2006. All charter operations already vested in the industry should remain in business.

Response: The control date, December 9, 2005, was recommended by the Council and published by NMFS in the Federal Register on February 8, 2006 (71 FR 6442). The purpose of the control date announcement was to announce that anyone entering the charter sport fishery for halibut in and off Alaska after the control date will not be assured of future access to that fishery if a management regime that limits the number of participants is developed and implemented. The Council and NMFS intent in making the control date announcement was to discourage speculative entry into the charter halibut fishery while potential entry or access control rules were being developed by the Council and, if approved, implemented by the Secretary.

The notification of a control date does not compel the Council or the Secretary to use that date. In this case, the Council used the date in part by recommending a two-year qualifying period that ran through the end of 2005. The Secretary has approved the Council's recommended charter halibut moratorium recommendation which includes this qualifying period. The comment actually is seeking a new, more recent qualifying period. This cannot be done under the approved policy of 2004 and 2005 as the qualifying period without revising the entire Council recommendation. A more recent qualifying period would be a significant change to the recommended charter halibut moratorium policy and this rule.

NMFS has determined that such a significant change is not warranted and the approved policy and this rule are consistent with the Halibut Act and other applicable law.

Comment 64: I strongly oppose this proposal and ask that you reject it or restructure it to include anyone that was licensed during the qualifying period. I am a crab fisherman and a charter boat owner and captain with a very large investment, both in money and time, in my business. The business is my livelihood. I do not take enough halibut charters in the year to qualify under the proposed rule. I take people out for a variety of things, including guided fishing, and I will lose business without the ability to offer halibut fishing. I need both crab and halibut charter incomes or my business will fail.

Response: The minimum participation number of logbook trips was the second lowest participation standard considered by the Council and the Secretary. Participation in the charter halibut fishery at lower levels is not indicative of a significant commitment to this fishery, and including participants at lower levels would run counter to the objectives of this rule. Businesses that do not qualify for an initial allocation of a charter halibut permit may choose to alter their charter vessel business plan to focus on other species, acquire a transferable permit to expand operation in the charter halibut fishery, or leave the charter industry to focus on other commercial fisheries or ventures. Alternatively, the business could seek a special community charter halibut permit.

Comment 76: Although the Analysis states that the Council intended to curtail the growth of the charter sector, the “recent participation” and “same vessel” clauses of the rule will effectively eliminate 40 percent of current operators. Moreover, the Council intention to curtail the growth seems to be inconsistent with the provision to provide for 192 new CQE permits. The Analysis states that it is the purpose of this action to place a moratorium on “new” entry; however, this action actually limits any entry since 2005.

Response: “New” in this context refers to entry into the charter halibut fishery in Areas 2C or 3A after December 2005 (see response to Comments 40 and 45 concerning the control date). Hence, this action limits entry to operations that were active in the fishery during the qualifying period and that continued to operate with at least minimal logbook fishing trips in 2008. This potential outcome was published in the Federal Register on February 8, 2006 (71 FR 6442), and in the Council newsletter and other media. This notice specifically stated that anyone entering the charter halibut fishery after the control date of December 9, 2005, will not be assured of future access to that fishery if a limited access system is established that limits participation in the fishery.

The “recent participation” requirement is an important element in this rule as it serves to initially allocate charter halibut permits to businesses that were participating in the fishery during the historical qualifying years and are still participating during the most recent year for which NMFS has complete logbook information. This also demonstrates that the Council and Secretary have taken into account present participation as required by the Magnuson-Stevens Act section 303(b)(6). The “same vessel” requirement is clarified in response to Comments 54 and 56 and by the change in this rule from the proposed rule (see “Changes from the Proposed Rule” below).

This rule may allow up to 72 community charter halibut permits to be issued to CQEs representing communities in Area 2C and up to 98 in Area 3A, for a total of 170. These are the maximum number of community charter halibut permits allowed under this rule and they may not all be issued.

Comment 89: Under the section “Angler endorsement on permits” the proposed rule states “that the angler endorsement number on an applicant’s permits would be the highest number of clients that the applicant reported on any logbook fishing trip in 2004 or 2005, subject to minimum endorsement of four.” In some cases charter owners, including myself, have upgraded our vessels after the “applicant selected year” from

traditional four angler configurations to more environmentally efficient six or more angler configurations. We should not be penalized for investing in and upgrading our equipment to be more environmentally friendly, safer, more cost effective, and remain competitive in our industry. I suggest grandfathering consideration be given to such situations, especially for those of us that have been in this business for a decade or more.

Response: The Council's motion was meant to reflect the fleet composition and practices as they were in the qualifying period (2004 and 2005). The recent participation year was meant to screen out operations that had not continued to be active in recent years and is not included to reflect capacity upgrades since the qualifying period. As a result, permit endorsements reflect business activity levels in 2004 and 2005. The endorsement provisions are relatively liberal, reflecting the highest number of clients included on a trip taken by a qualifying business during the two year qualifying period. This endorsement is applied to all the permits received by the qualifying business. To the extent that a qualifying business does not receive charter halibut permits with endorsements that match its increased carrying capacity, the business could enter the permit market and obtain by transfer one or more permits with the appropriate number of endorsements, or “stack” two or more permits on a vessel.

Comment 91: The types of permits proposed in the moratorium are unacceptable. The six-person and four-person permits will only allow operators to take six or four charter anglers, depending upon which permit is granted. Our vessel is certified for four to six anglers, and the number of anglers we carry varies by trip. We cannot run a profitable business with this restriction.

Response: The angler endorsement represents the maximum number of anglers that may catch and retain halibut. This rule does not require that the number of charter vessel anglers on a vessel operating under a charter halibut permit exactly equal the angler endorsement on the permit.

Comment 93: The proposed rule talks about stacking permits. There is no mention of not being able to split a permit between boats. This would best fit our business plan as most operators may only need one or two more endorsements to add to a permit with four endorsements. (In Southeast Alaska, the maximum number of lines fishing per vessel is six.)

Response: Stacking permits in this action means having more than one permit on a charter vessel to use the total number of angler endorsements. For example, a charter vessel operator could hold two charter halibut permits, one with an endorsement of four and another with an endorsement of six. Both of these permits combined, or “stacked,” would authorize this charter vessel operator to have up to 10 charter vessel anglers on board the vessel, unless this number of passengers is prohibited by USCG licensing or other safety rules or regulations. This rule does not provide for splitting permits as this would potentially multiply the number of permits initially allocated contrary to the intent of this rule.

Comment 98: The Organized Village of Kake Council would like to see the Kake area be left open for local six-pack charter boats that would like to enter into the guided sport halibut fishery. Although the amount of sport charters in Kake is limited, the dozen that enrolled in the six-pack license class this past winter indicates an interest in guided sport halibut in our small town and should be given a chance to enter. We have witnessed the large number of charter businesses in the larger cities and can see that they need to be limited, but to shut down all of Southeast Alaska, including rural areas, to a limited license on sport halibut fisheries is too extensive and favors larger communities over rural villages. NOAA should study Kake to see what we are doing to develop a sustainable economy, which includes developing six pack charter boats that will help sustain the two or three lodges that we have in our community.

Response: This rule has a special provision for rural communities like Kake through its CQE program. Kake is specifically listed in this rule as an Area 2C community that is eligible to receive community

charter halibut permits (50 CFR 300.67(k)(2)(i)). As such, a CQE representing Kake can receive a maximum of four community charter halibut permits at no charge and can acquire a maximum of four additional charter halibut permits through the market for transferable charter halibut permits. Hence, a CQE representing Kake can hold a maximum of eight permits. Individual businesses in Kake are not limited by this provision from acquiring additional charter halibut permits.

Comment 103: The proposed rule “grandfathers” current participants that qualify for more than five permits to receive and operate more than five permits while restricting all other entities to five. Grandfathering in this manner has become an accepted practice in Alaska's quota share programs; however, other programs do not allow the grandfather rights (i.e., access privileges in excess of the excessive share cap defined for the fishery) to be sold in total as is proposed in this rule. Allowing grandfathering to continue after a business is sold raises serious social equity issues. While a case can be made for allowing large operations to continue to operate above the cap for a given amount of time, providing the opportunity for those licenses to all be sold to one entity perpetuates the inequity. We recommend that NMFS modify the proposed regulations to restrict purchasers of halibut guided sport limited entry permits to the defined excessive share limit of five permits.

At a minimum we strongly recommend that NMFS remove the requirement that transfer of more than five permits be contingent upon the transfer of all assets, including lodges, vessels, and other assets. This provision will inflate the overall value of businesses holding more than five permits, providing them with a windfall. There is simply no need for NMFS to tie all business assets to the transfer of more than five permits; this is a market decision between buyer and seller, and is outside of NMFS's purview. This provision does not seem to be administratively feasible or appropriate for NMFS to determine that this condition can be satisfied.

Response: The approved Council recommendation specifically provides for a conditional exception to the excessive share limit of five charter halibut permits. This provision, commonly called the “grandfather” provision, applies only to an initial recipient of charter halibut permits that initially qualifies for more than five permits. The Secretary has approved this recommendation and it is implemented in this rule.

One condition to this grandfather provision is that it applies as long as the initial recipient of more than five charter halibut permits continues to exist as it does at the time it is initially issued the permits. If the initial recipient is an individual and dies, then the exception stops and the individual's successor-in-interest may not hold more than five permits. If the initial recipient is a non-individual corporate entity that dissolves or changes, then the exception also stops and the new or changed entity may not hold more than five permits. This rule refers to 50 CFR 679.42(j)(4)(i) for the meaning of “change” for a non-individual entity.

The other condition allows grandfathered permits in excess of the five-permit limit to be transferred to a new person (i.e., individual or non-individual entity) without application of the five-permit limit providing, among other things, that the person transferring its grandfathered permits also is transferring its entire charter vessel fishing business, including all assets of that business, to the person designated to receive the permits. The language of the Council recommendation stated that “grandfathered permits that are sold in total when a business owner sells his entire business/fleet maintain that grandfathered status.” This rule implements this language by stating that “NMFS may approve a permit transfer application that would result in the person that would receive the transferred permit(s) holding more than five (5)...permits if...[t]he person transferring its permits also is transferring its entire charter vessel fishing business, including all assets of that business, to the designated person that would receive the transferred permits” (50 CFR 300.67(j)(6)).

These exceptions are designed to balance the need to apply the excessive share limit to the charter halibut fishery in these areas with the need to recognize that some charter vessel businesses will qualify for more than five permits and should be allowed to continue business with the same number of charter vessels for which they initially qualified. The Council and Secretary intend, however, to have more charter vessel businesses comply with the excessive share limit over time than may do so at the time of initial allocation of permits. As charter businesses change, exit, and enter the charter halibut fishery over time, the number of businesses holding grandfathered permits should decrease relative to the number that received them at initial allocation. This outcome is encouraged to the extent that costs of transferring grandfathered permits are increased by the “all assets” requirement at 50 CFR 300.67(j)(6)(iv).

NMFS will require applicants for transfers of charter halibut permits in excess of the excessive share limit to attest that (1) the existing permit holder that holds more than five permits will be transferring all of the transferable permits that were initially issued together, (2) the current permit holder will be transferring all assets of its charter vessel fishing business along with the permits, and (3) the person that will receive the permits in excess of the excessive share limit does not hold any permits at the time of the proposed transfer. The comment is correct that NMFS does not define or describe all of the assets that will have to be included in the sale of a charter vessel fishing business because each sale will be unique. NMFS may require additional documentation of the items included in the sale of the business.

Comment 104: The excessive share limit section in the proposed rule limits any charter owner from growing beyond five vessels or its current size. We understand the desire to limit consolidation of permits to only a few owners; however, this provision is overly restrictive. Further it would prevent a permit holder from selling to another entity that has any permits thus limiting market value. An alternative needs to be developed.

Response: An excessive share limit to prevent excessive consolidation under a limited access system is a requirement of the Halibut Act (see discussion above under the heading “Consistency with Halibut Act”). Determining what is excessive is a public policy judgment of the Council that is based on the current structure of the charter halibut fishery. Alternative excessive share limits should be suggested to the Council for development and potential recommendation to the Secretary.

Comment 105: Several comments stated that charter businesses had been purchased between the qualifying period (2004 or 2005) and the recent participation period (2008). Page 18182 of the proposed rule (74 FR 18178) states that “[c]harter halibut permits would not be awarded to persons who purchased a charter fishing business that met some or all of the participation requirements but who themselves do not meet the participation requirements.” The proposed rule specifies that NMFS would not recognize private business purchase agreements when issuing permits because the Council did not recommend it.

The comments disagree with the proposal to not recognize private business purchase agreements when issuing permits, stating that they purchased charter businesses that had sufficient participation in the qualifying period and continued to operate the business in the recent participation period. Some comments specified that their business purchases included the fishing history of the business's vessels, rights to any limited entry program benefits, and in some cases, the purchasers have taken possession of the business's logbooks from the qualifying period. One comment requested analysis of the impacts of either including or excluding a number of potential initial recipients due to private agreements to transfer participation history with a business. Another commenter stated that he consulted a lawyer when drafting the contract of sale to prevent problems with the transfer of the future limited entry permit and any future IFQs and notified NOAA General Counsel of the sale. Another commenter stated a belief that the Council intended for persons that purchased rights and operating histories and met other application criteria (e.g., operated the year prior to implementation) to be eligible for permits. One comment suggested that NMFS should change the rule to specify that if a charter operation met the

minimum qualifications in 2004 or 2005 but was sold after 2005 and kept the same name, that charter company will qualify for a permit if it met the minimum requirements in the recent participation period. The comment suggests that NMFS establish an appeal process to address this issue if the rule is not changed.

Response: NMFS did not propose to recognize private agreements for several reasons that were stated in the proposed rule preamble. Prominent among these was that the Council did not recommend this policy. The Council has expressed its intent to recognize private agreements that transfer participation history in the establishment of other limited access systems, but not for this action. Because the Council was silent about its intent to recognize such transfers in the development of this rule, this silence can be interpreted only as no intent to recognize such transfers.

Notwithstanding the narrative in the proposed rule (74 FR 18178, April 21, 2009) preamble on page 18182, the proposed rule also makes clear on page 18186 that NMFS will issue a charter halibut permit to the entity that held the ADF&G Business Owner License that authorized the logbook fishing trips that met the participation requirements. Further, the proposed rule at page 18186, states that NMFS will follow the form of ownership that the business used to obtain legal authorization from the State of Alaska for its past participation in the charter halibut fishery. NMFS will not determine the owners of a corporate entity or the members of a partnership. No analysis of this policy is possible at this time because NMFS has no information on how many charter vessel businesses transferred their participation history to another business since the qualifying period. Applicants that receive an initial administrative determination that they do not qualify for such permits may appeal that determination as specified in this rule at 50 CFR 300.67(h)(6) and described in the proposed rule on page 18186 and 18195.

Comment 108: If qualification for a charter halibut permit is based on the 2004 and 2005 logbooks, many charter captains will be adversely affected. Although some may have the funds to buy the limited entry permits they need to keep operating, I am not likely to be able to afford to buy any permits.

Response: At the beginning of the development of this rule, the Council announced a control date of December 9, 2005, to alert potential businesses of the possibility of a limited access system for the charter halibut fishery. This announcement was made by a Federal Register notice published February 8, 2006 (71 FR 6442). This notice informed any business entering the charter halibut fishery in Areas 2C and 3A after 2005 that they were not be assured of future access to the fishery if a limited access system was developed and implemented.

Comment 109: Two separate comments noted that their participation in the charter halibut fishery during the qualifying period was prevented because of problems with vessels.

Response: The Council recognized that certain unavoidable circumstances could prevent a permit applicant from participating in either the qualifying period or recent participation period. The preamble to the proposed rule (74 FR 18178, April 21, 2009) on page 18187 contains a detailed description of the unavoidable circumstances exception to the qualification requirements. To qualify for the unavoidable circumstances exception in the charter halibut permit program, an applicant must demonstrate that (1) it participated in either the qualifying period or the recent participation period, (2) it had a specific intent to participate in the period the applicant missed, (3) the circumstance that thwarted participation was unavoidable, unique to the applicant, and unforeseen and unforeseeable, (4) the applicant took all reasonable steps to overcome the problem; and (5) the unavoidable circumstance actually occurred. Permit applicants that are initially denied a charter halibut permit may make an unavoidable circumstances appeal through the NOAA Office of Administrative Appeals.

Comment 143: There exists neither proper analysis identifying the number of vessels excluded nor a remedy for those that have made substantial investments.

Response: NMFS recently supplemented the Analysis using ADF&G logbook data from 2008. This updated Analysis is contained within the final EA/RIR/FRFA (see ADDRESSES). This rule does not compensate charter businesses that do not qualify for any charter halibut permits. One reason compensation is not necessary is that the control date announcement (71 FR 6442, February 8, 2006) provided notice to businesses about the risk of entering the charter halibut fishery after the control date. Another reason compensation is not provided is that businesses have value even without charter permits. Charter vessel assets may be used in fishing for species other than halibut or other endeavors. Also, a market for transferable charter halibut permits is expected to emerge under this rule that will allow acquisition of permit(s).

Comment 150: The Council and NMFS have completely failed to gather or evaluate data relative to the charter sector. The Council states that the need for implementing a moratorium is to manage the fisheries within the unfair and outdated GHF policy. Despite the Council failing to present economic data supporting its supposition, NOAA web site data clearly show increases in quota share equity and ex-vessel value between 300 percent and 400 percent statewide and within areas. This massive increase in profitability does not lend credence to the need for wiping out the charter sector.

Response: NMFS estimates that a total of 520 charter businesses will qualify for an initial allocation of either a transferable or non-transferable charter halibut permit. The Analysis (see ADDRESSES) indicates this number of businesses is sufficient to accommodate market demand for guided sport fishing for halibut. This rule is designed to curtail growth of fishing capacity in the charter halibut fishery as intended by the Council and based on its problem statement. The GHF policy implemented in 2003 (68 FR 47256, August 8, 2003) was designed to establish an amount of halibut harvest by the charter halibut sector that will be monitored annually. The purpose of the GHF is different from this rule.

### **3.6.1 Entities directly regulated by this action**

Two classes of entities are directly regulated by this action: (1) guided charter businesses active in IPHC Areas 2C and 3A, and (2) CQE qualified communities and CQE groups formed by those communities in Areas 2C and 3A.

#### **3.6.1.1 Guided charter businesses**

The RIR of this document provides a detailed description of the current guided halibut sport fishery. Chapters 3 and 5 of the halibut charter IFQ EA/RIR/IRFA (NPFMC 2005), the associated appendices, and particularly the 1997 EA/RIR/IRFA (NPFMC 1997), provide detailed descriptions of the guided halibut sport fishery in earlier years.

The proposed moratorium (Alternative 2) would issue permits based on whether a business achieved a specified level of participation during 2004 or 2005, and in 2008. The Council's preferred alternative would issue permits to an estimated 231 businesses in Area 2C and to 296 businesses in Area 3A.

A large proportion of the businesses active in halibut guiding in 2008 will not qualify for permits. In Area 2C, 173 of the guided businesses that showed evidence of bottomfish fishing in 2008 would not qualify to receive an Area 2C guided charter permit under the limited entry program. One hundred and fifteen (115) of these had five or more trips in 2008, and 71 of these had fifteen or more trips in 2008.

For comparison, there were 231 qualifying businesses in Area 2C. Thus, 43% of the businesses active in 2008 would not qualify for permits.

In Area 3A, 154 of the guided businesses that showed evidence of bottomfish fishing in 2008 would not qualify to receive an Area 3A guided charter permit under the limited entry program. One hundred and eleven (111) of these had five or more trips in 2008, and 81 of these had fifteen or more trips in 2008. For comparison, there were 296 qualifying businesses in Area 3A. Thus, 34% of the businesses active in 2008 would not qualify for permits.

These businesses either did not operate during the qualification period identified by the Council (2004-2005), or operated during that period, but did not operate in 2008 at the thresholds in the recency provisions of the Council's motion.

Businesses that operated in 2008 but failed to qualify may have been unaware of the qualification criteria for this action. The Council chose the control date in December 2005, and incorporated it into its final action in April 2007. It was published in several issues of the Council's newsletter, and by publication in the *Federal Register* in February 2006 (71 *FR* 6442), the Council and NMFS met their notification responsibilities.

Operations making significant, irrecoverable, investments in the business would have had a strong incentive to inquire into the regulatory status of the fishery as an important element of due diligence. Other operations, making less significant and largely recoverable investments (e.g. using an existing vessel to explore the potential of the industry) may have had smaller incentives to do so. However, the existence of these incentives and the Council and Secretarial publication of the control date, do not preclude the possibility that some operations failed to fully understand the implications of Council activity.

Businesses that were aware of the criterion, and that nevertheless entered the fishery after the qualification period, may have believed that there was a significant chance that the Council or the Secretary ultimately would not impose the requirement of having fished in the qualification period, or they may have structured their operations in light of the upcoming limited access permit requirement. In either case they would have anticipated that there would be a significant chance they would either have to cease operations if the control date was part of the final program, or that they would have to buy the requisite permits, work as a hired skipper or subcontractor to a firm that held permits, or access community halibut charter permits through a CQE program.

The largest of these companies, which are lodges, may be considered large entities under SBA standards, but that cannot be confirmed. All of the other 800-plus charter operations would likely be considered small entities, based upon SBA criteria, since they would be expected to have gross revenues of less than \$7.0 million on an annual basis.

### **3.6.1.2 CQE communities**

The only provisions of this action that directly regulate communities are included in the permit allotment part addressed under Issue 12. That action seeks to help 32 small, remote communities in Areas 2C and 3A develop charter businesses by mitigating the economic barrier associated with purchasing a charter halibut permit and creating a number of non-transferable permits that can only be held by the non-profit entity representing the eligible community.

Under the preferred alternative, 18 qualifying Area 2C communities could be eligible to each receive up to 4 community halibut charter permits and 14 Area 3A communities could be eligible to each receive up



to 7 community halibut charter permits. Guided halibut fishing trips made with these permits must either begin or end in the qualifying community to which they are issued. In addition, each of these community CQE programs would be able to buy additional transferable permits equal in number to its allocation of community halibut charter permits. This authority to buy additional permits makes it possible for these communities to have eight (in 2C) or 14 (in 3A) permits in total; these potential permit numbers would exceed the permit holding cap imposed on other entities (five permit limit unless grandfathered with more than that).

The 32 communities in Area 2C and 3A directly regulated as part of this amendment are discussed in Section 2.5.12.2. All 32 of these communities that would be able to take advantage of this program would be considered small entities under the SBA definitions.

### **3.6.2 Recordkeeping requirements**

Permit applications must be submitted prior to start of the program. The application will require information about the business applying for the permit, including the ownership structure of the business (U.S. citizenship papers for individuals) and information on the charter activities of the business (see Section 2.5.1). After submitting the initial permit application, additional applications will not be required. NMFS will only require additional reports when the structure of the business owning the permit changes or the permit is transferred. The initial application for a charter permit could take an estimated two hours to complete, depending on the amount of additional information the applicant needs to provide. The application for transfer of a charter permit is estimated to take two hours to complete, based on previous experience with the groundfish License Limitation Program.

Persons applying for a military MWR (Morale, Welfare, and Recreational) permit must submit an application. In addition, CQEs representing communities eligible to receive community halibut charter permits would be required to identify the person that will use the permit upon request of a halibut charter permit. The application for an MWR permit or a permit for a CQE is estimated to take two hours to complete. In all cases, basic reading and writing skills would be required to complete the application forms. A comprehensive discussion of the recordkeeping and reporting requirements is in Section 2.6.

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

### **3.6.3 Agency steps to minimize significant economic impacts on small entities**

The directly regulated entities under this action are the active guided charter businesses that will be subject to a permit requirement in order to participate in the fishery in the future and the CQE communities, which will be offered the opportunity to obtain four, or seven, free permits, and the opportunity to purchase additional permits, allowing them to “anchor” guided charter activity in their communities.

Of these, only currently active guided charter operations that will not receive a permit to continue to participate in this fishery, will suffer significant adverse economic impacts. These operations must purchase transferable permits in order to remain active. As noted earlier, NMFS estimates that 173 of the businesses active in Area 2C in 2008 will not receive permits, and that 154 of the businesses active in Area 3A in 2008 will not receive permits.

The Council and Secretary considered a no-action alternative, but this was rejected because it would not accomplish the objective of this action, which is to stabilize the businesses in this fishery by controlling entry, while providing opportunities for rural community development. The Council considered an option

that only required a single landing in 2008 to meet the recency requirement. This action was originally taken to stabilize the businesses in this fishery with respect to active participants in 2004 and 2005. The recency requirement was adopted because the Council was aware that implementation would take several years, and it wanted to limit qualifying businesses to those active during the “stabilization” period that were still active close to the time the program was to be implemented. An activity threshold similar to that used in the “stabilization” period was thus adopted for the “recency” period.

The Council and NMFS have taken several steps to minimize the burden on these entities. The Council adopted a control date early in this process, and has taken steps to publicize it. The Council adopted the control date at its December 2005 meeting. In April 2006, it received a recommendation from its Charter Halibut Stakeholder Committee that it initiate an analysis of an entry moratorium using the December 9, 2005 control date. At its April 2006 meeting it requested staff to prepare an analysis of moratorium options based on the December 9, 2005 control date. The Council received a discussion paper from staff, based on this control date at its December 2006 meeting. It adopted a preliminary preferred alternative based on this control date at its February 2007 meeting, and it recommended a limited entry plan that included this December 9, 2005 control date at its April 2007 meeting. Newsletters for each of these Council meetings contained stories on the Council action and mentioned this control date. NMFS published a notice in the Federal Register in February 2006 stating that the Council had adopted this control date (71 FR 6442; Feb 8, 2006) and the Council devoted a paragraph to this notice in its February 2006 newsletter. The Council reiterated its intent repeatedly following the December 2005 meeting and the control date has been a part of the Council’s recommendations since April 2007, and thus through both the most important portions of the 2007 and 2008 guided halibut charter seasons.

The Council created a class of non-transferable permits to ease the exit from the fishery of a large class of businesses participating at relatively low levels of activity. Thus, any business that reported more than five logbook trips in the qualifying and in the recent participation period, but that had no vessel with at least 15 trips in one of the two years 2004-2005 and in 2008, would receive non-transferable permits. These permits would allow that operation to continue its activity until the operator left the fishery, at which time they would expire. Thus the Council created a transitional mechanism for many operations that may well have reduced the pool of businesses that would be forced to withdraw from the fishery immediately.

Finally, the Council and NMFS created transferable permits to allow the market to reallocate permits among recipients. This makes it possible for businesses that were active in 2008 to continue their activity by purchasing permits.

The Council has created a class of community halibut charter permits. These will be issued to CQE programs formed by qualifying communities. If qualified communities in Area 2C take full advantage of this program, and additional 72 permits may be issued for guided charter vessels. If qualified communities in Area 3A take full advantage, an additional 98 permits may be available. These permits were created to provide development opportunities for rural communities, but they should offer opportunities for businesses that do not receive transferable or non-transferable permits, and that are willing to enter a joint venture with a qualified community to utilize these permits.

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## APPENDIX 1

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

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

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

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

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

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

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

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

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

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

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



## APPENDIX 2

### Communities in which projected permit holders terminated trips in the year they qualified (2004 or 2005) and residence of commercial halibut QS holders

Table A1. Number of qualified vessels that terminated a trip in the community during the qualifying years

Community	Am. 66	Option 10.1					Option 10.2				
		1 trip	5 trips	10 trips	15 trips	20 trips	1 trip	5 trips	10 trips	15 trips	20 trips
Afognak		1	1	1	1	1	1	1	1	1	1
Amook Island		2	2	2	2	2	2	2	2	2	2
Amook Pass		1	1	1	1	1	1	1	1	1	1
Anchor Point		60	58	56	52	51	60	57	54	51	50
Anchor River		1	1	1	1	1	1	1	1	1	1
Angoon	Yes	13	13	12	12	11	13	13	12	12	11
Anton Larsen Bay		6	6	6	6	4	6	5	5	5	3
Auke Bay		45	35	25	22	16	45	34	24	21	15
Bar Harbor		4	1	1	1	1	4	1	1	1	1
Bartlett Cove		6	5	5	4	4	6	5	4	4	4
Bay Of Pillars		3	3	3	3	3	3	3	3	3	3
Boardwalk		3	3	3	3	2	3	3	2	2	2
Camp Island		1	1	1	1	1	1	1	1	1	1
Cannery Cove		6	5	5	5	5	6	5	5	5	5
Cape Chacon		3	3	2	1	0	3	2	1	0	0
Cape Ninilchik		2	2	1	0	0	2	2	1	0	0
Cedars Lodge		10	8	7	7	6	10	8	7	7	5
Chenega	Yes	1	1	1	1	0	1	1	1	1	0
Clover Bay		2	2	2	2	2	2	2	2	2	2
Clover Pass		14	14	13	11	10	14	13	12	9	9
Coffman Cove	Yes	7	7	7	7	7	7	6	6	5	5
Cordova		9	7	7	6	5	9	7	7	5	3
Craig	Yes	74	72	68	64	62	74	68	63	57	54
Cranberry Creek		1	1	1	1	1	1	1	1	1	1
Crescent Harbor		4	4	3	3	1	4	4	3	2	1
Dall Island		1	1	1	1	1	1	1	1	1	1
Deep Creek		114	107	98	90	88	114	106	98	90	87
Dog Bay Harbor		1	1	0	0	0	1	1	0	0	0
Eagle Creek Lodge		1	1	1	1	1	1	1	1	1	1
Eagle Harbor		1	0	0	0	0	1	0	0	0	0
El Capitan Lodge		7	7	7	7	7	7	6	6	6	6
Elfin Cove	Yes	31	31	31	29	28	31	31	31	28	27
Ellamar		1	1	1	1	1	1	1	1	1	1
Excursion Inlet		2	2	1	1	0	2	2	1	1	0
False Island		5	5	5	5	5	5	5	5	5	5
Fishermans Bend		4	3	2	2	2	4	3	2	2	2
Funter Bay		2	2	2	1	1	2	2	2	1	1
Glacier Bay		1	1	1	1	1	1	1	1	1	1
Gold Coast Lodge		1	1	1	1	1	1	1	1	1	1
Gull Cove		2	2	2	2	1	2	1	1	1	1
Gustavus	Yes	25	24	20	20	20	25	24	20	20	20
Haines		4	4	4	3	2	4	4	4	3	2

Community	Am. 66	Option 10.1					Option 10.2				
		1 trip	5 trips	10 trips	15 trips	20 trips	1 trip	5 trips	10 trips	15 trips	20 trips
Halibut Cove	Yes	1	1	0	0	0	1	1	0	0	0
Hallo Bay		1	1	1	0	0	1	1	1	0	0
Hanus Bay		1	1	0	0	0	1	1	0	0	0
Happy Valley		8	8	8	8	8	8	8	8	8	8
Hawk Inlet		1	1	1	1	1	1	1	1	1	1
Hidden Basin		1	1	1	1	1	1	1	1	1	1
Hollis	Yes	1	0	0	0	0	1	0	0	0	0
Homer		203	196	189	181	176	203	194	186	180	174
Hood Bay		2	1	1	0	0	2	1	1	0	0
Hoonah	Yes	14	12	10	9	5	14	11	10	9	5
Iliamna Bay		1	1	1	0	0	1	1	1	0	0
Iron Creek		2	2	2	2	2	2	2	2	1	1
Juneau		35	30	24	18	15	35	30	22	18	15
Kake	Yes	1	1	0	0	0	1	1	0	0	0
Kalinin Bay		2	1	0	0	0	2	1	0	0	0
Kasitsna Bay		1	1	1	1	1	1	1	1	1	1
Kelp Bay		3	3	3	3	3	3	3	3	3	2
Ketchikan		69	53	45	37	33	69	50	42	35	31
Killisnoo		5	5	5	5	5	5	5	5	4	4
Kiluda Bay		1	1	1	1	1	1	1	1	1	1
Klawock	Yes	19	19	17	17	16	19	19	15	14	13
Knudson Cove		21	16	12	9	7	21	15	12	8	5
Kodiak		42	40	33	29	26	42	39	32	28	25
Kukak Bay		3	3	3	2	2	3	3	3	2	2
Kupreanof Island		1	0	0	0	0	1	0	0	0	0
Larsen Bay	Yes	15	15	14	14	12	15	13	12	11	8
Little Tutka Bay		1	1	1	1	1	1	1	1	1	1
Log Cabin Resort		1	1	1	1	1	1	1	1	1	1
Millers Landing		2	2	2	2	2	2	2	2	2	2
Morne Island		3	3	3	3	3	3	3	3	2	2
Narrows Inn		3	3	3	3	3	3	3	3	3	3
Naukati		3	3	3	3	2	3	3	3	3	2
Ninilchik		16	16	16	14	13	16	16	16	14	13
Old Harbor	Yes	10	10	10	10	9	10	10	9	9	7
Orr Island		1	1	1	1	1	1	1	1	1	1
Ouzinkie	Yes	1	1	1	1	0	1	1	1	1	0
Pasagshak Bay		1	1	1	1	1	1	1	1	1	1
Pelican	Yes	9	8	8	6	4	9	8	8	6	4
Petersburg		40	35	31	25	22	40	35	29	24	21
Point Baker	Yes	3	3	3	2	2	3	3	3	2	2
Poohs Landing		1	1	1	1	1	1	1	1	1	1
Port Alexander	Yes	6	6	6	6	5	6	6	6	6	5
Port Lions	Yes	14	13	10	9	7	14	12	9	8	6
Port Protection	Yes	3	3	2	2	2	3	3	2	2	1
Port St Nicholas		2	2	2	2	2	2	2	2	2	2
Port Wakefield		4	4	3	3	1	4	3	3	3	1
Port William		1	1	1	1	1	1	1	1	1	1
Prince Rupert		1	1	1	1	0	1	1	1	1	0
Pybus Point		4	4	4	4	4	4	4	4	4	4

Community	Am. 66	Option 10.1					Option 10.2				
		1 trip	5 trips	10 trips	15 trips	20 trips	1 trip	5 trips	10 trips	15 trips	20 trips
Raspberry Island		3	3	3	2	2	3	2	2	2	2
Rocky Pass Resort		2	2	2	2	2	2	2	2	2	1
Rocky Point		1	1	1	1	1	1	1	1	1	1
S Kaigani Bay		5	5	5	5	5	5	5	5	5	5
Sadie Cove		1	1	1	1	1	1	1	1	1	1
Saginaw Bay		1	1	1	1	1	1	1	1	1	1
Salmon Falls		18	17	16	10	7	18	14	11	8	7
Salmon Landing		7	7	7	7	7	7	7	7	7	7
Saltery Cove		1	1	1	1	1	1	1	1	1	1
Sarkar Cove		1	1	1	1	1	1	1	1	1	1
Sea Otter Sound		1	1	1	1	1	1	1	1	1	1
Seal Bay (Sc)		3	3	3	3	3	3	3	3	3	3
Sealing Cove		6	6	6	6	5	6	6	6	6	5
Seldovia	Yes	12	12	12	11	10	12	12	12	11	10
Seward		151	136	126	117	110	151	133	121	111	103
Shelter Island		7	7	7	7	6	7	7	7	7	6
Shuyak Island		1	1	1	1	1	1	1	1	1	1
Silver King Lodge		6	6	6	6	6	6	6	6	6	6
Silver Salmon		2	2	2	2	2	2	2	2	2	2
Sitka		197	187	165	154	146	197	183	159	149	142
Skagway		3	3	2	1	1	3	3	1	1	1
Sportsman Cove		12	12	12	12	12	12	11	10	10	9
Spruce Mill New Flt		4	4	4	4	4	4	3	3	3	3
Ssbh		5	5	5	5	5	5	5	5	5	5
Swanson Harbor		1	1	1	1	1	1	1	1	1	1
Tenakee	Yes	4	4	3	2	2	4	3	3	2	2
Thomas Basin		4	3	3	3	2	4	3	3	3	2
Thorne Bay	Yes	11	11	10	10	9	11	11	9	9	9
Token		1	1	1	0	0	1	1	1	0	0
Tutka Bay		1	1	1	1	1	1	1	1	1	1
Ugak Bay		6	6	5	4	3	6	5	4	4	3
Uganik Bay		4	4	4	2	2	4	4	4	2	2
Uyak Bay		3	3	2	2	2	3	3	2	2	2
Valdez		55	46	40	31	29	55	45	37	30	28
Wakefield		1	1	1	1	0	1	1	1	1	0
Warm Springs Bay		10	10	9	9	9	10	10	9	8	7
Waterfall		25	25	25	25	25	25	25	25	25	24
Whale Pass (Pow-Se)	Yes	6	6	6	6	4	6	6	5	5	4
Whale Pass (Sc)		2	1	1	0	0	2	1	1	0	0
Whalers Cove		3	3	3	3	3	3	3	3	3	3
Whiskey Gulch		4	4	4	3	2	4	4	4	3	2
Whitstone Harbor		1	1	1	1	1	1	1	1	1	1
Whittier		27	25	23	21	18	27	25	23	21	18
Williamsport		1	1	1	0	0	1	1	1	0	0
Wrangell		14	13	12	8	3	14	13	11	7	3
Yakutat	Yes	16	15	14	13	13	16	15	14	13	12
Yes Bay		13	13	13	13	10	13	11	9	8	6
Zachar Bay		7	7	5	5	4	7	7	4	4	2

Table A2. Number of qualified businesses that terminated a trip in the community during the qualifying years

Community	Am. 66	Option 10.1					Option 10.2				
		1 trip	5 trips	10 trips	15 trips	20 trips	1 trip	5 trips	10 trips	15 trips	20 trips
Afognak		1	1	1	1	1	1	1	1	1	1
Amook Island		2	2	2	2	2	2	2	2	2	2
Amook Pass		1	1	1	1	1	1	1	1	1	1
Anchor Point		57	55	53	50	49	57	54	52	49	48
Anchor River		1	1	1	1	1	1	1	1	1	1
Angoon	Yes	9	9	8	8	7	9	9	8	8	7
Anton Larsen Bay		5	5	5	5	3	5	5	5	5	3
Auke Bay		39	29	20	17	12	39	29	20	17	12
Bar Harbor		4	1	1	1	1	4	1	1	1	1
Bartlett Cove		6	5	5	4	4	6	5	4	4	4
Bay Of Pillars		2	2	2	2	2	2	2	2	2	2
Boardwalk		2	2	2	2	2	2	2	2	2	2
Camp Island		1	1	1	1	1	1	1	1	1	1
Cannery Cove		3	2	2	2	2	3	2	2	2	2
Cape Chacon		3	3	2	1	0	3	2	1	0	0
Cape Niniichik		1	1	1	0	0	1	1	1	0	0
Cedars Lodge		9	7	6	6	5	9	7	6	6	5
Chenega	Yes	1	1	1	1	0	1	1	1	1	0
Clover Bay		1	1	1	1	1	1	1	1	1	1
Clover Pass		13	13	12	10	9	13	12	11	9	9
Coffman Cove	Yes	6	6	6	6	6	6	5	5	5	5
Cordova		8	6	6	5	4	8	6	6	5	3
Craig	Yes	36	34	31	30	28	36	33	29	27	26
Cranberry Creek		1	1	1	1	1	1	1	1	1	1
Crescent Harbor		4	4	3	3	1	4	4	3	2	1
Dall Island		1	1	1	1	1	1	1	1	1	1
Deep Creek		97	90	81	74	72	97	89	81	74	71
Dog Bay Harbor		1	1	0	0	0	1	1	0	0	0
Eagle Creek Lodge		1	1	1	1	1	1	1	1	1	1
Eagle Harbor		1	0	0	0	0	1	0	0	0	0
El Capitan Lodge		2	2	2	2	2	2	2	2	2	2
Elfin Cove	Yes	18	18	18	16	15	18	18	18	16	15
Ellamar		1	1	1	1	1	1	1	1	1	1
Excursion Inlet		2	2	1	1	0	2	2	1	1	0
False Island		3	3	3	3	3	3	3	3	3	3
Fishermans Bend		4	3	2	2	2	4	3	2	2	2
Funter Bay		2	2	2	1	1	2	2	2	1	1
Glacier Bay		1	1	1	1	1	1	1	1	1	1
Gold Coast Lodge		1	1	1	1	1	1	1	1	1	1
Gull Cove		2	2	2	2	1	2	1	1	1	1
Gustavus	Yes	21	21	17	17	17	21	21	17	17	17
Haines		4	4	4	3	2	4	4	4	3	2
Halibut Cove	Yes	1	1	0	0	0	1	1	0	0	0
Hallo Bay		1	1	1	0	0	1	1	1	0	0
Hanus Bay		1	1	0	0	0	1	1	0	0	0
Happy Valley		2	2	2	2	2	2	2	2	2	2
Hawk Inlet		1	1	1	1	1	1	1	1	1	1

Community	Am. 66	Option 10.1					Option 10.2				
		1 trip	5 trips	10 trips	15 trips	20 trips	1 trip	5 trips	10 trips	15 trips	20 trips
Hidden Basin		1	1	1	1	1	1	1	1	1	1
Hollis	Yes	1	0	0	0	0	1	0	0	0	0
Homer		180	173	166	159	154	180	172	165	159	154
Hood Bay		2	1	1	0	0	2	1	1	0	0
Hoonah	Yes	12	11	10	9	5	12	11	10	9	5
Iliamna Bay		1	1	1	0	0	1	1	1	0	0
Iron Creek		1	1	1	1	1	1	1	1	1	1
Juneau		27	22	19	15	13	27	22	17	15	13
Kake	Yes	1	1	0	0	0	1	1	0	0	0
Kalinin Bay		2	1	0	0	0	2	1	0	0	0
Kasitsna Bay		1	1	1	1	1	1	1	1	1	1
Kelp Bay		2	2	2	2	2	2	2	2	2	1
Ketchikan		56	41	34	27	23	56	40	32	25	21
Killisnoo		3	3	3	3	3	3	3	3	2	2
Kiluda Bay		1	1	1	1	1	1	1	1	1	1
Klawock	Yes	13	13	11	11	10	13	13	10	10	9
Knudson Cove		17	12	11	8	6	17	12	11	8	5
Kodiak		42	40	33	29	26	42	39	32	28	25
Kukak Bay		3	3	3	2	2	3	3	3	2	2
Kupreanof Island		1	0	0	0	0	1	0	0	0	0
Larsen Bay	Yes	8	8	7	7	7	8	8	7	7	7
Little Tutka Bay		1	1	1	1	1	1	1	1	1	1
Log Cabin Resort		1	1	1	1	1	1	1	1	1	1
Millers Landing		1	1	1	1	1	1	1	1	1	1
Morne Island		2	2	2	2	2	2	2	2	2	2
Narrows Inn		3	3	3	3	3	3	3	3	3	3
Naukati		3	3	3	3	2	3	3	3	3	2
Ninilchik		16	16	16	14	13	16	16	16	14	13
Old Harbor	Yes	6	6	6	6	5	6	6	6	6	5
Orr Island		1	1	1	1	1	1	1	1	1	1
Ouzinkie	Yes	1	1	1	1	0	1	1	1	1	0
Pasagshak Bay		1	1	1	1	1	1	1	1	1	1
Pelican	Yes	8	7	7	6	4	8	7	7	6	4
Petersburg		38	33	29	24	21	38	33	29	24	21
Point Baker	Yes	2	2	2	1	1	2	2	2	1	1
Poohs Landing		1	1	1	1	1	1	1	1	1	1
Port Alexander	Yes	5	5	5	5	5	5	5	5	5	5
Port Lions	Yes	14	13	10	9	7	14	12	9	8	6
Port Protection	Yes	3	3	2	2	2	3	3	2	2	1
Port St Nicholas		1	1	1	1	1	1	1	1	1	1
Port Wakefield		2	2	2	2	1	2	2	2	2	1
Port William		1	1	1	1	1	1	1	1	1	1
Prince Rupert		1	1	1	1	0	1	1	1	1	0
Pybus Point		3	3	3	3	3	3	3	3	3	3
Raspberry Island		2	2	2	2	2	2	2	2	2	2
Rocky Pass Resort		2	2	2	2	2	2	2	2	2	1
Rocky Point		1	1	1	1	1	1	1	1	1	1
S Kaigani Bay		2	2	2	2	2	2	2	2	2	2
Sadie Cove		1	1	1	1	1	1	1	1	1	1

Community	Am. 66	Option 10.1					Option 10.2				
		1 trip	5 trips	10 trips	15 trips	20 trips	1 trip	5 trips	10 trips	15 trips	20 trips
Saginaw Bay		1	1	1	1	1	1	1	1	1	1
Salmon Falls		3	2	2	1	1	3	2	2	1	1
Salmon Landing		4	4	4	4	4	4	4	4	4	4
Saltery Cove		1	1	1	1	1	1	1	1	1	1
Sarkar Cove		1	1	1	1	1	1	1	1	1	1
Sea Otter Sound		1	1	1	1	1	1	1	1	1	1
Seal Bay (Sc)		2	2	2	2	2	2	2	2	2	2
Sealing Cove		5	5	5	5	4	5	5	5	5	4
Seldovia	Yes	12	12	12	11	10	12	12	12	11	10
Seward		122	108	99	90	84	122	108	98	89	83
Shelter Island		4	4	4	4	3	4	4	4	4	3
Shuyak Island		1	1	1	1	1	1	1	1	1	1
Silver King Lodge		6	6	6	6	6	6	6	6	6	6
Silver Salmon		2	2	2	2	2	2	2	2	2	2
Sitka		137	127	110	102	96	137	126	108	101	95
Skagway		3	3	2	1	1	3	3	1	1	1
Sportsman Cove		3	3	3	3	3	3	3	2	2	2
Spruce Mill New Flt		1	1	1	1	1	1	1	1	1	1
Ssbh		4	4	4	4	4	4	4	4	4	4
Swanson Harbor		1	1	1	1	1	1	1	1	1	1
Tenakee	Yes	3	3	3	2	2	3	3	3	2	2
Thomas Basin		4	3	3	3	2	4	3	3	3	2
Thorne Bay	Yes	7	7	6	6	6	7	7	6	6	6
Tokeen		1	1	1	0	0	1	1	1	0	0
Tutka Bay		1	1	1	1	1	1	1	1	1	1
Ugak Bay		3	3	3	3	3	3	3	3	3	3
Uganik Bay		2	2	2	2	2	2	2	2	2	2
Uyak Bay		3	3	2	2	2	3	3	2	2	2
Valdez		51	42	36	28	27	51	42	35	27	26
Wakefield		1	1	1	1	0	1	1	1	1	0
Warm Springs Bay		3	3	2	2	2	3	3	2	2	2
Waterfall		1	1	1	1	1	1	1	1	1	1
Whale Pass (Pow-Se)	Yes	4	4	4	4	3	4	4	4	4	3
Whale Pass (Sc)		2	1	1	0	0	2	1	1	0	0
Whalers Cove		2	2	2	2	2	2	2	2	2	2
Whiskey Gulch		2	2	2	2	1	2	2	2	2	1
Whitstone Harbor		1	1	1	1	1	1	1	1	1	1
Whittier		27	25	23	21	18	27	25	23	21	18
Williamsport		1	1	1	0	0	1	1	1	0	0
Wrangell		13	12	11	7	3	13	12	10	7	3
Yakutat	Yes	12	11	10	9	9	12	11	10	9	9
Yes Bay		2	2	2	2	2	2	2	2	2	2
Zachar Bay		3	3	2	2	1	3	3	2	2	1

Table A3. Percent of commercial halibut QS by owner residence

City	Area	
	2C	3A
Anchor Point	0.00%	0.86%
Anchorage	0.19%	3.01%
Anderson	0.00%	0.00%
Angoon	0.58%	0.00%
Aniak	0.00%	0.00%
Auke Bay	1.23%	0.16%
Central	0.00%	0.00%
Chenega Bay	0.00%	0.00%
Chignik Lagoon	0.00%	0.00%
Chiniak	0.00%	0.01%
Chitina	0.00%	0.02%
Chugiak	0.00%	0.02%
Clam Gulch	0.00%	0.27%
Cooper Landing	0.00%	0.00%
Copper Center	0.00%	0.00%
Cordova	0.01%	3.67%
Craig	3.22%	0.00%
Delta Junction	0.00%	0.72%
Dillingham	0.00%	0.43%
Douglas	1.45%	0.61%
Dutch Harbor	0.00%	0.01%
Eagle River	0.00%	0.58%
Edna Bay	0.20%	0.00%
Eilsen Airforce Base	0.00%	0.00%
Elfin Cove	0.86%	0.14%
Fairbanks	0.21%	0.02%
Fritz Creek	0.10%	0.16%
Gakona	0.00%	0.02%
Girdwood	0.00%	0.14%
Gustavus	0.50%	0.14%
Haines	2.75%	0.29%
Halibut Cove	0.00%	0.28%
Homer	0.00%	8.71%
Hoonah	1.37%	0.19%
Hydaburg	0.16%	0.00%
Hyder	0.06%	0.01%
Indian	0.00%	0.00%
Juneau	7.99%	1.80%
Kake	1.18%	0.00%
Kasilof	0.00%	0.52%
Kenai	0.00%	1.27%
Ketchikan	6.14%	0.52%
King Salmon	0.00%	0.00%
Klawock	0.01%	0.00%
Kodiak	0.03%	17.14%
Larsen Bay	0.00%	0.00%
Manokotak	0.00%	0.00%

Mekoryuk	0.00%	0.25%
Metlakatla	0.39%	0.00%
Meyers Chuck	0.08%	0.00%
Moose Pass	0.00%	0.00%
Naknek	0.00%	0.00%
Nikiski	0.00%	0.20%
Nikolaevsk	0.00%	0.48%
Ninilchik	0.00%	0.24%
Nome	0.04%	0.03%
Non-Alaska City	17.45%	39.57%
North Pole	0.01%	0.01%
Old Harbor	0.00%	0.08%
Ouzinkie	0.00%	0.28%
Palmer	0.19%	0.22%
Pelican	1.13%	0.12%
Petersburg	25.54%	6.54%
Point Baker	0.28%	0.00%
Port Alexander	0.75%	0.01%
Port Graham	0.00%	0.05%
Port Lions	0.00%	0.07%
Salcha	0.00%	0.00%
Sand Point	0.00%	0.01%
Seldovia	0.00%	0.93%
Seward	0.00%	1.62%
Sitka	17.25%	3.64%
Skagway	0.05%	0.00%
Soldotna	0.00%	1.01%
South Naknek	0.00%	0.00%
St George Island	0.00%	0.00%
St Paul Island	0.03%	0.02%
Sterling	0.00%	0.14%
Sutton	0.00%	0.03%
Tenakee Springs	0.15%	0.06%
Thorne Bay	0.17%	0.00%
Togiak	0.00%	0.00%
Twin Hills	0.00%	0.00%
Unalaska	0.11%	0.00%
Valdez	0.00%	0.42%
Wards Cove	0.52%	0.00%
Wasilla	0.05%	0.92%
Whittier	0.00%	0.09%
Willow	0.00%	0.25%
Wrangell	7.56%	0.33%
Yakutat	0.00%	0.67%
Grand Total	100.00%	100.00%



## APPENDIX 3

### Council Motion on Charter Halibut Moratorium in Area 2C and 3A March 31, 2007

The Council recommends the following as the final preferred alternative for the charter halibut moratorium (limited entry) action in IPHC Areas 2C and 3A.

#### **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.<sup>168</sup>

**Issue 1. Permits<sup>169</sup> may be held by U.S. citizens or U.S. businesses** with 75 percent U.S. ownership of the business. Businesses<sup>170</sup> may receive multiple permits due to charter halibut activity by vessels reported by the businesses in ADF&G logbooks. Initial permit recipients may be “grandfathered” below the U.S. ownership level and above proposed use caps until any change in ownership of the business occurs.<sup>171</sup>

**Issue 2. Permit would be designated for Area 2C or Area 3A.** If a business owner qualifies for a permit in both areas based on the history from a single vessel, he/she 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.<sup>172</sup>

**Issue 5. Transfers** of permits (permanent) for vessels that qualified at trip levels of 15 and above in Area 2C and Area 3A would be allowed up to use caps. Permits issued below trip levels of 15 in Area 2C and Area 3A would be non-transferable.

**Issue 6. Leasing** of permits would not be allowed.<sup>173</sup>

#### **Issue 7. Permit Endorsement for Number of Halibut Clients on Board**

Highest number on any trip in 2004 or 2005, with minimum endorsement of 4.

Permits issued under the military hardship provision would receive a halibut client endorsement of 6.

<sup>168</sup>Military (Morale, Welfare, and Recreational) boats are not required to meet the qualification requirements of the program, but harvests still count against the GHL.

<sup>169</sup>Through initial issuance and transfers.

<sup>170</sup>A business means a business licensed by the State of Alaska as a sport fish guide operator.

<sup>171</sup>Transferred permits would not be grandfathered below the U.S. ownership cap, even upon sale of a business, but would be grandfathered above the use cap upon sale of the entire business (see Issue 11).

<sup>172</sup>The only tangible evidence is the ADF&G logbook, which requires meeting all State legal requirements.

<sup>173</sup>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.

**Issue 8. Permits** may be stacked up to use caps.<sup>174</sup>

**Issue 9. Evidence of participation** is ADF&G saltwater logbook entry with bottomfish statistical area, rods, or boat hours.<sup>175</sup>

**Issue 10. Qualification period**

Option 10.1. Each licensed guide business owner(s) who reported a minimum of 5 bottomfish logbook trips during 2004 or 2005 and year prior to implementation<sup>176</sup> would be issued a permit(s) based on the number of trips summed for all vessels in his best year of the qualification period, unless an unavoidable circumstance<sup>177</sup> occurred. A business would be limited to the number of permits equal to the highest number of vessels used in any one year during the qualifying period. (*Staff note: this means businesses are restricted to a maximum number of permits equal to or less than the maximum number of vessels that submitted logbooks in 2004 or 2005*).

*Example: a business owner operated 3 vessels with 4, 4, and 12 trips, respectively (summed trips = 20) in his best year. He would be issued 3 permits under a 5 trip minimum ( $20/5 = 4$ , but the maximum number of vessels in that year is 3).*

**Issue 11. Use caps**, with grandfather<sup>178</sup> provision. The AFA 10% ownership rule for affiliation<sup>179</sup> 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 active<sup>180</sup> charter businesses terminated trips in the community in each of the years 2004 and 2005 may request limited entry permits.<sup>181</sup>

<sup>174</sup>For example, a business can stack two licenses (each endorsed for 6 clients) on one vessel for a total client endorsement of 12.

<sup>175</sup>Actual halibut statistical area, rods, or boat hours as reported in the ADF&G logbooks are required to demonstrate participation in the year prior to implementation.

<sup>176</sup>“Year prior to implementation” could potentially mean two years prior to implementation, depending on the starting date of the application period for permits. Meaning, the participation threshold would also need to be met in either 2007 or 2008, for implementation in 2009.

<sup>177</sup>Acceptable circumstances will be adjudicated on a case by case basis through the NOAA Office of Administrative Appeals, and includes medical emergencies, military exemptions, and constructive losses. These hardship provisions should be implemented using similar criteria used in the groundfish License Limitation Program. The military exemption refers to an individual who was assigned to active military duty during 2004 or 2005, who qualifies as “active” during the year prior to implementation, and who demonstrated an intent to participate in the charter fishery in Area 2C or 3A (prior to the qualifying period).

<sup>178</sup>A business that owns/controls permits in excess of the use cap maintains the grandfather status for those permits that remain in its control after other permits are sold, but the sold permits lose the grandfather status in perpetuity. Grandfathered permits that are sold in total when a business owner sells his entire business/fleet maintain that grandfathered status. Grandfathered status refers to permits, not to vessels.

<sup>179</sup>Any entity in which 10 percent or more of the interest is owned or controlled by another individual or entity shall be considered to be the same entity as the other individual or entity.

<sup>180</sup>“Active” is defined as it is under Issue 10 (i.e., at least 5 bottomfish trips).

<sup>181</sup>Staff notes that the eligible communities resulting from this criteria are as follows: Area 2C – Angoon, Coffman Cove, Edna Bay, Hollis, Hoonah, Hydaburg, Kake, Kassan, Klawock, Metlakatla, Meyers Chuck, Pelican, Point Baker, Port Alexander, Port Protection, Tenakee, Thorne Bay, Whale Pass; Area 3A – Akhiok, Chenega, Halibut Cove, Karluk, Larsen Bay, Nanwalek, Old Harbor, Ouzinkie, Port Graham, Port Lions, Seldovia, Tatitlek, Tyonek, Yakutat.

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

Area 3A – use cap of 7 requested permits per eligible community.

Overall use caps<sup>182</sup> for all CQEs in a management area are 2 times those selected for the qualifying CQE requested permit use cap for each area. *(Staff note: result is overall use cap of 8 permits for each CQE in Area 2C and 14 permits for each CQE in Area 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., permanently 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).

The Council also recommends that NMFS issue interim permits to licensed fishing guide business owners appealing their permit status. *(Staff note: NOAA GC will develop an approach to implement the Council's intent with regard to interim permits and provide these recommendations as an informational report at the June 2007 Council meeting. The Council expressed an interest in limiting the issuance of interim permits only to those claims that have provided legitimate documentation and have a basis for success.)*

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<sup>182</sup>The overall use cap refers to the limit on the number of permits a CQE can hold and use in total. This limit includes both purchased permits and permits requested and issued at no cost under Issue 12.