

FINAL

**Regulatory Impact Review
For a Proposed Regulatory Amendment**

**To Limit Possession of Guided and Unguided Halibut
Simultaneously on the Same Fishing Vessel**

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Abstract: This document analyzes a regulatory action that would prohibit the mixing of guided and unguided halibut simultaneously on any fishing vessel in Areas 2C and 3A. The first alternative under consideration is the status quo. The second alternative would prohibit the possession of guided and unguided halibut simultaneously on any fishing vessel. Under the third alternative (the preferred alternative), if guided and unguided halibut is mixed onboard the fishing vessel, all halibut anglers, including unguided anglers, are bound by the International Pacific Halibut Commission annual management measures for guided sport fishing.

List of Acronyms and Abbreviations

ADFG	Alaska Department of Fish and Game
ADNR	Alaska Department of Natural Resource
AKFIN	Alaska Fisheries Information Network
BOF	Board of Fish
BSAI	Bering Sea and Aleutian Islands
CEY	Constant Exploitation Yield
CHP	Charter halibut permit
CHLAP	Charter halibut limited access program
CCL	Combined Catch Limit
COAR	Commercial Operators Annual Report
Council	North Pacific Fishery Management Council
CQE	Community Quota Entity
CSP	Catch Share Program
E.O.	Executive Order
EEZ	Exclusive Economic Zone
FMP	fishery management plan
Ft	foot or feet
GAF	Guided Angler Fish
GHL	guideline harvest level
GOA	Gulf of Alaska
IPHC	International Pacific Halibut Commission
lb(s)	pound(s)
LOA	length overall
MSA	Magnuson-Stevens Fishery Conservation and Management Act
MWR	Morale, Welfare, and Recreation program (U.S Military)
NMFS	National Marine Fishery Service
NOAA	National Oceanographic and Atmospheric Administration
NPFMC	North Pacific Fishery Management Council
OLE	Office of Law Enforcement
OMB	Office of Management and Budget
PPA	Preliminary preferred alternative
PRA	Paperwork Reduction Act
RAM	Restricted Access Management Program
RIR	Regulatory Impact Review
RQE	Recreational Quota Entity
SEAGO	South East Alaska Guides Organization
TAC	total allowable catch
U.S.	United States
USCG	United States Coast Guard

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Executive Summary

This document analyzes a proposed regulatory action that would prohibit the mixing of guided and unguided halibut simultaneously on any vessel in International Pacific Halibut Commission (IPHC) Areas 2C and 3A in the Gulf of Alaska (GOA). The first alternative under consideration is the status quo. The second alternative would prohibit the possession of guided and unguided halibut simultaneously on any fishing vessel. Under the third alternative (preferred alternative), if there is any mixing of halibut harvested using sport fishing guide services with halibut harvested not using sport fishing guide services on Convention waters in Area 2C or Area 3A, then the Federal and IPHC annual management measures for guided sport fishing apply to all halibut onboard the fishing vessel.

Purpose and Need

Recognizing the challenges for accountability and enforcement when halibut harvested from both guided and unguided fishing are mixed on the same charter fishing vessel, the Council adopted a purpose and need statement in February 2017. During the October 2017 meeting, the Council modified the purpose and need statement to clarify that the proposed regulatory action applies to fishing vessels and not floating lodges. The following is the Council's revised purpose and need statement for this proposed regulatory action:

Different regulations apply to guided and unguided (i.e., chartered and non-chartered) halibut fishing trips. Possessing halibut harvested from both guided and unguided trips on the same fishing vessel at the same time presents challenges for accountability and enforcement that cannot be adequately addressed by current regulations. Mixed guided and unguided halibut can occur on multi-day fishing vessels, and to a lesser extent on fishing vessels that are owned by unguided fishing operations that also provide sport fishing guide services to their clients. The potential for mixing guided and unguided halibut exists on every fishing vessel that services halibut harvesters. The number of these operations and the associated halibut harvests remain unknown. The mixing of guided and unguided halibut could expand in the future as charter operators look for ways to maximize halibut harvests for guided and unguided anglers on their fishing vessels.

Once guided and unguided halibut are mixed aboard a fishing vessel, it is difficult to determine which halibut were harvested under the guided regulations and which halibut were harvested under the unguided regulations. The current regulatory structure allows guided and unguided halibut to be mixed on a fishing vessel but does not provide the regulated public or authorized officers with a mechanism to ensure compliance with the more restrictive guided halibut regulations. A regulatory change could ensure proper accounting of guided and unguided catch.

Alternatives

Alternative 1: Take no action

This alternative is the no action alternative. Currently, there are no regulatory provisions to prohibit the mixing of guided and unguided halibut.

Alternative 2: Prohibit the possession of guided and unguided halibut simultaneously on any fishing vessel

Alternative 2 would prohibit the mixing of halibut harvested by guided and unguided anglers in IPHC Areas 2C and 3A on a charter fishing vessel. Halibut caught under one operation type (guided or unguided) must be offloaded from the fishing vessel and removed to shore before halibut from the other operation type may be brought onboard.

Alternative 3 (Council Preferred Alternative): *If halibut harvested using sport fishing guide services is possessed with halibut harvested not using sport fishing guide services on Convention waters in Area 2C or 3A, the following Federal or IPHC annual management measures for guided sport fishing for the area that the halibut was harvested apply to all halibut onboard the fishing vessel: carcass retention requirements, daily bag and possession limits, and size limits (if applicable).*

Under Alternative 3, halibut from guided and unguided sport fishing may be retained onboard a fishing vessel; however, the daily bag limits, possession limits, size restrictions, and carcass retention requirements would be the same for all anglers, whether they are guided, unguided, or crew members. Each of those limits would correspond to the federal or IPHC management measures and applicable federal regulations for guided anglers. Under this alternative, unguided anglers and crew members on charter vessels would not be subject to the guided halibut charter management measures for recording harvest in a saltwater logbook, day-of-the-week closures, and annual limits.

Regulatory Impact Review

Table ES-1 Summary of Alternatives

Alternative	Costs	Benefits
Alternative 1 - Status quo	<ul style="list-style-type: none"> • As guided restrictions increase relative to unguided restrictions, anglers are likely to choose unguided fishing trips on multi-day fishing vessels which could increase mixing of halibut • Anglers and operators could label halibut caught with the assistance of a guide as unguided halibut to circumvent regulations • Compliance will continue to be challenging, and vessel boardings will continue to be longer due to mixed guided and unguided halibut on the fishing vessel 	<ul style="list-style-type: none"> • Provides multi-day fishing vessels the most flexibility to accommodate both guided and unguided anglers at the same time without incurring the cost of transporting halibut to shore or turning away one category of anglers to prevent mixing of halibut • Allows crewmembers to fish as unguided anglers while not working
Alternative 2 - Prohibition of mixing	<ul style="list-style-type: none"> • Could result in reduced flexibility and lost revenue for multi-day fishing vessels that provide both guided and unguided trips from the same vessel due to restricting halibut fishing to guided or unguided, but not both at any one time • Could result in increased costs for multi-day charter halibut anglers if operating cost increases are passed on to consumers • Could increase operating costs for multi-day fishing vessels that continue to offer both guided and unguided fishing due to transporting either guided or unguided caught halibut to shore to prevent mixing • Crewmembers would be prohibited from unguided halibut fishing due to mixing of halibut when halibut harvested by guided anglers are onboard the fishing vessel 	<ul style="list-style-type: none"> • Improve accountability and enforcement by providing clear and concise regulations for guides, anglers, and authorized officers in the field • Maximize compliance and reduce the duration of at-sea vessel boardings
Alternative 3 - Use Guided Regulations if mixing <i>Preferred Alternative</i>	<ul style="list-style-type: none"> • Unguided anglers, including crew members, would be subject to stricter guided regulations if mixing of halibut on a multi-day fishing vessel is occurring • Could increase cost for multi-day vessels that continue to offer both guided and unguided fishing due to transporting halibut to shore to prevent mixing • Could result in increased costs for multi-day charter halibut anglers if operating costs are passed on to consumers 	<ul style="list-style-type: none"> • Allows multi-day vessels to mix guided and unguided caught halibut • Allows crewmembers to fish when guided anglers are onboard multi-day fishing vessel • Not including the annual management requirements or reporting requirements for halibut harvest in saltwater logbooks, day-of-the-week closures, and annual limits for unguided anglers reduces implementation costs, at-sea enforcement complications, and additional economic burden to multi-day vessel operators from these guided restrictions • Improve accountability and enforcement by providing regulations that are clearer and more concise relative to Alternative 1.

1 Introduction

This document analyzes a proposed regulatory action that would prohibit the mixing of guided and unguided halibut simultaneously on any vessel in IPHC Areas 2C and 3A in the GOA. The first alternative under consideration is the status quo. The second alternative would prohibit the possession of guided and unguided halibut simultaneously on any fishing vessel. Under the third alternative (preferred alternative), if a mix of halibut from guided and unguided sport fishing are retained onboard a charter fishing vessel, then the daily bag limits, possession limits, size restrictions, and carcass retention requirements would be the same for all anglers, whether they are guided, unguided, or crew members. Each of those limits would correspond to the federal or IPHC management measures and applicable federal regulations for guided anglers. Under the preferred alternative, unguided anglers and crew members on charter vessels would not be subject to the guided halibut charter management measures for recording harvests in a saltwater logbook, day-of-the-week closures, and annual limits.

This document is a Regulatory Impact Review (RIR) Analysis. It provides assessments of the economic benefits and costs of the action alternatives, as well as their distribution. This RIR addresses the statutory requirements of the Magnuson Stevens Fishery Conservation and Management Act and Presidential Executive Order 12866.

The proposed action has no potential to affect, individually or cumulatively, the human environment. The only effects of the action are economic, as analyzed in this RIR. As such, the proposed action is categorically excluded from the need to prepare an Environmental Assessment.

2 Regulatory Impact Review

This RIR examines the benefits and costs of a proposed regulatory amendment to restrict mixing of guided and unguided halibut simultaneously on a vessel.

The preparation of an RIR is required under Presidential Executive Order (E.O.) 12866 (58 FR 51735, October 4, 1993). The requirements for all regulatory actions specified in E.O. 12866 are summarized in the following Statement from the E.O.:

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, environmental, public health and safety, and other advantages; distributive impacts; and equity), unless a statute requires another regulatory approach.

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:

- 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 and safety, or State, local, or tribal governments or communities;
- Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in Executive Order 12866.

2.1 Relationship of this action to federal law

The management of Pacific halibut fishery off Alaska falls under the authority of the Northern Pacific Halibut Act of 1982 (Halibut Act, 16 U.S.C. 773-773k), in coordination with annual fishery management measures adopted by the IPHC. Section 3 details the authority of the Halibut Act and its relevance to the proposed action.

IPHC promulgates regulations governing the halibut fishery. The Halibut Act also authorizes the Council to recommend regulations that are in addition to, and not in conflict with IPHC regulations. Council action must also be approved and implemented by the U.S. Secretary of Commerce (Secretary). While the proposed action would not be under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) (16 U.S.C. § 1801, *et seq.*) and would therefore not include an amendment to a Fishery Management Plan, the proposed action would still require an amendment to U.S. Federal regulations that are subject to approval by the Secretary.

2.2 Purpose and need for action

Recognizing the challenges for accountability and enforcement when halibut are harvested from both guided and unguided trips and are mixed on the same fishing vessel, the Council adopted a purpose and need statement in February 2017. During the October 2017 meeting, the Council modified the purpose and need statement to clarify that the proposed regulatory action applies to fishing vessels and not floating lodges. The following is the Council's revised purpose and need statement for this proposed regulatory action:

Different regulations apply to guided and unguided (i.e., chartered and non-chartered) halibut fishing trips. Possessing halibut harvested from both guided and unguided trips on the same fishing vessel at the same time presents challenges for accountability and enforcement that cannot be adequately addressed by current regulations. Mixed guided and unguided halibut can occur on multi-day fishing vessels, and to a lesser extent on fishing vessels that are owned by unguided fishing operations that also provide sport fishing guide services to their clients. The potential for mixing guided and unguided halibut exists on every fishing vessel that services halibut harvesters. The number of these operations and the associated halibut harvests remain unknown. The mixing of guided and unguided halibut could expand in the future as charter operators look for ways to maximize halibut harvests for guided and unguided anglers on their fishing vessels.

Once guided and unguided halibut are mixed aboard a fishing vessel, it is difficult to determine which halibut were harvested under the guided regulations and which halibut were harvested under the unguided regulations. The current regulatory structure allows guided and unguided halibut to be mixed on a fishing vessel but does not provide the regulated public or authorized officers with a mechanism to ensure compliance with the more restrictive guided halibut regulations. A regulatory change could ensure proper accounting of guided and unguided catch.

2.3 History of this action

At the June 2016 meeting, the Council tasked staff to prepare a discussion paper on the mixing of guided and unguided halibut on the same vessel. Different regulations apply to guided and unguided (i.e., chartered and non-chartered) halibut fishing trips. For example, unguided sport fishers may harvest halibut of any size without restriction, and they are not subject to an annual catch limit. Charter vessel anglers, or guided fishers, on the other hand, are subject to more restrictive regulations on daily bag limit, size, daily closures, and annual catch limit.

The Enforcement Committee at its October and December 2016 meetings developed a discussion paper to address the Council's June 2016 request. After reviewing the discussion paper during the February 2017 meeting, the Council initiated an analysis for limiting the mixing of guided and unguided halibut on the same vessel. Alternatives for consideration include: 1) no action; 2) prohibit the possession of guided and unguided halibut simultaneously on any vessel; and 3) if halibut harvested using sport fishing guide services is possessed with halibut harvested not using sport fishing guide services in IPHC Area 2C or 3A, the IPHC annual management measures for guided sport fishing for the area that the halibut was harvested apply to all halibut onboard the fishing vessel.

During the October 2017 meeting, the Council reviewed an initial review analysis of the proposed regulatory action. After reviewing the initial review analysis and the October 2017 Enforcement Committee and the Advisory Panel recommendations, the Council released the document for public review. The Council also revised the purpose and need statement to clarify that this action applies to fishing vessels and not floating lodges or "other fishing facilities", because these facilities do not meet the

definition of a fishing vessel, as defined in the Northern Pacific Halibut Act. In addition to revising the purpose and need, the Council also removed Suboption 3.1 from the alternatives and options under consideration. Suboption 3.1 would have extended the requirements in Alternative 3 to other floating facilities as well as to fishing vessels. Finally, the Council selected Alternative 3 as its preliminary preferred alternative.

At the April 2018 meeting, the Council selected Alternative 3 as its preferred alternative. Their preferred alternative would require unguided anglers to abide by bag and possession restrictions, size restrictions, and carcass retention for size-restricted halibut. The Council purposely did not include three Federal and IPHC annual management measures in Alternative 3. These annual management measures not included in the alternative are day-of-the-week closures, recording harvest in a saltwater logbook, and annual limits.

2.4 Alternatives

Alternative 1: Take no action

This alternative is the no action alternative. Currently, there are no regulatory provisions to prohibit the mixing of guided and unguided caught halibut on the same vessel.

Alternative 2: Prohibit the possession of guided and unguided halibut simultaneously on any fishing vessel

Alternative 2 would prohibit the mixing of halibut harvested by guided and unguided charter vessel anglers in IPHC Areas 2C and 3A on a fishing vessel. Halibut caught under one operation type (guided or unguided) must be offloaded from the fishing vessel and removed to shore before halibut from the other operation type may be brought onboard.

Alternative 3 (Preferred Alternative): *If halibut harvested using sport fishing guide services is possessed with halibut harvested not using sport fishing guide services on Convention waters in Area 2C or 3A, the following Federal or IPHC annual management measures for guided sport fishing for the area that the halibut was harvested apply to all halibut onboard the fishing vessel: carcass retention requirements, daily bag and possession limits, and size limits (if applicable).*

Under Alternative 3, if halibut from guided and unguided angling are retained on a charter fishing vessel, all halibut anglers, including unguided anglers and crew members, are bound by the Federal or IPHC annual management measures and applicable federal regulations for guided sport fishing bag and possession restrictions, size restrictions, and carcass retention requirements for size-restricted halibut. Guided sport fishing annual management measures not included in this alternative are recording harvest in a saltwater logbook, day-of-the-week closures, and annual limits.

2.4.1 Preferred Alternative Rationale

The Council selected Alternative 3 because it provides flexibility for multi-day fishing vessel operations to mitigate impacts of stricter guided restrictions that applied to unguided anglers, while also improving accountability and enforcement by providing regulations that are clear and concise. The Council did not include three Federal and IPHC annual management measures in Alternative 3. These annual management measures include day-of-the-week closures, recording harvest in a saltwater logbook, and annual limits. The Council did not include recording of harvested halibut in saltwater logbook due to the additional cost of revising and managing the saltwater logbook program to accommodate unguided anglers. Annual limits were not included in the preferred alternative due the potential of at-sea enforcement complications when applying this limit to unguided anglers that harvested halibut while onboard a multi-day vessel when mixing of halibut occurred. Finally, the Council did not include day-of-the-week closures in their preferred alternative since it would limit multi-day fishing vessels from

offering unguided fishing on those closure days, which may be a mitigating option for charter businesses that are constrained by the closure.

2.4.2 Other alternatives not included for consideration

During the December 2016 Enforcement Committee meeting, the Committee recommended not to include an alternative that would identify guided and unguided halibut on the same vessel by tagging, cutting a fin, or separating into different holds or bins. Clipping a fin is already used to mark Guided Angler Fish (GAF), so using the same mechanism to mark non-GAF fish could create confusion. Also, cutting fins, tagging halibut, or separating halibut into different bins or holds to delineate guided and unguided caught halibut is essentially a self-reporting mechanism that may place too much reliance on the honor system.¹ Recognizing the limitations of this approach, the Council did not include it as an alternative for consideration.

During initial review in October 2017, the proposed action applied to both multi-day vessels and floating lodges. However, during that meeting, the Council removed floating lodges from the proposed alternatives. Floating lodges are not a fishing vessel as defined in Northern Pacific Halibut Act. The Act defines a fishing vessel at 16 U.S.C. § 773(f) as:

- (1) any vessel engaged in catching fish in Convention waters² or processing or transporting fish loaded in Convention waters;
- (2) any vessel outfitted to engage in any activity described in paragraph (1); or
- (3) any vessel in normal support of any vessel described in paragraph (1) or (2)”

Floating lodges must secure a lease or a permit from the Alaska Department of Natural Resources (ADNR) for the adjacent tidelands where the floating lodge is located. As part of the application process, the operator is required to submit a development plan, a clear statement of the intended use of the property, and a United States Geographic Survey map showing the location of the adjacent tidelands where the floating lodge will be located. The development plan is a written statement (narrative) and a sketch or blueprint drawing describing the proposed use and development of state land. If the floating lodge were to move outside the lease or permit area, the floating lodge would have to secure another lease or permit for that location. Recognizing that the necessary ADNR lease or permit requirements for floating lodges likely precludes floating lodges as a fishing vessel, as defined in the Northern Pacific Halibut Act, the Council chose to remove them from consideration for this proposed action.

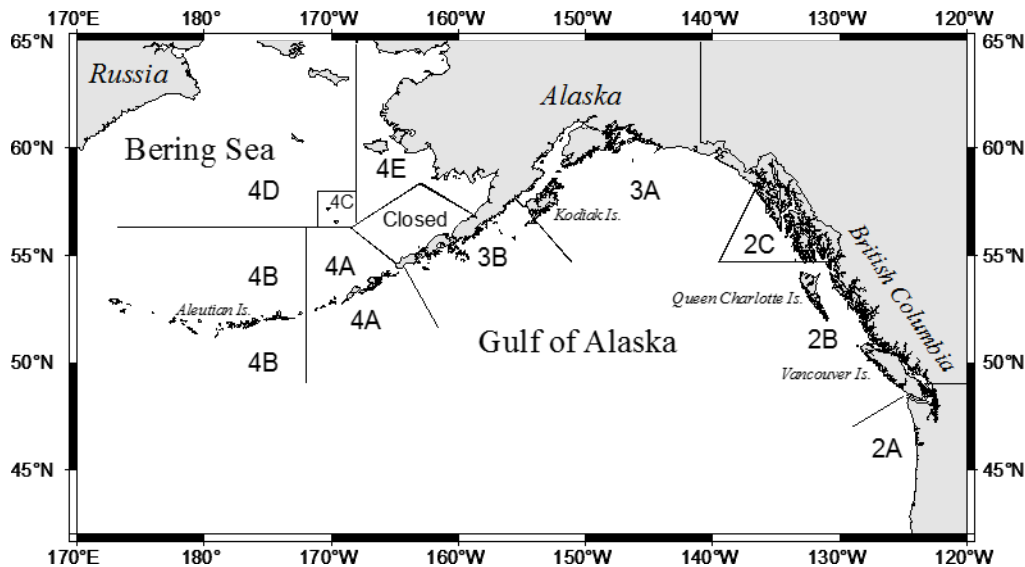
2.5 Description of management area

The potential actions under consideration would directly affect IPHC halibut regulatory areas 2C (Southeast Alaska) and 3A (South Central Alaska). Direct effects would be expected to occur for guided and unguided operators and anglers that mix harvested halibut in these areas.

¹ A similar situation exists in the unguided fleet, where a two-fish per person per day limit – rather than a boat limit (number of anglers multiplied by two-fish) – relies on the honor system.

² From 16 U.S. Code § 773 – Definitions (d) “Convention waters” means the maritime areas off the west coast of the United States and Canada described in article I of the Convention.

Figure 2-1 International Pacific Halibut Commission Regulatory Areas.



2.6 Methodology for analysis of impacts

The evaluation of impacts in this analysis is designed to meet the requirement of E.O. 12866, which dictates that an RIR evaluate the costs and benefits of the alternatives, to include both quantifiable and qualitative considerations. Additionally, the analysis should provide information for decision makers “to 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.”

One of the largest challenges in preparing this RIR is providing an accurate account of the number of the multi-day fishing vessels that offer both guided and unguided halibut fishing in the affected areas, and the extent to which mixing of guided and unguided halibut simultaneously occurs. Neither NMFS, the Alaska Department of Fish and Game (ADFG), nor the IPHC collects data on the number of trips conducted on multi-day fishing vessels. They also do not collect information on halibut harvest for guided and unguided charter services on multi-day fishing vessels or the extent of mixing of guided and unguided halibut on these fishing vessels. It is also not possible to quantify the number of boardings that encountered mixing of guided and unguided halibut by Office of Law Enforcement (OLE) personnel since they do not collect this information. Based on anecdotal accounts, OLE personnel have encountered multi-day fishing vessels at sea that have mixed guided and unguided halibut onboard. In some cases, where there was suspicion of mixing, they were unable to verify that all guided halibut onboard was harvested and retained in compliance with the IPHC Annual Management Measures.

Given the absence of data concerning the mixing of guided and unguided halibut in Areas 2C and 3A, the analysis will rely on a qualitative assessment to describe the impacts of the alternatives. The absence of data creates two challenges for analysts in preparing an RIR. First, without a fully described and enumerated status quo, it is difficult to measure the impacts of the action alternatives compared to status quo. Second, the lack of data concerning the numbers of multi-day fishing vessels, the catch of guided and unguided halibut on these fishing vessels, and the extent of mixing of guided and unguided halibut on these fishing vessels make it difficult to provide the Council a measure of the impacts from the action alternatives. Therefore, the analysis has relied on a qualitative approach to assess the impacts of the alternatives and the net benefits to the Nation.

2.7 Description of guided and unguided halibut fisheries

2.7.1 Management of guided and unguided halibut fishery

Guided halibut sport fishing is managed under an annual allocation and is subject to charter restrictions under Federal regulations (50 CRF 300) that can be more restrictive than the regulations for unguided anglers fishing for halibut. The Council and NMFS developed specific management programs for the charter halibut fishery to achieve allocation and conservation objectives for the halibut fisheries. These management programs are also intended to maintain stability and economic viability in the charter fishery by establishing 1) limits on the number of participants; 2) allocations of halibut that vary with abundance; and 3) a process for determining annual charter angler harvest restrictions to limit charter fishery harvest to the established allocations. The charter halibut fisheries in Areas 2C and 3A are managed under the Charter Halibut Limited Access Program (CHLAP) (50 CFR 300.67) and the Catch Sharing Plan (CSP) (50 CFR 300.65). The CHLAP limits the number of operators in the charter fishery, while the CSP establishes annual allocations to the charter and commercial fisheries and describes a process for determining annual management measures to limit charter harvest to the allocations in each management area.

Since the implementation of the CHLAP program in 2011, all vessel operators in Areas 2C and 3A with charter anglers on board must have an original, valid permit on board during every charter vessel fishing trip for the area in which halibut were caught and retained. Federal charter halibut permits are endorsed for the appropriate regulatory area and the number of anglers that may catch and retain halibut on a charter vessel fishing trip that ranges from 4 to 38.

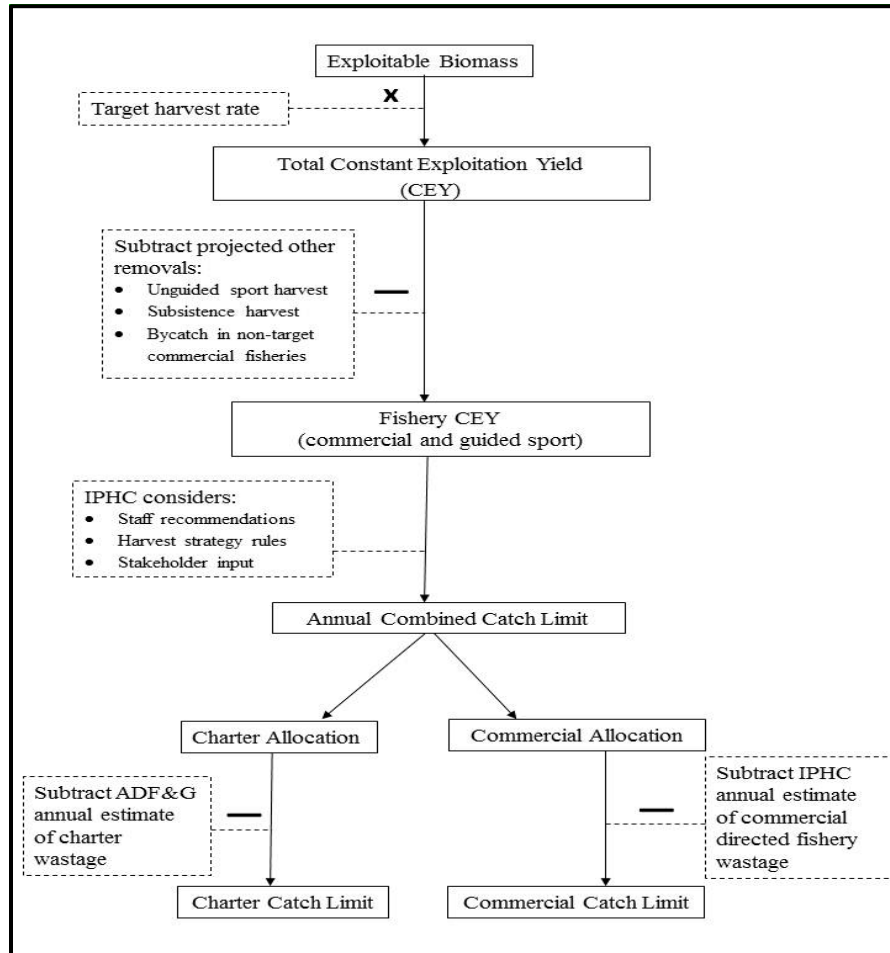
The CSP, implemented by NMFS in January 2014, defines an annual process for allocating halibut between the charter and commercial halibut fisheries in Areas 2C and 3A. The CSP establishes sector allocations that vary proportionally with changing levels of annual halibut abundance and that balance the differing needs of the charter and commercial halibut fisheries over a wide range of halibut abundance in each area. The CSP describes a public process by which the Council develops recommendations to the IPHC for charter angler harvest restrictions that are intended to limit harvest to the annual charter halibut catch limit in each area.

As part of the implementation of the CSP, the ADFG Saltwater Charter Logbook (i.e., logbook) is the primary data collection method for monitoring and managing the charter harvest. The logbook program provides information on participation and harvest by individual vessels and businesses in charter fisheries for halibut, as well as other state-managed saltwater species. Compiled logbook data show where fishing occurs, the extent of participation, and the species and number of fish kept and released by individual anglers. This information is essential for regulation and management of the charter halibut fisheries in Area 2C and Area 3A.

As seen in Figure 2-2, projected unguided sport removals and subsistence harvest are subtracted from the total constant exploitation yield (CEY) before the catch limits are set for commercial and guided fishing. There is no catch limit assigned to unguided sport harvest; the total amount of removals is constrained indirectly through management measures such as bag limits and gear restrictions. Catch limits are established for the commercial and guided halibut sectors with the remaining CEY.

The regulations for unguided sport halibut harvest have remained at a daily bag limit of two fish of any size, while the guided sport sector's management measures are more restrictive and have varied over the years (particularly since the implementation of the CSP). The CSP provides a systematic means, using the best available data, to annually adjust harvest management measures to meet the harvest objectives.

Figure 2-2 Process for setting annual combined catch limits, charter, and commercial allocations, and charter and commercial catch limits for Area 2C and Area 3A under the Catch Sharing Plan



Annual management measures for implementation in the Areas 2C and 3A guided halibut fishery are determined each year through a public process. In December, before Council consideration, ADFG presents an analysis based on the combinations of management measures requested by the Council’s Charter Halibut Management Committee. This analysis is based on a forecast of the upcoming year’s harvest under the current year (“status quo”) regulations and observed effects of various measures in past years. Projected harvests under alternative management measures are compared to the guided sector’s allocation under the IPHC’s interim management procedure and a reference level of fishing harvest intensity for the combined commercial and guided sport fisheries. The guided allocation is defined in relation to the magnitude of this combined catch limit. Management measures are not modified in-season. Therefore the Council recommends annual management measures intended to keep guided harvest within the guided sector allocation in each area.

There are a variety of management measures that have been used or considered in the past to manage the charter and other recreational halibut fisheries. Some of these measures directly restrict the number or size of fish allowed to be retained. Management measures for the guided sector in recent years have been more restrictive relative to the unguided sector, as can be seen in Table 2-1.

Table 2-1 Management measures, harvest limit, and harvest for guided sport halibut fishing in Area 2C and 3A, 2010 to 2017

IPHC area	Year	Management type	Harvest limit (Mlb)	Guided harvest (Mlb)	% of harvest limit	Area 2C charter regulation
2C	2010	GHL	0.788	1.086	138%	One fish (no size limit); no harvest by skipper & crew; line limit
	2011	GHL	0.788	0.344	44%	One fish with a maximum of 37 inches; no harvest by skipper and crew; line limit
	2012	GHL	0.931	0.605	65%	One fish under (U)45 inches or over (O)68 inches; no harvest by skipper and crew; line limit
	2013	GHL	0.788	0.762	97%	One fish U45 inches or O68 inches; no harvest by skipper and crew; line limit
	2014	CSP	0.761	0.783	103%	One fish U44 inches or O76 inches; no harvest by skipper and crew; line limit
	2015	CSP	0.851	0.768	90%	One fish U42 inches or O80 inches; no harvest by skipper and crew; line limit
	2016	CSP	0.906	0.789	87%	One fish U43 inches or O80 inches; no harvest by skipper and crew; line limit by skipper and crew; line limit
	2017	CSP	0.915	Not yet released	N/A	One fish U44 inches or O80 inches; no harvest by skipper and crew; line limit
3A	2010	GHL	3.65	2.698	74%	Two-fish bag limit (no size restrictions); no limit on crew retention
	2011	GHL	3.65	2.793	77%	Two-fish bag limit (no size restrictions); no limit on crew retention
	2012	GHL	3.103	2.284	74%	Two-fish bag limit (no size restrictions); no limit on crew retention
	2013	GHL	2.734	2.514	92%	Two-fish bag limit (no size restrictions); no limit on crew retention
	2014	CSP	1.78	2.034	114%	Two-fish bag limit (one fish U29 inches); one trip per day; no harvest by skipper and crew
	2015	CSP	1.89	2.067	109%	Two-fish bag limit (one fish U29 inches); one trip per day, five-fish annual limit; Thursday closure; no harvest by skipper and crew
	2016	CSP	1.814	2.004	110%	Two-fish bag limit (one fish U28 inches); one trip per day, four-fish annual limit; Wednesday closure; no harvest by skipper and crew; line limit
	2017	CSP	1.89	Not yet released	N/A	Two-fish bag limit (max on second fish U28 inches); one trip per day, four-fish annual limit; Wednesday closure and 18 July, 25 July, and 1 August; no harvest by skipper and crew; line limit

Source: From NPFMC and ADFG
 GHL = Guide Line Harvest
 CSP = Catch Share Program

2.7.2 Halibut removals in guided and unguided sport fishing

Five major categories of halibut use occur in Alaska: commercial landings, sport (guided and unguided), subsistence and personal use, discard mortality in halibut targeted fisheries, and bycatch mortality in non-halibut directed fisheries.

Table 2-2 and Table 2-3 provide Area 2C and Area 3A guided and unguided sport harvest of halibut by the number of fish and millions of pounds (Mlb) from 1995 through 2016. For the 2016 season, the harvest of Area 2C guided halibut was 66,147 fish for a yield of 0.789 Mlb, while the harvest of unguided halibut was 66,714 fish for a yield of 1.246 Mlb. For Area 3A, the harvest of guided halibut was 158,212 fish for a yield of 2.004 Mlb, while the harvest of unguided halibut was 128,582 fish for a yield of 1.246 Mlb.

**Table 2-2 Area 2C guided and unguided sport harvest of halibut to include number of fish (No. Fish)
Millions of pounds (M lb.)**

Year	Guided ^a		Unguided		Total Sport Harvest	
	No. Fish	Yield (M lb)	No. Fish	Yield (M lb)	No. Fish	Yield (M lb)
1995	49,615	0.986	39,707	0.765	89,322	1.751
1996	53,590	1.187	41,307	0.943	94,897	2.129
1997	51,181	1.034	53,205	1.139	104,386	2.172
1998	54,364	1.584	42,580	0.917	96,944	2.501
1999	52,735	0.939	44,301	0.904	97,036	1.843
2000	57,208	1.130	54,432	1.121	111,640	2.251
2001	66,435	1.202	43,519	0.721	109,954	1.923
2002	64,614	1.275	40,199	0.814	104,813	2.090
2003	73,784	1.412	45,697	0.846	119,481	2.258
2004	84,327	1.750	62,989	1.187	147,316	2.937
2005	102,206	1.952	60,364	0.845	162,570	2.798
2006	90,471	1.804	50,520	0.723	140,991	2.526
2007	109,835	1.918	68,498	1.131	178,333	3.049
2008	102,965	1.999	66,296	1.265	169,261	3.264
2009	53,602	1.249	65,549	1.133	119,151	2.383
2010	41,202	1.086	52,896	0.885	94,098	1.971
2011	36,545	0.344	42,202	0.685	78,747	1.029
2012	42,436	0.605	54,696	0.977	97,132	1.583
2013	52,675	0.762	78,078	1.361	130,753	2.123
2014	65,036	0.783	69,060	1.170	134,096	1.954
2015	65,656	0.768	73,816	1.327	139,472	2.094
2016	66,147	0.789	66,714	1.246	132,861	2.035

Source: ADF&G 2017

^a - Guided harvest estimates in numbers of fish are based on the Alaska Statewide Harvest Survey (mail survey) prior to 2014, and on the ADF&G charter logbook beginning in 2014.

Table 2-3 Area 3A guided and unguided sport harvest of halibut to include number of fish (No. Fish) Millions of pounds (M lb.)

Year	Guided ^a		Unguided		Total Sport Harvest	
	No. Fish	Yield (Mlb)	No. Fish	Yield (Mlb)	No. Fish	Yield (Mlb)
1995	137,843	2.845	95,206	1.666	233,049	4.511
1996	142,957	2.822	108,812	1.918	251,769	4.740
1997	152,856	3.413	119,510	2.100	272,366	5.514
1998	143,368	2.985	105,876	1.717	249,244	4.702
1999	131,726	2.533	99,498	1.695	231,224	4.228
2000	159,609	3.140	128,427	2.165	288,036	5.305
2001	163,349	3.132	90,249	1.543	253,598	4.675
2002	149,608	2.724	93,240	1.478	242,848	4.202
2003	163,629	3.382	118,004	2.046	281,633	5.427
2004	197,208	3.668	134,960	1.937	332,168	5.606
2005	206,902	3.689	127,086	1.984	333,988	5.672
2006	204,115	3.664	114,887	1.674	319,002	5.337
2007	236,133	4.002	166,338	2.281	402,471	6.283
2008	198,108	3.378	145,286	1.942	343,394	5.320
2009	167,599	2.734	150,205	2.023	317,804	4.758
2010	177,460	2.698	124,088	1.587	301,548	4.285
2011	184,293	2.793	128,464	1.615	312,757	4.408
2012	173,582	2.284	113,359	1.341	286,941	3.626
2013	199,248	2.514	121,568	1.452	320,816	3.966
2014	174,351	2.034	127,125	1.533	301,476	3.568
2015	163,632	2.067	136,225	1.616	299,857	3.682
2016	158,212	2.004	128,582	1.538	286,794	3.542

Source: ADF&G 2017

^a - Guided harvest estimates in numbers of fish are based on the Alaska Statewide Harvest Survey (mail survey) prior to 2014, and on the ADF&G charter logbook beginning in 2014.

2.7.3 Current regulations on mixing halibut

There are no regulations that address the specific issue of possessing guided and unguided sport halibut on the same vessel at the same time. There are, however, regulations designed to limit mixing of halibut across operation type in other situations, specifically halibut taken in subsistence, sport, and commercial fisheries. In October 2000, the Council, during deliberations on the customary trade of subsistence halibut, recognized that mixing subsistence-harvested halibut with non-subsistence harvested halibut, such as commercial halibut, would present an enforcement challenge. The Council was mindful of how easily subsistence halibut could be moved into the commercial sector. The Council intended to prevent the movement of subsistence halibut into the commercial sector by recommending that subsistence halibut be prohibited from entering commerce. To address the Council's preferred action, NMFS implemented a prohibition on possessing subsistence, sport, and commercially harvested halibut on the same vessel at the same time when the final subsistence regulations were published on April 15, 2003. NMFS included this regulatory tool to assist authorized officers in ensuring that subsistence halibut did not enter into the commercial sector, as well as daily bag and possession limits relevant to each fishery. Provided below are the relevant prohibitions:

50 CFR §300.66 Prohibitions.

In addition to the general prohibitions specified in 50 CFR 300.4, it is unlawful for any person to do any of the following:

(h) Conduct subsistence fishing for halibut while commercial fishing or sport fishing for halibut, as defined in §300.61, from the same vessel on the same calendar day, or possess on board a vessel halibut harvested while subsistence fishing with halibut harvested while commercial fishing or sport fishing...

(l): Retain subsistence halibut harvested under a charter halibut permit (CHP), Ceremonial Permit, or Educational Permit together in any combination or with halibut harvested under any other license or permit.

There are also limits on mixing sport-caught halibut on a vessel when other fish or shellfish are destined for commercial use. The IPHC Annual Management Measures at Section 25 (6) prohibit the possession of sport-harvested halibut onboard a vessel when other fish or shellfish aboard are destined for commercial sale, trade or barter. This prohibition is in place to assist authorized officers in ensuring that all of the regulations specific to the mechanism of harvest could be enforced efficiently while onboard a vessel.

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(6) No halibut caught in sport fishing shall be possessed on board a vessel when other fish or shellfish aboard said vessel are destined for commercial use, sale, trade, or barter.

2.7.4 Applicable definitions

This section includes a partial listing of definitions that are relevant to the proposed action as a reference guide.

Federal Definitions from 50 C.F.R. § 300.61

Sport fishing guide services, for purposes of §§300.65(d) and 300.67, means assistance, for compensation or with the intent to receive compensation, to a person who is sport fishing, to take or attempt to take halibut by accompanying or physically directing the sport fisherman in sport fishing activities during any part of a charter vessel fishing trip. Sport fishing guide services do not include services provided by a crew member, as defined at §300.61.

Compensation, for purposes of sport fishing for Pacific halibut in Commission regulatory areas 2C and 3A, means direct or indirect payment, remuneration, or other benefits received in return for services, regardless of the source; for this definition, “benefits” includes wages or other employment benefits given directly or indirectly to an individual or organization, and any dues, payments, fees, or other remuneration given directly or indirectly to a fishing club, business, organization, or individual who provides sport fishing guide services; and does not include reimbursement for the actual daily expenses for fuel, food, or bait.

Charter vessel, for purposes of §§300.65, 300.66, and 300.67, means a vessel used while providing or receiving sport fishing guide services for halibut.

Charter vessel fishing trip, for purposes of §§300.65, 300.66, and 300.67, means the period between the first deployment of fishing gear into the water from a charter vessel by a charter vessel angler and the offloading of one or more charter vessel anglers or any halibut from that vessel.

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

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

2.7.5 Guided and unguided halibut vessels

The background information in this section provides a general description of likely impacted fishing vessels and an estimate of the number of halibut sport fishing vessels that would likely be directly affected by the proposed action.

Table 2-4 shows the current number of charter halibut permit (CHP) and CHP holders by regulatory area and type of CHP. The total number of CHPs has changed since initial allocation. Some CHPs were initially considered “interim,” some of which were later revoked upon completion of an appeals process. Additionally, the number of CHP holders continually changes as permits are transferred. An individual may hold more than one CHP in more than one regulatory area. Additionally, Community Quota Entity (CQE) and U.S. Military Morale, Welfare and Recreation Program (MWR) permits have been issued.

As shown in Table 2-4, 268 entities currently hold 529 CHPs in Area 2C, and 289 entities currently hold 428 CHPs in Area 3A. For this calculation, all CHP holders were counted once per area, even if he or she holds multiple permits. Therefore, counts of CHP holders cannot be summed across areas and types because some CHP holders have permits in more than one category and are counted more than once.

Table 2-4 Distinct CHP holders, permits, and anglers as of July 24, 2017

Area	Permit type ¹	CHP holders ²	Permits	Angler endorsements
2C	CHP	268	529	2,714
	CQE	12	48	288
	MWR	1	1	Unlimited
3A	CHP	289	428	3,169
	CQE	8	56	336
	MWR	3	6	Unlimited

Source: CHP_Permits(7-24-17)

¹CHP regular permit with angler endorsements, CQE=community quota entity permits, MWR = U.S. Military Morale, Welfare, and Recreation Program permits

²An individual CHP holder may hold more than one CHP in more than one regulatory area

The number of unique CHP holders that would be affected by the proposed action is a significantly smaller group than the totals reported in Table 2-4. Businesses that provide exclusively guided or unguided halibut fishing would not be affected by the proposed action. The CHP holders that are affected by the proposed action are those that offer unguided fishing operations on multi-day fishing vessels, which cannot be separated out in the data available in Table 2-4.

Given the lack of available information, OLE has investigated other sources for information on the number of businesses that utilize multi-day fishing vessels. The following information was extracted from ADFG 2016 Charter Halibut Logbooks (charters retaining halibut) and subsequent open source internet searches, consisting primarily of charter businesses web pages, Facebook pages, and consumer review sites. This information is not all-inclusive, and the open source material is subject to interpretation. Also,

the business names or charter operators listed in the ADFG Charter Halibut Logbooks may not be the same as the actual business name utilized by the charter halibut outfitter.

Multi-day guided fishing vessels

As described in Chan et al. (2017³), there are a diversity of different business types and sizes of operations that offer charter saltwater sportfishing services in Alaska. This diversity of charter services allows these businesses the flexibility to respond differently to social, environmental, and regulatory management changes. In other words, changes in the halibut sport fishing regulations place constraints on saltwater charter businesses via day closures and smaller catch or halibut size limits. Charter businesses would likely offer a variety of fishing services to accommodate their clients and lessen the impacts of changing halibut charter regulations. The more flexible a charter business, the more adaptable the business is to changes in management regulations.

One such charter business that has the potential to adapt to changing halibut management regulations is a multi-day fishing and sightseeing adventure on a large vessel. Based on OLE's market research of the number of multi-day fishing vessel businesses, there are approximately 30 operations in Area 2C and 14 operations in Area 3A. On multi-day vessels, the captain, crew, and guests are lodged and fed and spend much of their time on the principal vessel as it tows a smaller vessel(s) or transports it on deck. The guests may use the smaller vessels to conduct unguided and guided fishing while the multi-day vessel is anchored or in transit. Guided fishing could also occur from the multi-day fishing vessel itself. Ever more constraining halibut fishery management measures could make multi-day vessel service an attractive business model given its potential for adapting to changes in the halibut management regulatory structure.

The challenge with multi-day fishing vessels is that when halibut harvested from guided and unguided fishing are mixed onboard the vessel, enforcement of the more restrictive guided halibut size, bag, and possession limits becomes difficult. A charter vessel operator could ignore the more restrictive guided angler rules and claim that some or all of the fish were taken by anglers who fished without a guide. The saltwater logbook does not provide an adequate tool for verification or enforcement of multi-day vessel activity. Logbook reporting is required at the end of the guided vessel fishing trip. In the case of the multi-day fishing vessels, reporting takes place during transfer of halibut from the smaller vessel to the larger vessel or during halibut transfer off the larger vessel (depending upon which vessel the halibut was harvested from). In the latter situation, mixing can occur on the larger vessel for some days before the logbook is completed.

Figure 2-3 is an example of a multi-day guided fishing vessel. This vessel is a 60-foot charter fiberglass vessel with five staterooms. There is room for up to six anglers. The vessel may go 50 miles each day, depending on the fishing, the weather, and the clients' requests. One or more smaller vessels are often associated with this type of fishing vessel. Each trip's itinerary is personalized.

³ Chan, Maggie, A.H. Beaudreau, and P.A. Loring. 2017. Evaluating Patterns and Drivers of Spatial Change in the Recreational Guided Fishing Sector in Alaska. PLOS one. <http://journals.plos.org/plosone/article?id=10.1371/journal.pone.0179584>



Figure 2-3 Picture of a multi-day guided fishing vessel

2.8 Analysis of impacts

2.8.1 Alternative 1

Alternative 1 is the no action alternative. Under this alternative, vessels that cater to halibut anglers could continue to mix harvest that comes from guided and unguided fishing.

OLE has indicated to the Council it is likely many of the multi-day fishing vessels already limit the mixing of guided and unguided halibut, either by keeping the halibut separated or by limiting their anglers to only one form of fishing. Nevertheless, OLE reports that some multi-day fishing vessels do offer a mix of guided and unguided halibut fishing and would continue to mix the respective harvests since it is not prohibited. No systematic data collection for this type of fishing exists; however, the number of sport fishing businesses that could provide both guided and unguided halibut fishing services is currently estimated to be 30 multi-day fishing vessels in Area 2C and 14 multi-day fishing vessels in Area 3A.

Although not quantifiable due to the lack of data, it is possible that the increasing restrictions for guided halibut fishing (see Table 2-1) relative to the restrictions for unguided halibut fishing could result in more anglers choosing to take unguided fishing trips. In Area 2C, guided restrictions started diverging from unguided halibut restrictions in 2010, with one fish (no size limit) for guided operations, and two fish per day for unguided. In Area 3A, guided restrictions diverged from unguided restrictions starting in 2013, when size limits were implemented on one of the two allowed halibut for guided operations, and charter vessels were limited to one trip per day. As guided regulations continue to be more restrictive than unguided regulations, it is likely, under this no action, or status quo, alternative, that the number of unguided angler trips will increase on multi-day fishing vessels as anglers seek those fishing opportunities that result in more halibut catch. The potential increase in angler trips on multi-day vessels under this alternative could increase mixing of halibut on multi-day fishing vessels.

Under this alternative, in the absence of quantitative data, if the Council assumes that mixing is occurring, possessing halibut harvested from both guided and unguided trips simultaneously on a fishing vessel will continue to hamper accountability of sport-harvested halibut and enforcement of guided and unguided

regulations. Once guided and unguided halibut are mixed aboard a vessel, it is difficult for OLE to determine which halibut were harvested under the more restrictive guided regulations and which halibut were harvested under the more liberal unguided regulations. Assessing compliance will likely continue to be challenging, and the duration of an at-sea boarding will continue to be longer due to difficulties in accounting for harvest halibut under the different management regulations compared to the action alternatives. This alternative will continue to rely on the honor system to ensure compliance when halibut caught under the more restrictive guided halibut regulations are possessed simultaneously on the same vessel with halibut caught under the less restrictive unguided regulations.

2.8.2 Alternative 2

Under Alternative 2, the simultaneous possession of halibut harvests from guided and unguided angling vessels in Areas 2C and 3A would be prohibited. This alternative would likely affect only multi-day fishing vessels that offer both guided and unguided fishing opportunities on the same trip. Businesses that offer only one form of angling – either guided or unguided – and do not complete a fishing trip on a multi-day vessel where guided and unguided halibut could be mixed would not be affected by this alternative.

As indicated early in Section 2.7.5, an approximate number of multi-day vessels that provide both guided and unguided halibut fishing services for Area 2C is 30, while for Area 3A is 14. The effect of this alternative on multi-day fishing vessels would be the elimination of both guided and unguided halibut fishing services that result in mixing of halibut onboard the fishing vessel. Under Alternative 2, halibut caught under one operation type (guided or unguided) must be moved ashore before switching to the other operation type to prevent mixing of guided and unguided halibut harvest on the fishing vessel. The effect of prohibiting the mixing of guided and unguided halibut may be lost revenue due to reduced business flexibility and constraint on fishing operations to offer only guided or unguided halibut fishing services at any one time on the fishing vessel. However, the multi-day charter fishing trips in areas 2C and 3A are supply constrained, and demand for trips may not be sensitive to halibut retention restrictions. Thus, lacking a market model for this industry it is not possible to definitively determine the direction or the magnitude of impacts to the multi-day charter operators.

One approach that could be utilized by multi-day vessels to mitigate the restrictions of Alternative 2 would be to transport either the unguided halibut or guided halibut to shore to prevent mixing of the harvest on the fishing vessel. Since no mixing of guided and unguided halibut harvests would then occur, a business could still offer both fishing services on the vessel. However, delivering their harvests to shore would likely increase the cost for the multi-day vessel possibly resulting in increased costs for multi-day charter anglers.

An additional impact of this alternative could be a limitation on halibut fishing by crewmembers⁴ while guided customers are onboard the fishing vessel. On multi-day fishing vessels, crewmembers will often use their free time to fish for halibut. In most cases, any halibut caught by a crewmember is considered unguided halibut, and therefore, under Alternative 2, could not be onboard with halibut caught by guided customers. Crewmembers could always fish as guided anglers, but the crewmember would be held to the same restrictions as all other guided anglers. In general, a sport fishing business would likely restrict their crewmembers from fishing for halibut while guided customers are onboard the fishing vessel to prevent mixing of halibut onboard the vessel and potentially displacing guided anglers from a trip. Given that one of the primary benefits of being a crewmember is access to recreational fishing, this alternative would restrict that benefit, which could make it more challenging for multi-day fishing vessels to attract crewmembers.

⁴ A crew member, as defined in the charter halibut program, means an assistant, deckhand, or similar person who works directly under the supervision of, and on the same vessel as, a charter vessel guide or operator of a vessel with one or more charter vessel anglers on board.

From the perspective of OLE, this alternative would put in place regulations that would improve accountability and enforcement by prohibiting the mixing of guided and unguided halibut onboard the vessel. This approach would be less ambiguous and more concise for guides, anglers, and authorized officers in the field. Given that this alternative does allow multi-day vessels to offer either guided or unguided halibut fishing, but not both at the same time, when the enforcement officer conducts a boarding, he/she will have to determine if the anglers have been guided or unguided. Once the officer has determined the category of anglers for that particular fishing trip, the officer could quickly determine the appropriate bag and size limits. Overall, this alternative would improve OLE's ability to enforce the halibut catch accounting regulations in Areas 2C and 3A by providing unambiguous regulations that require little interpretation by guides, anglers, and OLE officers. This alternative will also maximize OLE's ability to assess compliance and reduce the duration of at-sea vessel boardings, since accounting of harvested halibut will be easier.

2.8.3 Alternative 3, Preferred Alternative

Under Alternative 3, mixing of halibut from guided and unguided fishing could occur onboard a fishing vessel, but unguided anglers would be subject to the same bag and possession limits, size restrictions, and carcass retention requirements as guided anglers, as determined by IPHC annual management measures and applicable federal regulations. Management measures the Council did not include in the alternative are annual limits, entering unguided fish in saltwater logbooks, and day-of-the-week closures.

Relative to Alternative 2, this alternative provides some flexibility for multi-day vessels by allowing both guided and unguided fishing experiences on the same fishing trip. It also addresses OLE's ability to enforce existing regulations for the accurate accounting of guided and unguided halibut fishing, since all anglers are subject to the same bag limits, possession limits, size restrictions, and carcass retention requirements for the applicable IPHC area (see Table 2-1 for the latest guided regulations).

The effect of this alternative on the businesses that might mix guided and unguided halibut would likely be the restriction of unguided anglers to the guided daily bag and size regulations, which is more restrictive than unguided halibut regulations. For Area 2C, the restriction in 2017 was one fish limit 44 inches or under or 80 inches or more. For Area 3A, the 2017 restriction was two fish per day, but one fish must be 28 inches or less.

Unguided angler, on multi-day vessels where mixing of guided and unguided halibut is occurring, would not be required to record their harvested halibut in the charter guide's saltwater logbook, and therefore unguided halibut caught would not apply towards the annual limit for the angler. In consultation with ADFG, the reporting of unguided harvested halibut in the saltwater logbook would likely be problematic since there are currently no data fields in the charter logbook to record unguided halibut. Since ADFG manages the charter saltwater logbook program, the State would have to agree to modify the saltwater logbook program to add data fields to report unguided halibut. ADFG would likely need to implement a regulatory change to modify the saltwater logbook, and this would likely result in additional costs for the modification and the management of the saltwater logbook program.

Since halibut caught by unguided anglers would be treated just like guided halibut when mixing is occurring, and saltwater logbooks and databases are modified by ADFG, then presumably unguided caught halibut would not be counted against the guided halibut allocation. If unguided halibut is counted against the guided halibut allocation even after modifying the saltwater logbooks and databases, then there could be some negative impacts on the businesses that rely on the guided halibut allocation. The degree to which this would impact the businesses that rely on the guided halibut allocation cannot be determined due to the lack of data on unguided catch. In all likelihood, the addition of unguided halibut being deducted from guided halibut allocations would have a negative impact on the halibut charter businesses. In Area 3A, guided halibut catch exceeded its limit in 2014 through 2016, indicating the allocation is fully utilized, and resulting in stricter measures. For Area 2C, guided halibut catch only

exceeded the limit in 2014, so there may be some amount of halibut available under the guided allocation. If the Area 2C guided halibut allocation were to be fully utilized in the future, however, the addition of unguided halibut catch from multi-day vessels could result in stricter measures.

The reporting of unguided halibut in saltwater logbooks could also potentially overestimate unguided halibut harvest from multi-day fishing vessels due to double counting. As noted above, halibut harvested by unguided anglers on multi-day fishing vessels that are mixing halibut will have to be reported in the saltwater logbook. That same halibut harvested, caught by an unguided angler, could also be reported in the Alaska Sport Fish Survey. If that were the case, the combination of reporting would result in the double-counting of the unguided halibut harvest in those situations.

Given these complications and additional costs of revising the saltwater logbook program, the Council did not include the requirement of recording of harvested halibut by unguided anglers in the charter guide's saltwater logbook in this alternative.

From the perspective of OLE, Alternative 3 improves accountability and enforcement, similar to Alternative 2. In particular for enforcement, the most important elements of the guided regulations to apply to unguided halibut harvest under Alternative 3 would be size limits, bag and possession limits, and carcass retention restrictions. Applying these three elements of the charter regulations to unguided anglers would improve OLE's ability to ensure that guided harvest is accurately accounted for when halibut mixing is occurring on multi-day vessels. If halibut is mixed, the enforcement officer could determine the appropriate number of halibut onboard the vessel per angler, per day using the bag and possession limits for guided regulations. In Area 2C, this would be one halibut, 44" or under or over 80", per angler, per day, for a possession limit of no more than two halibut on the multi-day fishing vessel. In Area 3A, this would be two halibut, one of which must be less than 28", per angler, per day, with a possession limit of no more than four halibut on the multi-day fishing vessel.

OLE has indicated that there are two components of the guided regulations which should be considered differently: day-of-the-week closures and annual limits. Including the day-of-the-week closure in Alternative 3 would likely increase enforceability but could potentially increase negative impacts to multi-day fishing operations. By not including day-of-the-week closures as part of Alternative 3, a vessel could allow unguided fishing to occur on closure days while guided fish is also onboard the vessel, which could be challenging for enforcement. Anglers on multi-day fishing vessels would still be constrained by the guided halibut possession limit noted above. However, requiring vessels to abide by the day-of-the-week closure restrictions would limit multi-day fishing vessels from offering unguided fishing on those closure days, which may be a mitigating option for charter businesses that are constrained by the closure. As a result, the Council did not include day-of-the-week closure as part of their preferred Alternative 3.

As for annual limits, OLE is concerned that applying this restriction to unguided anglers when there is guided fish onboard the vessel could cause complications for at-sea enforcement. For example, an unguided angler is fishing from a multi-day vessel where guided and unguided fish are mixed. If the unguided angler caught two halibut, the angler would be required to record two halibut on back of his or her fishing license as guided and towards the annual limit. However, technically, the angler was not charter fishing. Now that same angler goes out later that same year to charter fish and catches the annual limit of four halibut. The angler's sport fish license would have six halibut recorded on the back, two more than the annual charter limit if this guided restriction were included in the alternative. The halibut recorded on the angler's fishing license while on the multi-day vessel, combined with halibut catch from the charter vessel, will cause complications for OLE while conducting an at-sea boarding and likely increase boarding time. Based on this complication, the Council did not include annual limits as part of their preferred Alternative 3.

2.8.4 Number and description of directly regulated small entities

Section 603 of the Regulatory Flexibility Act (RFA) requires that an initial regulatory flexibility analysis (IRFA) be prepared to describe the economic impacts of proposed actions on small entities. As of January 2017, NMFS Alaska Region will prepare the IRFA in the Classification section of the proposed rule for an action. Therefore, the preparation of a separate IRFA is not necessary for the Council action on this issue until after final action.

There are two action alternatives under consideration. The first alternative would prohibit the possession of guided and unguided halibut simultaneously on any fishing vessel. Under the second alternative, if any halibut harvested using sport fishing guide services is possessed with halibut harvested not using sport fishing guide services in Area 2C or Area 3A, the IPHC annual management measures for guided sport fishing for the area that the halibut was harvested apply to all halibut onboard the fishing vessel.

Based on estimates provided by OLE on the number of multi-day vessel operators that could be affected by this proposed action, there are likely less than 44 businesses in Areas 2C and 3A. When corporations are created in Alaska, the State requires the applicant to identify itself and its activities by filing under the North American Industrial Classification System (NAICS) code that they operate under. A review of corporate filing records for directly regulated entities revealed that NAICS code 487210, *Scenic and Sightseeing Transportation on Water*, is frequently identified. Some entities also identified 713990, *All Other Amusement and Recreation*, as their class code.

On July 18, 2019, the Small Business Administration (SBA) issued an interim final rule (84 FR 34261) effective August 19, 2019, that adjusted the monetary-based industry size standards (i.e., receipts- and assets-based) for inflation for many industries. For fisheries for-hire businesses and marinas, the rule changes the small business size standard from \$7.5 million in annual gross receipts to \$8 million. See 84 Fed.Reg. at 34273 (adjusting NAICS 487990 (Scenic and Sightseeing Transportation, Other) and 713930 (Marinas)).

Thus, the directly regulated entities in the multi-day Commercial Charter Fishing sector are considered small entities if their total annual gross receipts, from all their activities and those of all affiliates combined, are less than \$8.0 million, as identified in the updated Small Business Administration's small business size table.⁵

The multi-day charter vessels identified as being directly regulated carry between 6 and 12 passengers and generally operate in Alaska waters from May through September. Some of these vessels relocate to other markets, such as Mexico, and earn additional revenue during the winter. Informal survey information indicates that the bunk rate on most vessels is approximately \$5,500 per week. It is possible to establish an upper bound of revenue for this fleet by assuming full occupancy of the largest vessel, carrying 12 passengers, for all 52 weeks of the year, at the going rate of \$5,500. The upper bound of total annual revenue for the largest vessel in the fleet is therefore \$3.4 million and fails to exceed the threshold to be defined as a large entity. It is true that several companies own two multi-day charter vessels; however, the combined upper bound revenue estimate of two vessels is \$6.8 million and remains below the large entity threshold. Although many of the vessel operators use booking services for the same vendor, these relationships are not considered to be affiliations under the RFA. No other information that is publicly available identifies any other affiliation. Thus, these 44 business are directly regulated small entities for purposes of the RFA; however, this action streamlines regulations in order to ease compliance and improve enforcement including reducing boarding times and is not likely to create a significant adverse impact on the directly regulated small entities.

⁵ See <https://www.sba.gov/document/support-table-size-standards>

Community Quota Entities may apply for and receive community CHPs. Some of those charter operations could potentially offer mixed guided and unguided halibut fishing; therefore, this proposed rule may directly regulate entities representing small, remote communities in Areas 2C and 3A. There are 20 communities in Area 2C and 14 in Area 3A eligible to receive community CHPs. Of these 34 communities, 20 currently hold community CHPs. Again, the number of these CHP holders who offer, or would offer, mixed guided and unguided fishing is unknown; however, this proposed action is not expected to adversely impact communities that hold CHPs.

The proposed action will apply more restrictive halibut bag, possession, and size limits on clients that take multi-day charters with mixed guided and unguided halibut fishing activity. These individuals are not considered directly regulated small entities under the RFA. However, the proposed action will also apply these more restrictive catch and possession limits on vessel crew and guides who choose to fish for halibut in any time off they may have during a trip. It is possible that these crew and guides may operate as subcontractors to the primary vessel and, as such, may be defined as small entities. However, the applicability of the more restrictive limits to any of these potential small entities is as an indirect consequence of their being aboard the vessel on a mixed guided and unguided trip. Thus, they are not considered to be directly regulated small entities for RFA purposes.

2.8.5 Summary of impacts of alternatives

Table 2-5 provides a table summarizing the impacts of the alternatives.

Table 2-5 Summary of alternatives

Alternative	Costs	Benefits
<p>Alternative 1 - Status quo</p>	<ul style="list-style-type: none"> As guided restrictions increase relative to unguided restrictions, anglers are likely to choose unguided fishing trips on multi-day fishing vessels which could increase mixing of halibut Anglers and operators could label halibut caught with the assistance of a guide as unguided halibut to circumvent regulations Compliance will continue to be challenging, and vessel boardings will continue to be longer due to mixed guided and unguided halibut on the fishing vessel 	<ul style="list-style-type: none"> Provides multi-day fishing vessels the most flexibility to accommodate both guided and unguided anglers at the same time without incurring the cost of transporting halibut to shore or turning away one category of anglers to prevent mixing of halibut Allows crewmembers to fish as unguided anglers while not working
<p>Alternative 2 - Prohibition of mixing</p>	<ul style="list-style-type: none"> Could result in reduced flexibility and lost revenue for multi-day fishing vessels that provide both guided and unguided trips from the same vessel due to restricting halibut fishing to guided or unguided, but not both at any one time Could result in increased costs for multi-day charter halibut anglers if operating cost increases are passed on to consumers Could increase operating costs for multi-day fishing vessels that continue to offer both guided and unguided fishing due to transporting either guided or unguided caught halibut to shore to prevent mixing Crewmembers would be prohibited from unguided halibut fishing due to mixing of halibut when halibut harvested by guided anglers are onboard the fishing vessel 	<ul style="list-style-type: none"> Improve accountability and enforcement by providing clear and concise regulations for guides, anglers, and authorized officers in the field Maximize compliance and reduce the duration of at-sea vessel boardings
<p>Alternative 3 - Use Guided Regulations if mixing</p> <p><i>Preferred Alternative</i></p>	<ul style="list-style-type: none"> Unguided anglers, including crew members, would be subject to stricter guided regulations if mixing of halibut on a multi-day fishing vessel is occurring Could increase cost for multi-day vessels that continue to offer both guided and unguided fishing due to transporting halibut to shore to prevent mixing Could result in increased costs for multi-day charter halibut anglers if operating costs are passed on to consumers 	<ul style="list-style-type: none"> Allows multi-day vessels to mix guided and unguided caught halibut Allows crewmembers to fish when guided anglers are onboard multi-day fishing vessel Not including the annual management requirements or reporting requirements for halibut harvest in saltwater logbooks, day-of-the-week closures, and annual limits for unguided anglers reduces implementation costs, at-sea enforcement complications, and additional economic burden to multi-day vessel operators from these guided restrictions Improve accountability and enforcement by providing regulations that are clearer and more concise relative to Alternative 1.

2.8.6 Summation of the alternatives concerning net benefit to the Nation

Relative to Alternative 1 (status quo), both Alternative 2 and Alternative 3 (the preferred alternative) would assist NMFS by improving OLE’s enforcement actions and helping to ensure compliance with the annual halibut management measures in Areas 2C and 3A. This is the principal benefit of each of the alternatives. Both of the alternatives would also mitigate the potential for the growth of the enforcement

issues associated with mixed guided and unguided halibut fishing, and will likely reduce the amount of time needed by enforcement officers during at-sea boardings. Neither alternatives is expected to add to the paperwork or reporting requirements for the affected businesses. Impacts to markets for charter fishing on multi-day vessels are possible, but are expected to be minimal. Multi-day charter vessels typically host a variety of activities for their clients, and under either of the action alternatives halibut fishing and halibut retention can continue. Moreover, the number of affected businesses by either of the alternatives is believed to be relatively small. Given these considerations, it is not possible to discern the net benefits to the Nation at this level of detail; however, once again, the principal rationale for this action are to develop clear and effective regulations that the agency and the public can use to comply with the rules of the CSP.

The Council chose Alternative 3 as the preferred action because it is a more flexible option that Alternative 2. As illustrated in Table 2-5 above, under Alternative 3, charter vessels that currently offer a mix of guided and unguided halibut fishing on the same fishing trip can continue to do so. This contrasts with Alternative 2, which would also allow charter vessels to offer guided or unguided fishing, but would not allow halibut to be retained from both forms of angling on the same fishing trip. Charter vessels and their anglers would have to determine at the outset whether the fishing trip was guided or unguided. The difference in net benefits to the Nation of Alternative 3 compared to Alternative 2 are not possible to determine, but are nevertheless expected to be minimal.

3 Pacific Halibut Act Considerations

The fisheries for Pacific halibut are governed under the authority of the Northern Pacific Halibut Act of 1982 (Halibut Act, 16 U.S.C. 773-773k). For the United States, the Halibut Act gives effect to the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the North Pacific Ocean and Bering Sea. The Halibut Act also provides authority to the Regional Fishery Management Councils, as described in § 773c:

(c) Regional Fishery Management Council involvement

The Regional Fishery Management Council having authority for the geographic area concerned may 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 International Pacific Halibut 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 1853(b)(6) of this title. 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 obligations in existing Federal law, reasonably calculated to promote conservation, and carried out in such manner that no particular individual, corporation, or other entity acquires an excessive share of the halibut fishing privileges.

It is necessary for the Council to consider the directions in the Halibut Act about the regulations that may result from this action. Much of the direction listed in § 773c(c) is duplicative with the Magnuson-Stevens Act's National Standard 4, requiring that regulations not discriminate between residents of different States, and directing that if halibut fishing privileges are allocated or assigned among fishermen, such allocation shall be fair and equitable.

The Halibut Act also directs regulations to be consistent with the limited entry criteria set forth in the Magnuson-Stevens Act. These are criteria that the Council and the Secretary must take into account when establishing a limited access system for a Magnuson-Stevens Act fishery. The criteria are listed below.

- (A) present participation in the fishery;
- (B) historical fishing practices in, and dependence on, the fishery;
- (C) the economics of the fishery;
- (D) the capability of fishing vessels used in the fishery to engage in other fisheries;
- (E) the cultural and social framework relevant to the fishery and any affected fishing communities;
- (F) the fair and equitable distribution of access privileges in the fishery; and
- (G) any other relevant consider actions.

This section focuses on the Council's PPA. If the Council amends its preferred alternative (PA) from the PPA this section will be revised.

The preferred Council action would implement a regulatory requirement for instances when halibut are retained from a mix of guided and unguided fishing on a charter vessel. In these situations, the daily bag limits, possession limits, size restrictions, and carcass retention requirements would be the same for all anglers onboard, including guided anglers, unguided anglers, and crew members. Those limits would correspond to the federal or IPHC management measures and applicable federal regulations for guided anglers. Under this alternative, unguided anglers and crew members on charter vessels would not be

subject to the guided halibut charter management measures for recording harvests in a saltwater logbook, day-of-the-week closures, and annual limits.

Based on the information in this analysis, and the Council and NMFS review of that information, this action is determined to be consistent with the Halibut Act and other applicable laws, including not being in conflict with regulations adopted by the International Pacific Halibut Commission and meeting requirements found at 16 U.S.C. sec. 773c(c).

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