

**FINAL**

**Regulatory Impact Review  
for a regulatory amendment to establish a  
Charter Halibut Permit Annual Registration  
September 2019**

Lead Agency: National Marine Fisheries Service, Alaska Region  
National Oceanic and Atmospheric Administration

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Abstract: This Regulatory Impact Review analyzes proposed management measures that would apply exclusively to the guided recreational (charter) sector fishing for Pacific halibut (*Hippoglossus stenolepis*) in International Pacific Halibut Commission (IPHC) regulatory Area 2C and 3A. The measures under consideration include implementing an annual renewal process for the Charter Halibut Permit (CHP), which is a component of the Charter Halibut Limited Access Program. The information collected in an annual registration process would update and/ or expand on the CHP data. The intent is to provide more complete and useful information to evaluate whether changes to the CHP Program are necessary as a result of changes in ownership and participation of CHPs, to facilitate retirement of non-transferable permits when ownership changes, and improve the ability of enforcement agents to ensure valid permits are being used.

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## List of Acronyms and Abbreviations

ADF&G	Alaska Department of Fish and Game
AKFIN	Alaska Fisheries Information Network
BOF	Board of Fish
BSAI	Bering Sea and Aleutian Islands
CHP	Charter halibut permit
CHLAP	Charter halibut limited access program
COAR	Commercial Operators Annual Report
Council	North Pacific Fishery Management Council
CQE	Community Quota Entity
E.O.	Executive Order
EEZ	Exclusive Economic Zone
FMP	fishery management plan
ft	foot or feet
GHL	guideline harvest level
GOA	Gulf of Alaska
IPHC	International Pacific Halibut Commission
lb(s)	pound(s)
LOA	length overall
Magnuson-Stevens Act	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
PA	Preferred alternative
PPA	Preliminary preferred alternative
PRA	Paperwork Reduction Act
RAM	Restricted Access Management Program
RIR	Regulatory Impact Review
RQE	Recreational Quota Entity
TAC	total allowable catch
U.S.	United States
USCG	United States Coast Guard

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## Executive Summary

This document analyzes proposed management measures that would apply exclusively to the guided recreational (charter) sector fishing for Pacific halibut (*Hippoglossus stenolepis*) in International Pacific Halibut Commission (IPHC) regulatory Area 2C and 3A. The action under consideration includes implementing an annual renewal process for Charter Halibut Permits (CHPs), which are a component of the Charter Halibut Limited Access Program. The information collected in an annual registration process would update and/ or expand on the CHP data. The intent is to provide more complete and useful information to evaluate whether changes to the CHP Program are necessary as a result of changes in ownership and participation of CHPs, to facilitate retirement of non-transferable permits when ownership changes, and improve the ability of enforcement agents to ensure valid permits are being used.

### Purpose and Need

The Council adopted a purpose and need in December 2016 and revised it in October 2017.

*The charter halibut fishery currently lacks a Charter Halibut Permit (CHP) registration or renewal process. The lack of CHP renewal process limits the information available to the Council for understanding and tracking changes and trends in CHP ownership, participation and latency. A renewal process also would improve enforcement of CHP usage on the water and facilitate retirement of non-transferable permits. It will also ensure that the Council and stakeholders get more complete information about the performance and usage of CHPs and to help assess the degree to which CHP holders are active participants in the fishery. The Council is considering developing an annual renewal for the CHP Program to provide improved information to evaluate whether changes to the CHP Program are necessary as a result of changes in ownership and participation of CHPs, facilitate retirement of non-transferable permits when ownership changes, and improve the ability of enforcement agents to ensure valid permits are being used.*

### Alternatives

The Council adopted the following alternatives for analysis in December 2016 and updated them in October 2017. The action alternative in this analysis was designed to accomplish the stated purpose and need for the action; to improve the information available to help evaluate whether changes to the CHP Program are necessary, facilitate retirement of non-transferable permits when ownership changes, and improve the ability of enforcement agents to ensure valid permits are being used.

The Council identified its preliminary preferred alternative (PPA) in October 2017 as well as adding Option 4 for consideration, outlining a question to ask CHP holders about the use of their CHP in the preceding year. In April 2018, the Council identified a preferred alternative (PA), shown in bold below. The Council also specified and adopted, as part of its PA, language for a question asking CHP holders about CHP use. This language was modified from what was previously presented in Option 4.

#### **Alternative 1. Status quo**

**Alternative 2. Implement an annual registration process for transferable and non-transferable charter halibut permits (CHP). A CHP holder must submit the following information to NMFS on an annual basis to register a CHP:**

- **CHP number,**
- **CHP holder name (individual or non-individual entity),**
- **CHP holder address, and**
- **CHP holder phone number and/ or email address**

**If a CHP is not registered with NMFS, the CHP would not be valid for use during the applicable fishing year.**

*Options for additional requirements could include (options are not mutually exclusive):*

**Option 1. CHP ownership (e.g., ownership holdings for the CHP by individual(s), partners, or a corporate entity).**

Option 2. Natural person(s) and/or vessel(s) that will use the permit.

*Sub-option:* If a non-transferable CHP is used by a natural person(s) and/or vessel(s) that was not submitted to NMFS during the annual registration, the CHP would not be valid for use during the following fishing year.

Option 3. For non-transferable permits, the CHP holder must notify NMFS where the permit will be used (i.e., the beginning and/or ending port(s) to trips where the CHP is used.

*Sub-option:* If a non-transferable CHP is used for a trip that begins or ends in a port that was not submitted to NMFS during the annual registration, the CHP would not be valid for use during the following year.

**Option 4. CHP use as indicated by answering the following question(s):**

- 1) In the last year, was this CHP used by an operator who is not part of the CHP ownership structure?
- 2) If yes, what were the agreed upon compensation terms for the use of the CHP?
  - a. No compensation; operator is an employee of the CHP holder
  - b. A flat fee paid to the permit holder
  - c. A fee that is the percentage of gross earnings
  - d. Combination of flat fee and percentage

Option 4 was modified in April 2018 by the Council to ask:

- 1) **Did you receive financial compensation for use of a CHP in the preceding year?**

## **Comparison of Alternatives Under the Council's Preferred Alternative**

Table 1 summarizes the benefits, costs (burden/ drawbacks), and ability of each alternative and option to address the stated purpose and need. The shaded cells highlight the Council's current PA.

The Council's Preferred Alternative (PA) includes Alternative 2, action to implement an annual registration process for CHPs, in order to be responsive to the issues described in the Council's purpose and need. The intention of non-transferable CHPs is that they would leave the fishery and no longer be valid when changes occurred to the original CHP holder's ownership structure, or the original CHP holder was deceased. An annual registration would provide a mechanism to determine if these events have occurred. The Council expects this action will aid in tracking consolidation, latency, and the use of CHPs. This action is expected to improve 'on the water' enforcement of CHPs, since CHPs will need to be current to be valid.

Alternative 2 provides standard annual registration information for registration and Option 1 is intended to determine the actual corporate structure and ownership. The collection of this updated ownership information suggested under Option 1 will help evaluate CHP usage, thus the Council included it as part of its PA.

The Council did not choose to include Options 2 and 3 in its PA. Option 2 asks for the name of the natural person using the CHP and the vessels that the CHP is used on. The Council understood that requiring these lists could create issues for businesses that had unforeseen circumstances and had to use their CHP differently during the season than intended. If a vessel has mechanical issues or a person listed leaves their employment and is replaced, these CHP holders and the businesses they are associated with may be penalized the following year for deviating from their list. Option 3 attempts to capture where and who will be using non-transferable CHPs. This information might not be known at the time of registration and

at times CHPs are used in different regions in one season. This would motivate CHP holders to be as comprehensive as possible in their list, recording every possible port of landing their CHP may be associated with. Again, the requirement could penalize CHP holders and the businesses they represent when unforeseen circumstances arise. This information does not necessarily limit leasing.

The Council chose not to include the questions originally listed under Option 4 which asks about use of CHP and type of compensation received for use of that CHP if it used by an operator who is not part of the CHP ownership structure. The analysis highlighted some short-comings of the wording for this question. For instance, if a CHP was used by multiple people each year and each of these people had a different financial relationship with the CHP holder (e.g., employee of the same business, friend that pays a flat fee, etc.), the CHP holder may not know how to answer this question. Moreover, some Council members did not consider it useful to know that type of compensation that was received from use of a CHP. There are many forms of compensation and different types of leasing. One Council member noted reluctance to include intent for collecting this type of information without suggesting the actual wording of the questions as well.

The Council ultimately adopted a yes or no style question in place of the question originally proposed under Option 4. This question asks: **Did you receive financial compensation for use of a CHP in the preceding year?** This question is intended to aid the Council in understanding the extent of leasing-like activity that occurs by CHP holders. The purpose of this action is not to create limitations on leasing, but to provide a greater understanding of how CHPs are used within the halibut charter sector. One Council member spoke to his support stating that he did not want to make a value judgement on the type of leasing that occurs in the charter halibut fishery, but that the Council should not miss an opportunity to collect information about the type of operations that occur in the halibut charter sector in order to monitor future trends.

The intention of this question is to understand arm's length-type CHP leases, rather than "self-leasing" situations, or, for example, when a CHP is held by a lodge owner and used without compensation by fishing guides employed through the lodge. The Council clarified that the financial compensation referenced does not refer to compensation received from charter anglers, but from a charter guide for use of the CHP. This compensation should not represent barter or trades, but other types of direct financial transfer for use of a CHP should be identified. The Council recommended NMFS include this type of clarifying context on the application. Like the other information listed on the application, the Council clarified that response to this question should be required in order to receive a renewed version of the CHP each year.

In addition, to the Alternatives and Options, the Council did not choose to have a specific date at which CHP would be automatically revoked as part of the registration process. If a non-transferable CHP was determined to have a change in ownership (i.e., the CHP holder passed away, or more people were added to the ownership structure of the CHP-holding entities), NMFS would follow the current due process procedure under the Administrative Procedures Act.

Additionally, it is the Council's intent to defer to the agency to implement the procedural details for obtaining a replacement permit in the event that an original permit becomes lost or destroyed. It is expected that this process will follow similar procedures already in place for other programs, and that replacement permits will be issued in a reasonably simple and timely fashion.

As described in the analysis, print-out or temporary CHPs could create a greater opportunity for CHP sharing as copies could be produced more easily and used on multiple vessels. Because there are no restrictions on who can use a CHP or on which vessel, the ability to make copies of a CHP could degrade the value of the CHP, create large enforcement challenges, and be counter to the intent of a limited access program. The Council stressed the financial hardship a charter business may experience in the event of a lost or damaged CHP if it does not have a convenient and expeditious way to obtain a replacement CHP. The Council highlighted the need to issue replacement CHPs in a simple and timely manner in order to

minimize both the economic burden to charter businesses and the possibility of citations in the event of a lost or damaged CHP.



**Table 1 Summary of benefits and cost of the proposed alternatives and options and their effectiveness at reaching the Council’s P&N (Council’s preferred alternative in shaded cells)**

Alternative or Option	Benefit	Cost/ Drawbacks/ Burden	Effectiveness at reaching the Council’s intent
Alternative 1: Status quo	No additional reporting burden on the charter sector. No additional administrative burden for NMFS AK region.	Does not provide for a systematic way for updating CHP holder information.	Does not address the stated purpose and need
<p><b>(PA) Alternative 2: Implement a Charter Halibut Permit annual renewal process.</b></p> <p><b>Provide:</b></p> <p><b>CHP number</b></p> <p><b>CHP holder name</b></p> <p><b>CHP holder address</b></p>	<p>Would provide a systematic way for updating CHP holder information. Changes to transferable CHP holders would be kept up-to-date. Changes to non-transferable CHP holders would clarify and accelerate the retirement of non-transferable CHPs.</p> <p>Would provide a better opportunity to track usage and latent capacity</p> <p>Issuing a CHP with the year identified on the permit could allow enforcement the ability to tell if the CHP is valid while they are on the water. It could decrease the number of invalid versions of CHPs used.</p>	<p>Will require time and effort for CHP holders to ensure the paperwork is completed.</p> <p>Could create a delay in the season if a CHP is not renewed in a timely fashion.</p> <p>NMFS Alaska Region will encounter costs, primarily in employee-hours, to annually issue and track the ownership of up to approximately 1,000 CHPs</p>	<p>Addresses the purpose and need by allowing for up-to-date information on CHP holders</p> <p>Allows for a better opportunity to track usage and latent capacity</p> <p>Still possible for changes in ownership to go unreported if there is a deliberate attempt to hide a change</p> <p>Does not assess the degree to which CHP holders are active participants as stated in the purpose and need.</p>
<b>(PA) Option 1. Provide CHP ownership update</b>	<p>Would provide a systematic way for updating CHP holder <i>ownership</i> information. Changes to transferable CHP holder ownership structure would be kept up-to-date. Would clarify and accelerate the retirement of non-transferable CHPs that have changed in ownership.</p> <p>Would provide a better opportunity to track usage and latent capacity</p> <p>Would help enforce the caps on CHP ownership</p>	<p>Will require time and effort for CHP holders to ensure the paperwork is completed appropriately</p> <p>Could create a delay in the season if a CHP is not renewed in a timely fashion</p> <p>NMFS Alaska Region will encounter significant costs, primarily in employee-hours, to annually issue and track the ownership of up to approximately 1,000 CHPs</p>	<p>Addresses the purpose and need by allowing for up-to-date information on CHP holders. This will allow for a better opportunity to track usage and latent capacity</p> <p>Still possible for changes in ownership to go unreported if there is a deliberate attempt to hide a change</p> <p>Does not assess active participation.</p>

Alternative or Option	Benefit	Cost/ Drawbacks/ Burden	Effectiveness at reaching the Council's intent
<p>Option 2. Provide natural person(s) and/or vessel(s) that will use the CHP</p> <p>AND</p> <p>Option 3. Provide the beginning and/or ending ports that will be used by a non-transferable CHP</p>	<p>Could discourage spontaneous sharing/leasing of CHPs throughout the season.</p>	<p>This action may not monitor or restrict leasing as long as the lease was planned.</p> <p>Incentive to report all people, vessels, and/or ports that might be used, regardless of leasing behavior</p> <p>Much of this information can already be gleaned from logbooks.</p> <p>Will require time and effort for CHP holders to ensure the paperwork is completed</p> <p>NMFS Alaska Region will encounter costs, primarily in employee-hours, to annually issue and track the ownership of up to approximately 1,000 CHPs</p>	<p>Does not assess the degree to which CHP holders are active participants as stated in the purpose and need.</p> <p>May be repetitive with information that is currently available in logbooks</p>
<p><i>Sub-option.</i> Non-transferable CHP will not be valid the following year if used by person, vessel, and/or port not registered</p>	<p>More likely to ensure that charter operators abided by their list of people, vessels, and/or ports designated to use the CHP</p>	<p>Could create a lost season if guide, vessels, and/ or ports are not properly registered</p> <p>Problematic for businesses that experience unexpected events like vessel maintenance issues, guide health issues, etc. Temporary allowances for emergency situations could create enforcement issues.</p>	<p>Does not assess the degree to which CHP holders are active participants as stated in the purpose and need.</p>
<p><b>(PA) Option 4. Question on renewal application about CHP use</b></p>	<p>Could provide for a better understand of CHP use and leasing behavior.</p>	<p>Will require time and effort for CHP holders to ensure the paperwork is completed.</p> <p>May create a delay in the season if a CHP is not renewed in a timely fashion (if it is a required element).</p> <p>NMFS Alaska Region will encounter costs, primarily in employee-hours, to annually issue and track the ownership of up to approximately 1,000 CHPs</p>	<p>May provide for a better understanding of active participation in the fleet through increased understanding of leasing.</p>

# 1 Introduction

This document analyzes proposed management measures that would apply exclusively to the guided recreational (charter) sector fishing for Pacific halibut (*Hippoglossus stenolepis*) in International Pacific Halibut Commission (IPHC) regulatory Area 2C and 3A. The measures under consideration include implementing an annual renewal process for Charter Halibut Permits (CHPs), which are a component of the Charter Halibut Limited Access Program. The information collected in an annual registration process would update and/ or expand on the CHP data. The intent is to provide more complete and useful information to evaluate whether changes to the CHP Program are necessary as a result of changes in ownership and participation of CHPs, to facilitate retirement of non-transferable permits when ownership changes, and improve the ability of enforcement agents to ensure valid permits are being used.

This document is a Regulatory Impact Review (RIR), which provides an assessment of the economic benefits and costs of the action alternatives as well as their distribution.<sup>1</sup> This RIR addresses the statutory requirements of the Magnuson Stevens Fishery Conservation and Management Act and Presidential Executive Order 12866. An RIR is a standard document produced by the North Pacific Fishery Management Council (Council) and the National Marine Fisheries Service (NMFS) Alaska Region to provide the analytical background for decision-making.

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 or safety, 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

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<sup>1</sup> The proposed action has no potential to effect individually or cumulatively on the human environment. The only effects of the action are economic, as analyzed in this RIR. As such, it is categorically excluded from the need to prepare an Environmental Assessment. Additionally, Section 603 of the Regulatory Flexibility Act requires that an initial regulatory flexibility analysis (IRFA) be prepared to identify if a proposed action will result in a disproportionate and/ or significant adverse economic impact on the directly regulated small entities, and to consider any alternatives that would lessen this adverse economic impact to those small entities. As of January 2017, NMFS Alaska Region will prepare the IRFA in the classification section of the proposed rule for an action.

- Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in this Executive Order.

## 1.1 Purpose and Need

The Council adopted a purpose and need in December 2016 and revised it in October 2017.

*The charter halibut fishery currently lacks a Charter Halibut Permit (CHP) registration or renewal process. The lack of CHP renewal process limits the information available to the Council for understanding and tracking changes and trends in CHP ownership, participation and latency. A renewal process also would improve enforcement of CHP usage on the water and facilitate retirement of non-transferable permits. It will also ensure that the Council and stakeholders get more complete information about the performance and usage of CHPs and to help assess the degree to which CHP holders are active participants in the fishery. The Council is considering developing an annual renewal for the CHP Program to provide improved information to evaluate whether changes to the CHP Program are necessary as a result of changes in ownership and participation of CHPs, facilitate retirement of non-transferable permits when ownership changes, and improve the ability of enforcement agents to ensure valid permits are being used.*

## 1.2 History of this Action

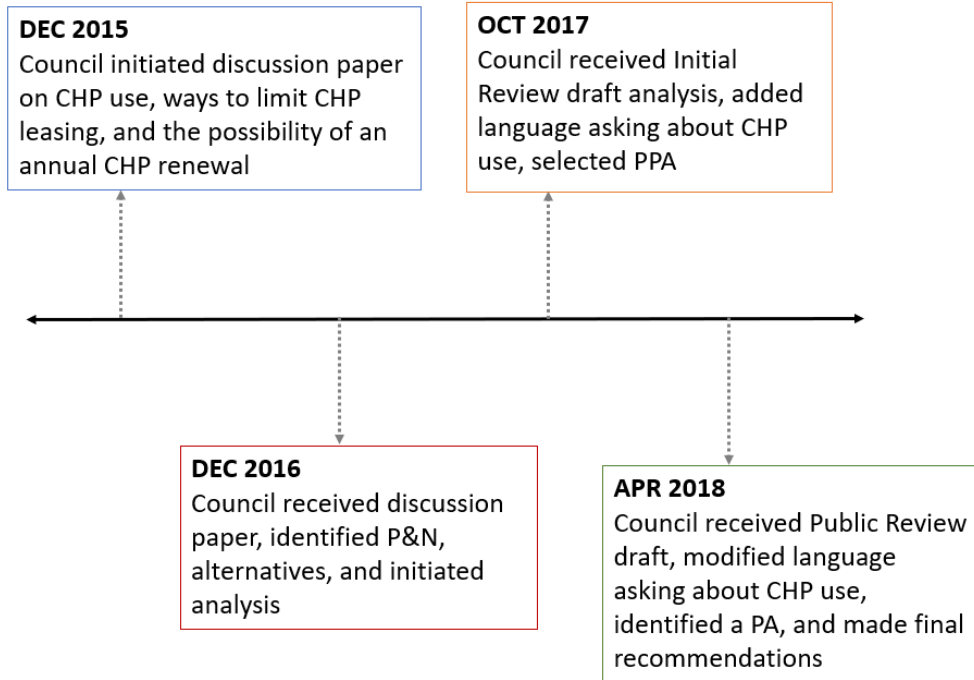
The analyses of a recreational quota entity (RQE) (NMFS/NPFMC 2017; NPFMC 2015, 2016), were centered around a purpose and need about the increasingly restrictive charter halibut management measures and a desire for the charter sector to have some influence on their regulatory environment through a ‘willing buyer, willing seller’ mechanism. Since the annual charter halibut management measures not only depend on the availability of the halibut resource, but also past trends in angler harvest and effort, this analysis prompted discussions about the state of the charter sector (i.e., growth versus decline in amount and level of operations). Thus, after consideration of an Initial Review Draft of the RQE analysis (NPFMC 2015), the Council requested that staff produce a discussion paper on CHP usage to be considered on a separate track from RQE.

In December 2016, a Council discussion paper (NMFS/NPFMC 2016) was produced in response to this motion looking at CHP usage. The purpose of this paper was to examine the potential for requiring an annual CHP renewal and to consider how to limit use of CHPs by persons who are not the permit holder (i.e., leasing; note see Section 4.2.4.2 for a more complete history of the Council’s consideration of leasing restrictions in the charter halibut fishery). This discussion paper highlighted the benefits of establishing an annual CHP renewal process and identified substantial logistical challenges in limiting (or prohibiting) leasing behavior, particularly without additional information on the diverse business structures of charter halibut fishing operations. The discussion paper noted that if the Council was interested in considering future action to either limit leasing activity (for non-transferable permits or all permits) and/ or considering measures to address latent CHP capacity, establishing an annual CHP renewal process could provide a more complete picture of the existing charter halibut fishing operations and better inform future changes to the program. Thus, in December 2016, the Council established a purpose and need, a set of alternatives, and requested an Initial Review Draft of an analysis on establishing an annual renewal process for CHPs.

The Council considered the first iteration of this analysis in October 2017. At this meeting, the Council identified Alternative 2, including Option 1 as a preliminary preferred alternative (PPA). The Council added in Option 4 and revised the purpose and need to address its intention for the inclusion of this question about CHP use.

In April 2018 the Council took final action to recommend a PA. The Council adopted all of the elements as in its PPA in addition to a question asking whether financial compensation was received from use of CHP in the preceding year.

**Figure 1 History of Council consideration of this amendment package**



### 1.3 Relationship of this Action to Federal Law

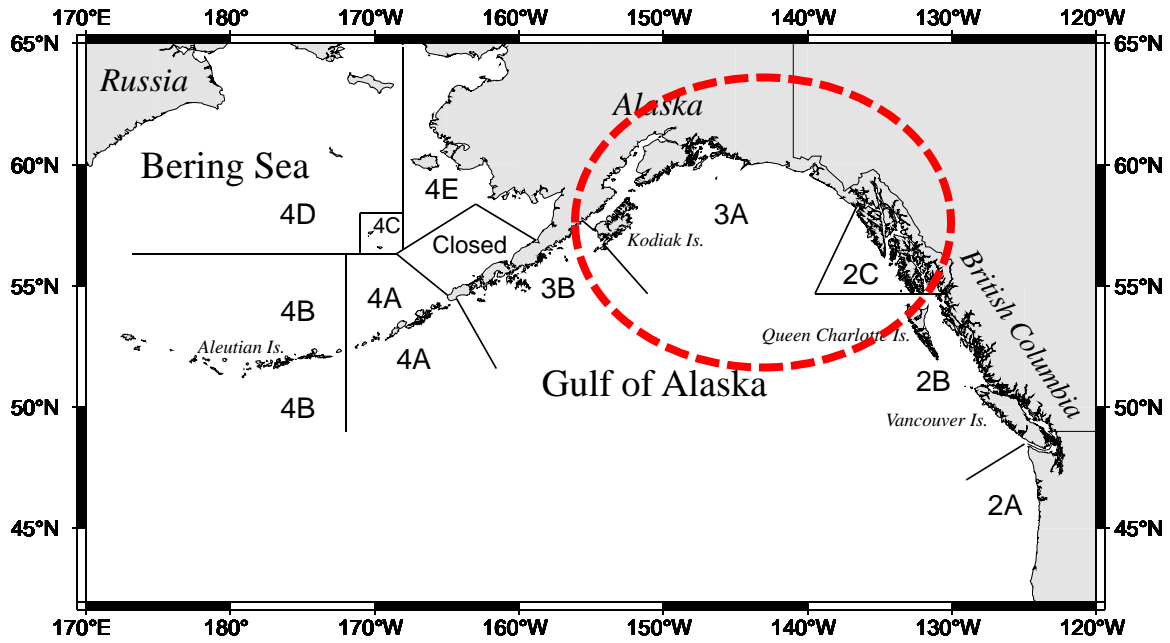
The Pacific halibut fishery in convention waters off Alaska is governed under the authority of the Northern Pacific Halibut Act of 1982 (Halibut Act, 16 U.S.C. 773-773k), in coordination with annual fishery management measures adopted by the IPHC. Section 5 details the authority of the Halibut Act and its relevance to the proposed action.

The IPHC promulgates regulations governing the halibut fishery; however, the Council may recommend regulations that are 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 USC 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.

### 1.4 Description of Action Area

The proposed action would directly affect charter halibut participants in IPHC halibut regulatory Areas 2C (Southeast Alaska) and 3A (South Central Alaska). Direct effects would be expected to occur for CHP holders in these areas with indirect effects to other charter halibut participants.

Figure 2 International Pacific Halibut Commission Regulatory Areas



## 2 Description of Alternatives

The Council adopted the following alternatives for analysis in December 2016 and updated them in October 2017. The action alternative in this analysis was designed to accomplish the stated purpose and need for the action; to improve the information available to help evaluate whether changes to the CHP Program are necessary, facilitate retirement of non-transferable permits when ownership changes, and improve the ability of enforcement agents to ensure valid permits are being used.

The Council identified its preliminary preferred alternative (PPA) in October 2017 as well as adding Option 4 for consideration, outlining a question to ask CHP holders about the use of their CHP in the preceding year. In April 2018, the Council identified a preferred alternative (PA), shown in bold below. The Council also specified and adopted, as part of its PA, language for a question asking CHP holders about CHP use. This language was modified from what was previously presented in Option 4.

Alternative 1. Status quo

**Alternative 2. Implement an annual registration process for transferable and non-transferable charter halibut permits (CHP). A CHP holder must submit the following information to NMFS on an annual basis to register a CHP:**

- **CHP number,**
- **CHP holder name (individual or non-individual entity),**
- **CHP holder address, and**
- **CHP holder phone number and/ or email address**

**If a CHP is not registered with NMFS, the CHP would not be valid for use during the applicable fishing year.**

*Options for additional requirements could include (options are not mutually exclusive):*

**Option 1. CHP ownership (e.g., ownership holdings for the CHP by individual(s), partners, or a corporate entity).**

Option 2. Natural person(s) and/or vessel(s) that will use the permit.

*Sub-option:* If a non-transferable CHP is used by a natural person(s) and/or vessel(s) that was not submitted to NMFS during the annual registration, the CHP would not be valid for use during the following fishing year.

Option 3. For non-transferable permits, the CHP holder must notify NMFS where the permit will be used (i.e., the beginning and/or ending port(s) to trips where the CHP is used.

*Sub-option:* If a non-transferable CHP is used for a trip that begins or ends in a port that was not submitted to NMFS during the annual registration, the CHP would not be valid for use during the following year.

**Option 4. CHP use as indicated by answering the following question(s):**

- 1) In the last year, was this CHP used by an operator who is not part of the CHP ownership structure?
- 2) If yes, what were the agreed upon compensation terms for the use of the CHP?
  - a. No compensation; operator is an employee of the CHP holder
  - b. A flat fee paid to the permit holder
  - c. A fee that is the percentage of gross earnings
  - d. Combination of flat fee and percentage

OR

- 1) **Did you receive financial compensation for use of a CHP in the preceding year?**

## 2.1 Alternative 1, No Action

The no action alternative is the regulatory status quo. CHP ownership data was originally collected/assigned when the CHLAP was implemented in 2011. This information includes permit holder name, business name (if provided), a mailing address, transferable or non-transferable status of permit, the type of permit (CHP, CQE charter permit or MWR charter permit – see Section 3.2.1), the angler endorsement for the permit, the assigned permit number, the assigned version letter, and an NMFS identification number that was assigned to each holder.

Under status quo, CHP ownership data is updated through the NMFS Restricted Access Management (RAM) Program when the information is volunteered, a CHP is transferred, or there is a request to reissue a permit. The latter occurs if a CHP is lost or damaged. For instance, RAM has received requests to reissue CQE charter permits when a Community Quota Entity (CQE) has difficulty collecting all of their permits back from charter operators. When a replacement is requested, the replacement is issued using the same original CHP number (*e.g.*, 4168) with a new version number (*e.g.*, 4168-B). Section 3.2 provides thorough background on status quo CHP regulations, use, and previous considerations of changes.

## 2.2 Alternative 2, Implement an Annual Registration Process for CHPs

The action alternative would implement an annual registration process for all (transferable and non-transferable) CHPs. In this annual process, the CHP holder would be required to submit the CHP serial number, the name of the CHP holder (individual or non-individual entity), the CHP holder address to NMFS, and CHP phone number and/or email address. If a CHP holder does not register with NMFS, their CHP(s) would not be valid for use during the applicable fishing year.

The four options under Alternative 2 suggest additional information that could be collected. Option 1, is part of the Council's PA and includes requiring details of the CHP ownership. For individuals who are sole owners of a CHP, this would be simply their given name. For partnerships or other types of entities that hold CHPs, this would include a more detailed explanation of the business ownership structure.

Option 2 is not part of the Council's PA. This option would require submission of the names of individuals and/ or vessels that will use the CHP in the following season in order for the permit to be renewed. If this option is recommended, it should be clear whether this option applies to non-transferable CHPs only, or both transferable and non-transferable CHPs. The sub-option stipulates that if a non-transferable CHP was used by an individual or vessel not listed on the CHP application, NMFS would not authorize that CHP for use the following year. Without the adoption of the sub-option, using a CHP by an individual or vessel not listed on the CHP application may still constitute a regulatory violation and CHP holder could still be subject to some other enforcement action (*e.g.* a fine).

For CHPs that are non-transferable, Option 3 would require submission of the location where the CHP would be used (*i.e.*, the beginning and/or end port). The sub-option stipulates that if a CHP was used on a trip leaving/ returning to a port not listed on the CHP application, there may be enforcement action. Again, without the adoption of the sub-option, a CHP used at a port not listed on the CHP application may still constitute a regulatory violation and CHP holder could still be subject to some other enforcement action (*e.g.* a fine). Option 3 is not part of the Council's PA.

Option 4 includes a question in the CHP renewal application asking about CHPs that are used by a person that is not the CHP holder. The original language of this question was rejected by the Council. Instead the Council proposed a yes/no question stated as: "Did you receive financial compensation for use of a CHP in the preceding year?". Section 2.3 clarifies the intent of this question.

The proposed action alternative and its options do not require an FMP amendment; however, they do require changes to Federal regulations. As an additional request for uniform information for greater than nine entities, this action would also need to comply with the Paperwork Reduction Act (PRA). This



process estimates the time burden of effort on the public and requires approval from the Office of Management and Budget (OMB).

### 2.3 Council's Rationale for the Preferred Alternative

The Council's PA includes Alternative 2, action to implement an annual registration process for CHPs, in order to be responsive to the issues described in the Council's purpose and need. The intention of non-transferable CHPs is that they would leave the fishery and no longer be valid when changes occur to the original CHP holder's ownership structure, or the original CHP holder is deceased. An annual registration would provide a mechanism to determine if these events have occurred. The Council also expects this action will aid in tracking consolidation, latency, and the use of CHPs. Additionally, this action is expected to improve 'on the water' enforcement of CHPs, since CHPs will need to be current to be valid.

Alternative 2 provides standard annual registration information for registration and Option 1 is intended to determine the actual corporate structure and ownership. The collection of this updated ownership information suggested under Option 1 will help evaluate CHP usage, thus the Council included it as part of its PA.

The Council did not choose to include Options 2 and 3 in its PA. Option 2 asks for the name of the natural person using the CHP and the vessels that the CHP is used on. The Council understood that requiring these lists could create issues of unforeseen circumstances for businesses had to use their CHP differently during the season than originally intended. For example, if a vessel has mechanical issues or a listed person leaves their employment and is replaced by someone else, these CHP holders and their associated businesses might be penalized the following year for deviating from their pre-season documentation. Option 3 attempts to capture where and who will be using non-transferable CHPs. This information might not be known at the time of registration and at times CHPs are used in different regions in one season. This would motivate CHP holders to be as comprehensive as possible in their list, recording every possible port of landing their CHP may be associated with. Again, the requirement could penalize CHP holders and the businesses they represent when unforeseen circumstances arise. This information does not necessarily limit leasing.

The Council chose not to include the questions originally listed under Option 4 which asks about use of CHP and the type of compensation received for use of that CHP if it used by an operator who is not part of the CHP ownership structure. The analysis highlighted some shortcomings of the wording for this question. For instance, if a CHP was used by multiple people each year and each of these people had a different financial relationship with the CHP holder (e.g., employee of the same business, friend that pays a flat fee, etc.), the CHP holder may not know how to answer this question. Moreover, some Council members did not consider it useful to know the type of compensation that was received from use of a CHP. There are many forms of compensation and different types of leasing. One Council member noted reluctance to include intent for collecting this type of information without suggesting the actual wording of the questions as well.

The Council ultimately adopted a yes or no style question in place of the question originally proposed under Option 4. This question asks: **Did you receive financial compensation for use of a CHP in the preceding year?** This question is intended to aid the Council in understanding the extent of leasing-like activity that occurs by CHP holders. The purpose of this action is not to create limitations on leasing, but to provide a greater understanding of how CHPs are used within the halibut charter sector. One Council member spoke to his support stating that he did not want to make a value judgement on the type of leasing that occurs in the charter halibut fishery, but that the Council should not miss an opportunity to collect information about the type of operations that occur in the halibut charter sector in order to monitor future trends.

The intention of this question is to understand arm's length-type CHP leases, rather than "self-leasing" situations, or, for example, when a CHP is held by a lodge owner and used without compensation by fishing guides employed through the lodge. The Council clarified that the financial compensation referenced does not refer to compensation received from charter anglers, but from a charter guide for use of the CHP. This compensation should not represent barter or trades, but other types of direct financial transfer for use of a CHP should be identified. The Council recommended NMFS include this type of clarifying context on the application. Like the other information listed on the application, the Council clarified that response to this question should be required in order to receive a renewed version of the CHP each year.

In addition, to the Alternatives and Options, the Council did not choose to have a specific date at which CHP would be automatically revoked as part of the registration process. If a non-transferable CHP was determined to have a change in ownership (i.e., the CHP holder passed away, or more people were added to the ownership structure of the CHP-holding entities), NMFS would follow the current due process procedure under the Administrative Procedures Act.

It is the Council's intent to defer to the agency to implement the procedural details for obtaining a replacement permit in the event that an original permit becomes lost or destroyed. It is expected that this process will follow similar procedures already in place for other programs, and that replacement permits will be issued in a reasonably simple and timely fashion.

As described in the analysis, print-out or temporary CHPs could create a greater opportunity for CHP sharing as copies could be produced more easily and used on multiple vessels. Because there are no restrictions on who can use a CHP or on which vessel, the ability to make copies of a CHP could degrade the value of the CHP, create large enforcement challenges, and be counter to the intent of a limited access program. The Council stressed the financial hardship a charter business may experience in the event of a lost or damaged CHP if it does not have a convenient and expeditious way to obtain a replacement CHP. The Council highlighted the need to issue replacement CHPs in a simple and timely manner in order to minimize both the economic burden to charter businesses and the possibility of citations in the event of a lost or damaged CHP.

### 3 Background Information on the Status Quo

In order to better understand the expected impacts from a CHP annual renewal process, the following sections provide information on the status quo of ADF&G sport fishing licensing, registration, and logbooks, as well as information on the charter halibut limited access program, including CHP characteristics, usage, management, and enforcement. This section concludes with a review of the Council's previous consideration of CHP leasing.

#### 3.1 ADF&G Licensing, Registration, and Logbooks

##### Sport Fishing Business and Guide License

The Alaska Department of Fish and Game (ADF&G) Division of Sport Fish has operated a program to register and license both sport fishing guides and sport fishing guide businesses since 1998 (Powers & Sigurdsson 2016). This licensing has been mandatory for both fresh water and saltwater sport fishing guides and business.<sup>2</sup> The license application can be used in three ways:

- 1) To license a business only
- 2) To license a guide only
- 3) To license a combination business owner / guide (an owner/operator where the owner also conducts the guiding)

Table 2 details the number of business and guide licenses issued by region. This table illustrates the number of sportfishing guide business licenses, guide licenses, and combination business/ guide licenses issued each year. Apparent in this table is that the vast majority of business owners purchase a combination business/ guide license, rather than just a business license. Ninety percent of the total business licenses in 2016 were acquired through the purchases of the combination license. Owner/ operator businesses are common in the sport fishing industry. However, there is also a financial incentive to purchase a combination guide/ business license, as the combination license has been the same price as the business license on its own. Even if the business owner hires other employees as the primary guides for their business, if there is a chance the owner may be operating as a guide at some point during the season, it makes sense for them to purchase the combination license.

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<sup>2</sup> Until 2016, a license was valid for either saltwater or freshwater sportfishing guides and guide business operations. In 2017, the licensing system was maintained for saltwater guides/ businesses, and those that participate in both freshwater and saltwater. However, in 2017 a license is not required for those who work exclusively in freshwater. Those that exclusively guided and/or operated a guide business in freshwater were still required to register through ADF&G; however, there were no fees for the registration.

For further description see: [http://www.adfg.alaska.gov/static/license/prolicenses/pdfs/sportfish\\_guide-business\\_2017\\_changes.pdf](http://www.adfg.alaska.gov/static/license/prolicenses/pdfs/sportfish_guide-business_2017_changes.pdf)

**Table 2 Number of licensed businesses and guides by region, 2012 through 2016**

<b>Licensed Businesses<sup>a</sup></b>					
<b>Region<sup>b</sup></b>	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>
Southeast	36	31	36	37	32
Southcentral	64	58	63	52	53
Other Alaska	4	3	6	4	4
Resident Total	104	92	105	93	89
Other U.S.	27	30	27	28	33
Foreign	0	0	0	0	0
Nonresident Total	27	30	27	28	33
Total (all resident types)	131	122	132	121	122
<b>Combination Licenses<sup>c</sup></b>					
	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>
Southeast	288	277	268	276	298
Southcentral	656	608	560	604	639
Other Alaska	50	53	40	57	70
Resident Total	994	938	868	937	1,007
Other U.S.	138	118	115	142	155
Foreign	0	0	0	0	0
Nonresident Total	138	118	115	142	155
Total (all resident types)	1,132	1,056	983	1,079	1,162
<b>Licensed Guides<sup>d</sup></b>					
	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>
Southeast	228	207	222	264	272
Southcentral	614	585	598	723	741
Other Alaska	72	68	72	100	116
Resident Total	914	860	892	1,087	1,129
Other U.S.	798	850	911	908	973
Foreign	0	1	2	3	2
Nonresident Total	798	851	913	911	975
Total (all resident types)	1,712	1,711	1,805	1,998	2,104

Source: ADF&amp;G Sport Fish Division

Notes: Data are current as of 08/10/2017; does not include duplicate licenses.

<sup>a</sup> Business-only licenses do not include the owner as a guide<sup>b</sup> Region assigned based on the physical address indicated at time of licensing<sup>c</sup> Combination licenses are issued to business owner/guides, where the business owners may conduct some or all of the guiding.<sup>d</sup> Guide license only, no business license

The license application collects the name of the business owner and/ or guide, and the permanent mailing information, permanent phone number, and in-season phone number if applicable. Those who apply for a business or a combo license also provide the name(s) of the business and, name of the business owner, occupational business license number, insurance company information, and insurance binder or policy number and effective dates. Citizenship information is also collected; a licensed fishing guide must be a citizen of the United States, Canada, or Mexico. Guides are also required to provide the status of their first aid training and certification, and the status and serial number of their current Alaska sport fishing license. If a guide plans to operate a motorized vessel on navigable waters with clients on board, the guide

is required to have a current U.S. Coast Guard Operator's License and provide that number and expiration date on the license application.

Once the license applications are reviewed for completeness and accuracy, ADF&G Division of Sport Fish mails a wallet-sized license to each guide or business. Individuals who apply for a license in person at an ADF&G office receive a copy of their application which serves as a temporary license and allows them to operate immediately. Those who apply for a license on the Internet, or by mailing their renewal application, are required to wait until they received their license in the mail prior to operating or providing guiding services.

## **Vessel Registration**

Charter vessel registration information is collected when a saltwater or freshwater logbook is issued to a business. Registration information includes the Alaska Division of Motor Vehicles registration number (AK number) or the USCG vessel documentation number. Upon completion of vessel registration with ADF&G, each vessel is provided two guide boat decals and year tags to indicate that the vessel may be used in the guide industry. Decals must be applied and visible on both sides of the vessel. The business owner can call ADF&G to augment their list of registered vessels throughout the season. There is no limit on the number of vessels a business can use in a season.

## **Saltwater Charter Logbook**

ADF&G Saltwater Charter Sportfishing Logbooks (logbooks) are issued to specific business for a specific vessel. All active vessels must be registered and issued a current year logbook from an ADF&G office. Logbooks may not be transferred between vessels or between businesses. For example, if Big Buts Lodge owns five charter vessels, Big Buts Lodge would apply for five logbooks, one for each vessel. If Big Buts Lodge shares a vessel throughout the season with Little Buts Charter LLC, that vessel would need two logbooks, one for each business (see Appendix for an example of the current logbook page).<sup>3</sup>

A logbook record is required for every guided trip taken with clients, defined as the time period between the deployment of fishing gear from a vessel providing sport fishing services and the offloading of one or more anglers or any harvested fish from the vessel. Each trip is associated with an individual licensed business, vessel, guide, and CHP number. For multiple CHPs used on the same trip, the guide will use a logbook page for each. After April 2, logbook pages are required to be submitted to ADF&G weekly.

Since 2005, ADF&G has conducted an extensive in-season and post-season logbook validation process to improve the accuracy of reported information (Powers & Sigurdsson 2016). This process has recently incorporated phone calls and other types of on-site outreach which has significantly improved the quality of the data, minimized reoccurring mistakes by the guide, increased compliance, and contributed to the outreach portion of this program. As part of its in-season editing, ADF&G verifies the presence of a CHP number if the logbook indicates halibut was retained. Since the CHP is part of the Federal Charter halibut limited access program (discussed in Section 3.2), NOAA Office of Law Enforcement (OLE) is responsible for ensuring these CHPs are valid. Section 3.2.6 describes OLE's data auditing process.

Based on returned logbook pages, Table 3 demonstrates the number of saltwater businesses and saltwater fishing guides that have been active between 2012 through 2016. Table 3 shows a total of 564 saltwater charter businesses and 1,235 saltwater fishing guides active in both Southeast and Southcentral in 2016; averaging a little more than two guides per business. This table also shows a slow decrease in the number of active saltwater businesses in both Southeast and Southcentral between 2012 and 2016, with less

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<sup>3</sup> Note that ADF&G allows for the transfer of a logbook from a primary charter vessel to a substitute vessel for up to seven consecutive days. After seven days the business must obtain a new logbook and ADF&G must be notified with the substitute vessel registration.

variation in recent years. The number of active saltwater guides has not demonstrated a clear trend between this time period.

**Table 3 Number of active saltwater businesses and guides by region, 2012 through 2016**

Active Businesses <sup>a</sup>					
Region <sup>c</sup>	2012	2013	2014	2015	2016
Southeast	320	301	302	300	309
Southcentral	300	273	274	262	256
Total <sup>d</sup>	619	573	571	561	564
Active Guides <sup>b</sup>					
Region <sup>c</sup>	2012	2013	2014	2015	2016
Southeast	690	700	690	738	746
Southcentral	539	541	512	527	531
Total <sup>d</sup>	1,197	1,200	1,164	1,213	1,235

Source: ADF&G Sport Fish Division

Notes: Data from 2012- 2016 current as of 08/10/2017

<sup>a</sup> Active Business counts are based of the business number listed on the sign-out sheet of a logbook (this can be a business only or a combination business/ guide license) and the submission of at least one log page from the logbook.

<sup>b</sup> Active Guide counts are based on the guide number written on each log page (this can be a guide only or a combination business/ guide license) and the submission of at least log page showing that guide license number.

<sup>c</sup> Region is based on the port of offloading, salmon and bottomfish statistical areas

<sup>d</sup> Total is not additive because a business or guide could operate in both regions. Includes businesses and guides that offered both saltwater and freshwater services.

## 3.2 Charter Halibut Limited Access Program (CHLAP)

On January 5, 2010, NMFS published a final rule (75 FR 56903)<sup>4</sup> to create a limited access system for charter vessels in the guided sport fishery for Pacific halibut in waters of IPHC Regulatory Areas 2C (Southeast Alaska) and 3A (Central Gulf of Alaska). The Charter Halibut Limited Access Program (CHLAP) limits the number of charter vessels that may participate in the guided sport fishery for halibut in these areas. The intended effect of the CHLAP was to curtail growth of fishing capacity in the guided sport fishery for halibut. Regulations implementing the CHLAP are at 50 CFR 300.67.

### 3.2.1 Issuance of Charter Permits

Since February 1, 2011, all vessel operators in Areas 2C and 3A with charter anglers onboard have been required to have an **original, valid charter halibut permit (CHP)** onboard during every charter vessel fishing trip on which Pacific halibut are caught and retained. CHPs are endorsed for the appropriate regulatory area (2C or 3A) and, with limited exceptions, the number of charter vessel anglers that may catch and retain halibut on a charter vessel fishing trip.

NMFS issued CHPs to **licensed charter fishing business owners** based on their past participation (number of eligible trips and number of vessels used during the qualifying period) in the charter halibut fishery. Because the Council proposed eligibility for a CHP to be limited to the holder of an ADF&G business owner license, a person would not qualify for a CHP if he or she held only a guide license or

<sup>4</sup> Available at: <https://www.gpo.gov/fdsys/pkg/FR-2010-09-17/pdf/2010-23267.pdf>

owned a charter vessel but did not hold an ADF&G business owner license during the qualifying and recent participation years.

There are several reasons why the Council decided to link CHPs to ADF&G business owner licenses. Foremost is that the owner of the charter vessel fishing business is required to obtain a business owner license from ADF&G. The business owner is also required to register with ADF&G the vessel(s) to be used as a charter vessel in their business. The ADF&G business owner license number is required to be recorded on each sheet of the logbook because this license authorized the guide to provide fishing guide services to the charter vessel anglers. Additionally, the business owner is responsible for submitting the logbook sheets to ADF&G within the required time limits. In summary, every charter vessel fishing trip was authorized by, and made pursuant to, an ADF&G business owner license. In order to identify eligibility for a CHP, the basic unit of participation for receiving a CHP was a logbook fishing trip, which were tied to the ADF&G business owner.

After the initial issuance of CHPs in 2010 and resolution of appeals of “interim permits” in 2012, no new permits (excluding CQE and MWR charter permits) have been issued. An implementation review report detailing the initial issuance and appeals resolution process is available on the NMFS website (NMFS 2012).

The CHLAP also provides a limited number of permits issued on request to nonprofit corporations representing specified rural communities (community quota entities or “CQE”) and for the U.S. Military’s Morale, Welfare and Recreation (MWR) programs for service members. All CQE and MWR charter permits are non-transferable.

Table 4 summarizes the number of valid MWR and CQE charter permits, as well as CHPs as of November 3, 2016. Table 4 demonstrates that there are very few MWR permits, and there are more CQE charter permits in Area 3A than in Area 2C.

**Table 4 Number of CHPs, MWR, CQE charter permits by regulatory area, 2016**

Regulatory Area	Permit type	Number of permits
2C	MWR	1 (<1%)
	CQE	48 (8%)
	CHPs	534 (92%)
	Total 2C	583
3A	MWR	6 (1%)
	CQE	63 (13%)
	CHPs	434 (86%)
	Total 3A	503
		1,086

Source: NMFS CHP database, November 3, 2016

### 3.2.2 Transferable and Non-transferable CHPs

CHPs were issues as either transferable or non-transferable, depending on the fishing history of the initial recipient. Transferable CHPs were issued to established businesses with a higher threshold of demonstrated history of participation in the charter halibut fishery. Participation was measured by the number of fishing trips reported in the logbook during two periods: a historic qualification year (2004 or 2005) and a recent qualification year (2008). To obtain a transferable CHP, an applicant must have reported a minimum of 15 logbook fishing trips on the same vessel during one of the two historic qualification years and a minimum of 15 logbook fishing trips on the same vessel in the recent qualification year.

Transferable permits allow new entrants in the fishery as the original CHP recipients leave the fishery. The Council and NMFS expected some consolidation in the fishery as CHP holders obtain additional permits by transfer. The consolidation of CHPs by one business could either allow them the opportunity to expand the number of charter vessels in their fleet or allow them to stack CHPs on one vessel and bring more anglers out on the water at one time. Only transferable permits were intended to be transferred to another business when the permit holder decided to leave the fishery.

CHP holders are subject to caps on the number of permits they may hold (typically five CHPs). However, an exemption was granted for initial recipients that were initially issued greater than five (i.e., these CHP holders were grandfathered in above the caps). Transfers of permits are also limited to prevent over-consolidation of CHP holders.

Non-transferable permits were issued to businesses that met some, but not all, of the historic and recent participation requirements. To receive a non-transferable CHP, an applicant must have reported a minimum of five logbook fishing trips during one of the historic qualification years (2004 or 2005), and a minimum of five trips during the recent qualification year (2008). The process used to identify the number of CHPs issued to a charter business applicant was somewhat different for non-transferable CHPs compared to transferable CHPs. The number of CHPs a business was issued was either determined by the total number of bottomfish logbook fishing trips in the “applicant selected” qualifying year divided by five and rounded down to a whole number; or the number of vessels that made bottomfish logbook trips in the “applicant selected” qualifying year, whichever was less.

Table 5 splits out the number of transferable and non-transferable CHPs by area. Non-transferable CHPs represent 30% of the CHP pool in Area 2C and they represent 21% of the CHP pool in Area 3A.

**Table 5 Number of CHPs by regulatory area and transferability status, 2016**

<b>Regulatory Area</b>	<b>CHP type</b>	<b>Number of CHPs</b>
2C	Transferable	374 (70%)
	Non-transferable	160 (30%)
	<b>Total 2C</b>	<b>534</b>
3A	Transferable	341 (79%)
	Non-transferable	93 (21%)
	<b>Total 3A</b>	<b>434</b>
<b>Total (both areas)</b>		<b>968</b>

Source: NMFS CHP database, sourced on November 3, 2016

NMFS issued non-transferable permits to avoid a sudden reduction in the potential harvest capacity of the charter fleet, while still reducing capacity over time. Issuance of non-transferable permits was intended to minimize the negative impacts of limiting access to participants with low levels of participation in the fishery. Reasons for low levels of participation in the fishery varied but may have included businesses that were phasing out of the charter fishery; new entrants who weren’t operating during the historic qualifying years; or individuals who offered charter fishing trips as more of a hobby than a livelihood. Some businesses that only received non-transferable permits have left the fishery and those permits have been revoked. Other businesses that received non-transferable permits may be continuing their charter halibut operations as they had prior to implementation of the CHLAP, while others may have increased their participation by increasing the number of charter fishing trips they offer relative to their participation during the CHLAP qualifying periods, or by acquiring additional transferable permits, or by both.

The Council, in recommending the CHLAP, did not specify a time frame for phasing out non-transferable permits and reducing capacity. Non-transferable permits were intended to be revoked when the individual or entity that was issued the permit stopped fishing, passed away, or in the case of a non-individual CHP holder, (e.g., business or partnership) the ownership structure dissolved or changed ownership structure.



Thus, the Council and NMFS expected the number of operators in the charter halibut fishery to decline as holders of non-transferable CHP change form or leave the fishery.

The type of entity that was issued the CHP may have an impact on how quickly non-transferable CHPs are phased out. For instance, an individual CHP holder with a non-transferable CHP might be expected to leave the charter fishery on a shorter timeline than the lifetime of an LLC. Table 6 demonstrates the types of entities that hold non-transferable CHPs by categorizing them into (1) individuals, (2) partnerships (i.e., groups of individuals), and (3) businesses, trusts, and military holders.

**Table 6** Types of non-transferable CHP holders

Regulatory Area	Total non-transferables	Individuals	Partnerships	Business, trust, military
2C	160	86 (54%)	53 (33%)	21 (13%)
3A	93	58 (62%)	33 (35%)	2 (2%)

Source: NMFS CHP database, sourced on November 3, 2016

Federal regulations include requirements to notify NMFS upon changes to CHP holder ownership structure. For an individual, a “change” means the individual has died, in which case NMFS must be notified within 30 days of the individual's death (§300.67(j)(5)(i)). For corporations and partnerships, a “change” means the addition of any new shareholder(s) or partner(s) (except though a court appointed trustee, see §679.42(j)(4)(i)). Thus, the death or retirement of one partner in a partnership, for example, would not be considered a change, but the addition of ownership interests in an LLC that holds a CHP would be considered a change. In the event of an ownership change of a non-individual entity, the CHP holder is required to notify NMFS of this change within 15 days of the effective change.

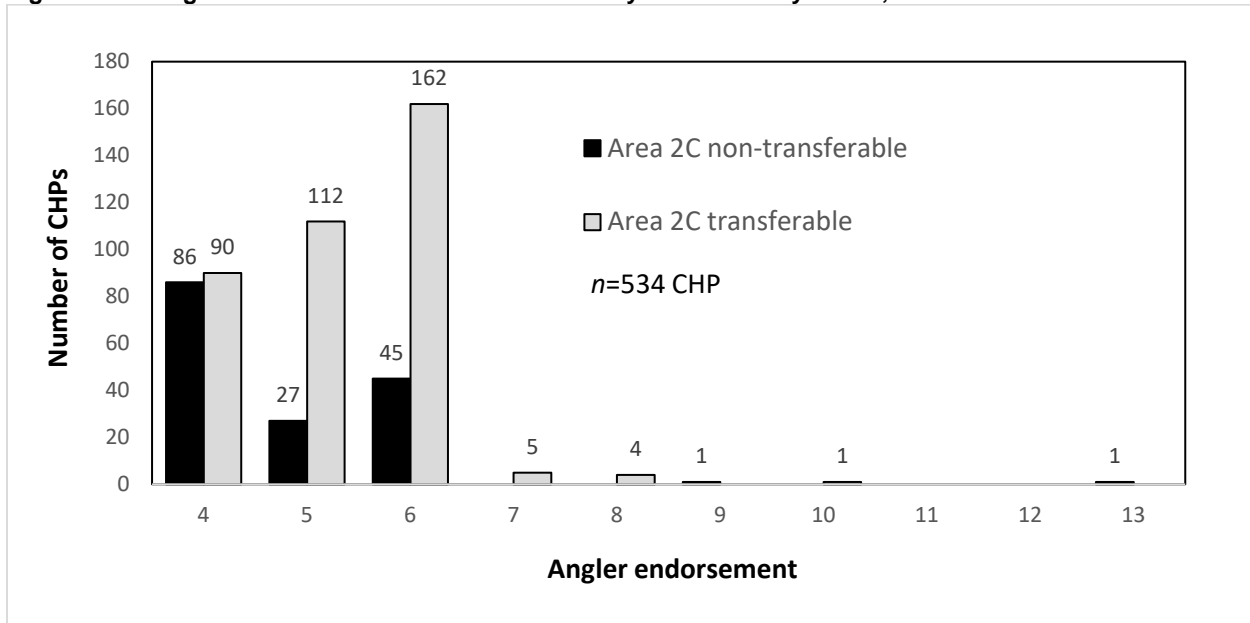
These requirements apply for both transferable and non-transferable CHPs; however, once RAM is informed of a change that has occurred for the holder of a non-transferable CHP, that CHP is no longer valid.

### 3.2.3 Angler Endorsements

Since CHPs are endorsed with a maximum number of charter vessel anglers that may catch and retain halibut on a charter vessel fishing trip, not all CHPs allow for equal angler effort. Thus, Table 5 does not imply that 30% and 21% of the angler effort in Area 2C and 3A is necessarily represented by non-transferable permits. CHP endorsements allow between 4 and 38 anglers to be on a vessel at one time, as demonstrated in Figure 3 and Figure 4.

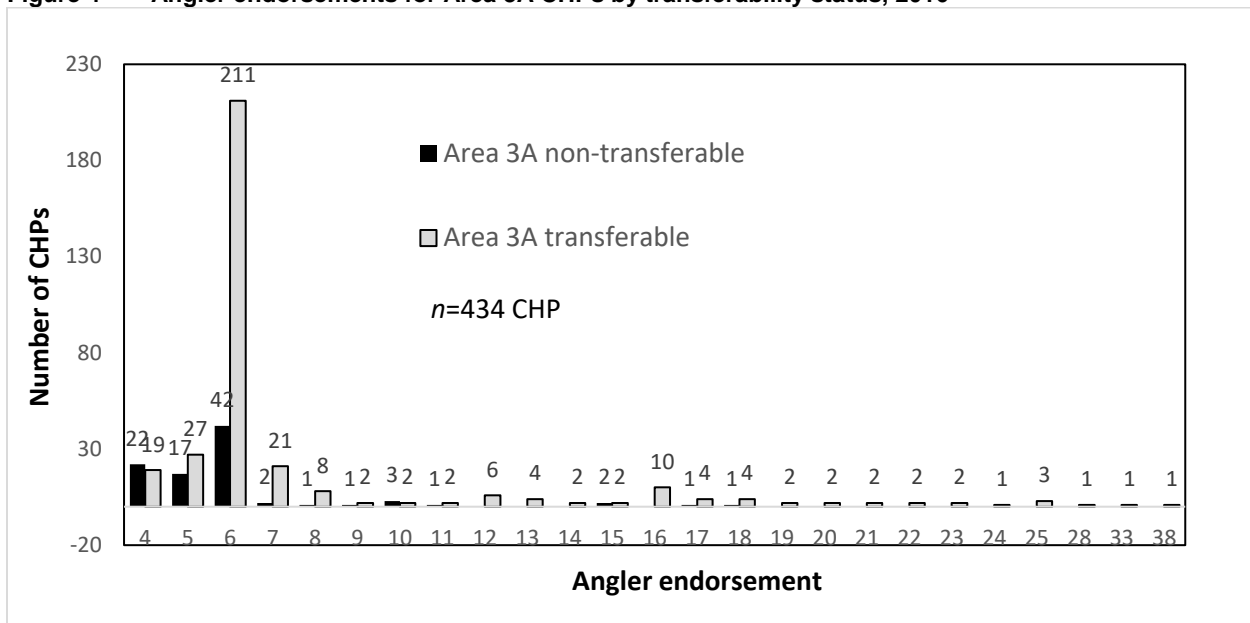
It is clear by comparing the histograms, that Areas 2C and 3A contain diverse types of businesses. The vast majority of Area 2C CHPs are endorsed for 4, 5, or 6 anglers per vessel (98% of Area 2C CHPs), with only one Area 2C CHP endorsed with as many as 13 anglers. Area 3A has 47 CHPs that are endorsed for more than 13 anglers, with only 77% of the CHPs endorsed for 4, 5, or 6 anglers per vessel. For both areas, non-transferable CHP were generally endorsed for 4,5, or 6 anglers per vessel, with a few exceptions.

**Figure 3 Angler endorsements for Area 2C CHPs by transferability status, 2016**



Source: NMFS CHP database, sourced on November 3, 2016

**Figure 4 Angler endorsements for Area 3A CHPs by transferability status, 2016**



Source: NMFS CHP database, sourced on November 3, 2016

If a charter business is looking to provide for additional halibut anglers on one vessel, there are two ways to go about it. The business could obtain a transferable CHP endorsed for a greater number of anglers, or the charter businesses could stack multiple CHPs on one vessel. For example, if a charter business had one vessel and held two CHPs one endorsed for four anglers each and one for two anglers, that vessel could take six anglers halibut fishing at once.

### 3.2.4 Transfer of CHPs

A transferable CHP may be transferred to an individual or non-individual entity. CHP holders are generally limited to five permits. CHP caps are computed by examining CHP holdings of affiliated persons. This information was required to be submitted at initial application and in the event of a transfer or replacement request. An initial recipient of more than five permits cannot receive transfers of additional permits but may transfer all of the CHPs to one other person under a special “grandfather” provision described at 50 CFR 300.67(j)(6). If an individual CHP holder dies or a corporate CHP holder dissolves or changes its ownership by adding one or more new owner(s) or partner(s), the initial recipient no longer qualifies for the grandfather privilege and the 5-permit limit applies to the new entity. NMFS considers a successor-in-interest or a changed corporate structure to be a different entity from the one that was the initial recipient of the permit. A change in ownership would invalidate “excess” transferable CHPs held<sup>5</sup> or require divestiture to a new person(s), and may result in the revocation of nontransferable CHPs held by the initial CHP holder.

Table 7 and Table 8 demonstrate the number of CHP, MWR, and CQE charter permits and charter permit holders (respectively) soon after initial allocation (2012), compared to the number of permits (permit holders) on July 28, 2017.<sup>6</sup> CHPs that were interim-use permits and later revoked are not included. CHPs that were interim as non-transferable in 2012 and were later determined to qualify as transferrable, are counted here as transferable so as to better highlight CHP permits (holders) that have entered or existed the charter fishery. Table 7 demonstrates that between 2012 and July 2017, 5 non-transferable CHPs were revoked from Area 2C and 11 non-transferable CHPs were revoked from Area 3A.

Table 8 shows the change in the number of CHP, MWR, and CQE charter permit *holders* over time. This table demonstrates little variation in the number of MWR and CQE charter permit holders.<sup>7</sup> The number of non-transferable CHP holders in Area 2C decreased by four between these time periods. However, the number of holders of transferable CHPs in Area 2C, increased (indicating new entry into the sector). Conversely, in Area 3A there was a decrease in the number of transferable CHP holders (indicating consolidation), and the exit of 8 non-transferable CHP holders, corresponding to the retirement of the 11 non-transferable Area 3A CHPs. Note that some businesses qualified for both transferable and non-transferable CHPs, thus counts of unique CHP holders in each area are less than the additive amount of transferable and non-transferable CHP holders.

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<sup>5</sup> Some CHP holders were “grandfathered in” with a number of CHP over the typical limit (5 per person/ entity).

<sup>6</sup> Note that while much of the CHP holder data is sourced from November 2016, this data is more current to reflect a number of non-transferable CHPs that were revoked between November 2016 and July 2017.

<sup>7</sup> In 2012, one CQE group was listed under two different holder names and addresses. By 2016 these holdings had merged. Between 2016 and 2017,

**Table 7 Number of CHPs, MWR, CQE charter permits by regulatory area, 2012 and 2017**

Regulatory Area	Permit type	Number of permits (2012)	Number of permits (2017)	Net change in permits (2012-17)	
2C	MWR	1	1	0	
	CQE	48	48	0	
	CHPs		534	529	-5
		Transferable	374	374	0
		Non-transferable	160	155	-5
	2C total	583	578	-5	
3A	MWR	6	6	0	
	CQE	63	56	-7	
	CHPs		439	428	-11
		Transferable	341	341	0
		Non-transferable	98	87	-11
	3A total	508	490	-18	

Source: NMFS CHP database, sourced on July 28, 2017; NMFS CHP initial allocation dataset, accessed at:

[https://alaskafisheries.noaa.gov/permits-licenses?field\\_fishery\\_pm\\_value=Charter+Halibut](https://alaskafisheries.noaa.gov/permits-licenses?field_fishery_pm_value=Charter+Halibut)

Note that these tables have been revised from the Initial Review draft to correct errors.

**Table 8 Number of CHPs, MWR, CQE charter permit holders by regulatory area, 2012 and 2017**

Regulatory Area	Permit type	Number of permit holders (2012)	Number of permit holders (2017)	Net change in permit holders (2012-17)	
2C	MWR	1	1	0	
	CQE	12	12	0	
	CHPs		252	268	+16
		Transferable	198	206	+8
		Non-transferable	100	96	-4
	2C total	265	281	+16	
3A	MWR	3	3	0	
	CQE	10	8	-2	
	CHPs		322	290	-32
		Transferable	270	235	-35
		Non-transferable	77	69	-8
	3A total				

Source: NMFS CHP database, sourced on July 28, 2017; NMFS CHP initial allocation dataset, accessed at:

[https://alaskafisheries.noaa.gov/permits-licenses?field\\_fishery\\_pm\\_value=Charter+Halibut](https://alaskafisheries.noaa.gov/permits-licenses?field_fishery_pm_value=Charter+Halibut)

Note that these tables have been revised from the Initial Review draft to correct errors.

Table 9 demonstrates the level of CHP transfer activity that occurred between 2011 and 2016. This table shows the total number of transactions that took place each year, as well as the unique number of CHPs, buyers, and sellers that are represented. The count of CHPs transferred is either equal to or less than the number of total transactions, as some CHPs were transferred twice in the same year. The greatest number of CHP transfers took place in 2011, following CHLAP implementation. That year, 33 CHP transactions occurred in Area 2C, and 48 CHP transactions occurred in Area 3A. A comparison of the number of sellers to number of buyers between 2011 and 2016, demonstrates some consolidation among ownership in Area 3A, but some expansion in Area 2C. Following 2011, the number of transactions has dropped off with some variation year-to-year.

**Table 9 CHP transfer activity Area 2C and 3A, 2011 through 2016**

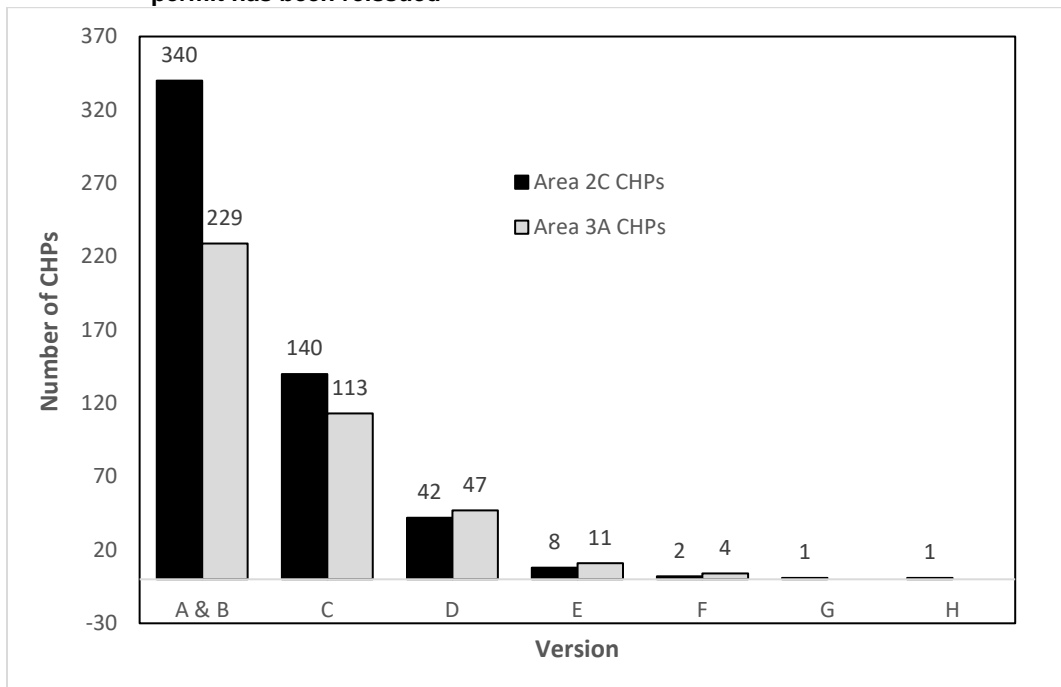
Area	Year	Permit Count	% of all transferable permits transferred <sup>a</sup>	Transaction Count	Seller Count	Buyer Count
2C	2011	33	8.8%	41	29	27
	2012	14	3.7%	14	14	12
	2013	10	2.7%	10	9	10
	2014	16	4.3%	17	16	17
	2015	23	6.1%	23	20	21
	2016	19	5.1%	20	18	18
Total 2011 - 2016 for 2C		101	27.0%	138	96	98
3A	2011	48	14.1%	49	47	38
	2012	23	6.7%	25	24	22
	2013	20	5.9%	21	19	21
	2014	23	6.7%	24	23	17
	2015	23	6.7%	23	21	20
	2016	39	11.4%	43	37	30
Total 2011 - 2016 for 3A		145	42.5%	208	162	127

Source: NOAA RAM, sourced through AKFIN

<sup>a</sup> Compared to 374 transferable CHPs in Area 2C and 341 transferable CHPs in Area 3A (see Table 5).

When a CHP is transferred or reissued, NMFS RAM issues a different version of the CHP. Each CHP has a unique and ongoing serial number, and also a character to identify the version of the CHP that is currently in use. Figure 5 illustrates the number of each CHP version. Note almost all CHPs were reissued as 'B' version initially because the version 'A' had incorrect text printed on it. Thus versions 'A' and 'B' are grouped together in the following figure. Other than this issue, the version of the CHP roughly translates into the number of times it has been transferred or reissued. For example, one Area 2C CHP is issued as version H, which indicates it has likely been transferred or reissued 6 times.

**Figure 5** The number of current CHPs issued by version, where version equates the number of times the permit has been reissued



Source: NMFS CHP database, sourced on November 3, 2016

### 3.2.5 Use of CHPs

This section includes the results of a Council discussion paper from December 2016 (NMFS/NPFMC 2016), which was tasked with three specific data requests in an effort to better understand CHP latency, usage, and active participation. These data requests included: (1) The number of permits that had been issued and number that had been used, (2) The number of CHPs that were used annually by businesses other than the owner of the CHP, and (3) number of CHPs used by more than one business in a year.

#### 3.2.5.1 Frequency of Use

The first data request asked: Question #1: How many CHPs had been used each year since they were issued, and how many have never been used?

To address this question, logbook data was used to determine the number of logbook trips associated with landed halibut that were reported for each CHP during each year. Only logbook trips in which halibut were caught and kept were included in these counts, because these are the only trips that require a CHP. CHP data were pulled from NMFS database on November 3, 2016; therefore, only the 968 CHPs that were valid on this date were used in this analysis. This means CHPs that were designated “interim” or revoked for other reasons between 2011 and this date, are not included. By using only these 968 CHPs, the total number of permits remains constant for comparisons. (Note, this is also consistent with the counts presented in Table 5.)

Data on CHP use has been collected in logbooks for all years of the CHLAP (2011–2015), but only data from 2012–2015 are available for this analysis because ADF&G completed a substantial amount of work to verify and revise submitted logbook data to improve the available information to respond to the Council’s data requests. The data verification processes consisted of ADF&G staff identifying CHP numbers that were recorded erroneously in the logbook and making these corrections in their logbook trip database. Sometimes these recording errors were identified from a CHP number that was previously

determined to be invalid, and other times the errors were identified as a valid CHP number, but the operator used another CHP on that specific trip and incorrectly recorded the CHP number. The number of invalid CHPs reported was highest in 2011, during the first year of the CHLAP when guides were unfamiliar with the permits and the program (Table 10). The number of invalid CHPs reported has generally decreased since then. The number of invalid CHP reported improved further in 2014 when ADF&G began contacting businesses in-season as logbook data were being entered and errors were detected. Data validation impacted the accounting for CHPs that were used or unused. In all years from 2012 through 2015, data validation decreased the count of used CHPs, and correspondingly increased the count of unused permits (Table 11). The reader should keep in mind that 2011 data have not yet been validated and therefore the values reported are approximate.

**Table 10 Number of invalid CHP numbers that could not be matched by ADF&G to valid CHPs in the NMFS database since 2011**

Year	Invalid CHP
2011*	167
2012	37
2013	64
2014	10
2015	4

Source: ADF&G Saltwater Charter Logbooks; NMFS CHP database

Note: 2011 data have not been validated according to the process described in the text

**Table 11 Comparison of original (uncorrected) versus validated CHP usage data, Areas 2C and 3A combined.**

	2011	2012	2013	2014	2015	Overall
<i>Original Data</i>						
Number of CHPs Used	851	844	832	838	850	959
Number of CHPs Not Used	117	124	136	130	118	9
<i>Validated Data</i>						
Number of CHPs Used	n/a	822	784	797	821	940
Number of CHPs Not Used	n/a	146	184	171	147	28

Source: ADF&G Saltwater Charter Logbooks; NMFS CHP database

Table 12 further qualifies CHP usage by combining NMFS CHP data with ADF&G logbook trip data and classifying it by IPHC regulatory area and transferability status. In this table, the count as well as the percentage of the total number of CHPs used and unused by regulatory area and transferability status each year are shown. The numbers in Table 12 reflect the number of CHPs that were used at least one time in a year, but do not indicate the extent of that usage.

In Area 2C, of the 534 valid CHPs, 160 (30%) were non-transferable and 374 (70%) were transferable. Usage rates of transferable permits were higher than non-transferable CHPs across all years examined in Area 2C. Usage rates were fairly constant within a transferability category of CHPs across years in Area 2C: 70%–74% of the non-transferable CHPs were used each year, while 86%–90% of transferable CHPs were used each year. Overall, 81%–85% of all Area 2C CHPs were used each year.

In Area 3A, of the 434 valid CHPs in 2016, 93 (21%) were non-transferable and 341 (79%) were transferable. As in Area 2C, usage rates of transferable CHPs were higher than non-transferable CHPs across all years examined in Area 3A. Usage rates were more variable among years for non-transferable CHPs in Area 3A, with rates ranging from 61%–84%. A similar percentage of transferable permits CHPs

were used in Area 3A than in Area 2C (84%–94%). Overall, 80%–91% of all Area 3A CHPs were used each year.

**Table 12** Number and percentage of CHPs used by IPHC regulatory area and transferability status, and for all CHPs combined (both regulatory areas and transferability statuses combined), 2012 through 2015

Regulatory Area	Transferable	Number and Percentage of CHPs Used									
		2011*		2012		2013		2014		2015	
Area 2C (n=534)	No (n=160)	118	74%	119	74%	112	70%	113	71%	114	71%
	Yes (n=374)	336	90%	330	88%	323	86%	332	89%	338	90%
	Total Used	454	85%	449	84%	435	81%	445	83%	452	85%
	Total Unused	80	15%	85	16%	99	19%	89	17%	82	15%
Area 3A (n=434)	No (n=93)	78	84%	71	76%	61	66%	57	61%	61	66%
	Yes (n=341)	319	94%	302	89%	288	84%	295	87%	308	90%
	Total Used	397	91%	373	86%	349	80%	352	81%	369	85%
	Total Unused	37	9%	61	14%	85	20%	82	19%	65	15%
All CHP Combined (n=968 valid CHPs)	Total Used	851	88%	822	85%	784	81%	797	82%	821	85%
	Total Unused	117	12%	146	15%	184	19%	171	18%	147	15%

\*data not validated

Source: ADF&G Saltwater Charter Logbooks; NMFS CHP database

Of the 968 total CHPs, approximately 28 have never been used since the CHLAP was implemented (see Table 11). An additional 5 CHPs were used only once each in 2011 only. Fourteen non-transferable CHPs and 6 transferable CHPs have never been used in Area 2C. Four non-transferable CHPs and 4 transferable CHPs have never been used in Area 3A (not included in a table).

To examine how extensively CHPs are being used, Figure 6 and Figure 7 depict the number of logbook trips reported by the number of CHPs in 2015 for Area 2C and Area 3A, respectively. The number of trips were binned to reflect four levels of participation: None (0 trips), Low (1-20 trips), Moderate (21-50 trips), and High (more than 50 trips).<sup>8</sup>

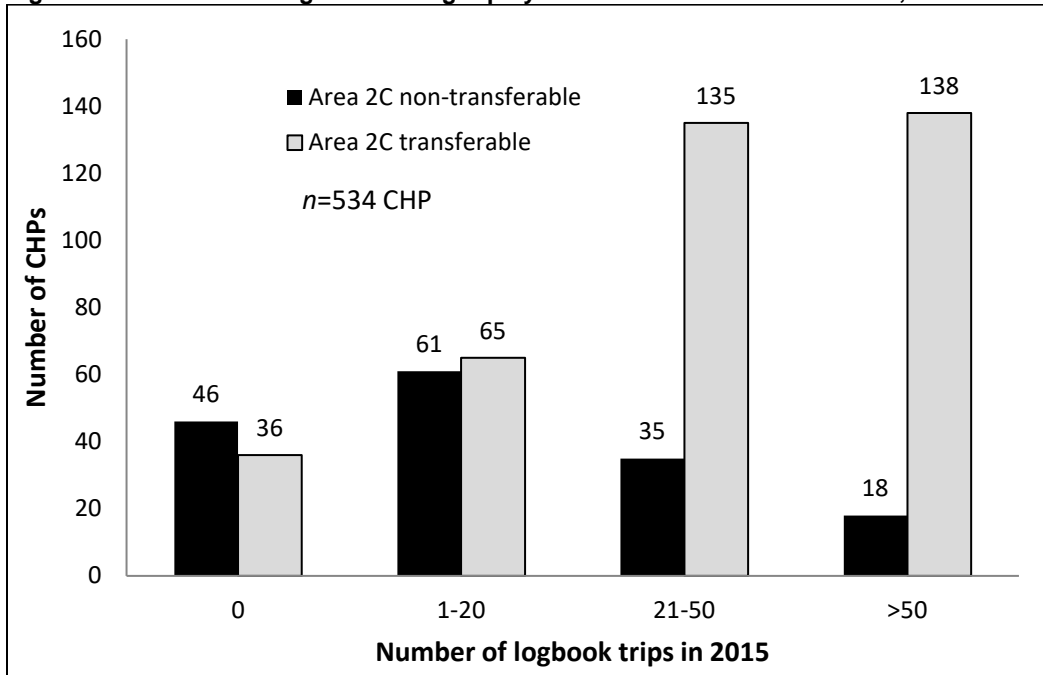
In the 2015 fishery in Area 2C (Figure 6), 82 (15%) of transferable and non-transferable CHPs had no reported logbook trips. Likewise, 126 (24%) transferable and non-transferable CHPs reported low participation in the 2015 fishery, logging fewer than 20 trips. A larger number of transferable CHPs reported moderate to high levels of participation in the fishery than non-transferable permits (32% and 29%, respectively). Non-transferable CHPs in Area 2C averaged 19 logbook trips in 2015, with a maximum of 118 logbook trips on one CHP. Transferable CHPs in Area 2C averaged 42 logbook trips in 2015, with a maximum of 107 logbook trips on one CHP.

The same percentage of CHPs had no reported logbook trips (65 CHP or 15%) in Area 3A as in Area 2C in 2015 (Figure 7). Likewise, 102 CHPs (23%) reported low participation in the 2015 fishery, logging fewer than 20 trips. As in Area 2C, a larger proportion of transferable CHPs reported moderate to high levels of participation in the fishery than non-transferable permits (28% and 34%, respectively). Non-transferable CHPs in Area 3A averaged 16 logbook trips in 2015, with a maximum of 102 logbook trips on one CHP. Transferable CHP in Area 3A averaged 41 logbook trips in 2015, with a maximum of 125 logbook trips on one CHP.

<sup>8</sup> Ranges of bin sizes were determined by analysts for the purpose of data visualization only. These bins do not reflect usage categories determined by the Council.

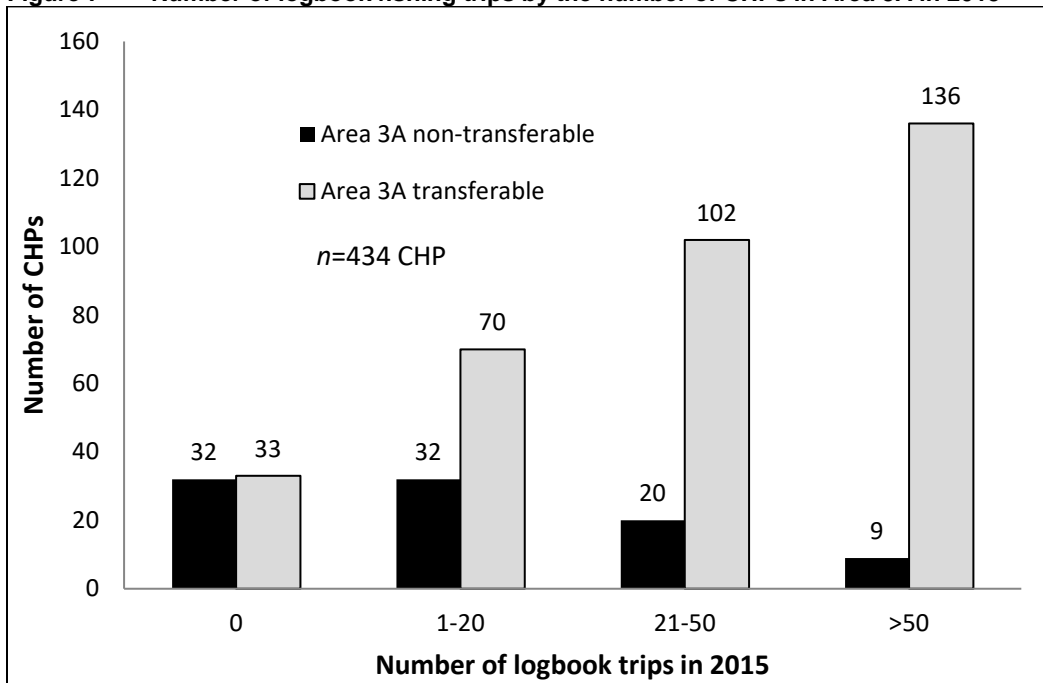


**Figure 6 Number of logbook fishing trip by the number of CHPs in Area 2C, 2015**



Source: ADF&G Saltwater Charter Logbooks; NMFS CHP database

**Figure 7 Number of logbook fishing trips by the number of CHPs in Area 3A in 2015**



Source: ADF&G Saltwater Charter Logbooks; NMFS CHP database

### 3.2.5.2 Users

Question #2 asked: How many CHPs were used annually by a business other than the owner of the CHP?

To answer this question (and Question #3), ADF&G staff counted the number of logbook trips reported on each CHP by business and year, for all 968 valid CHPs (as of November 3, 2016). Only logbook trips

in which halibut were caught and kept were included in these counts, because these are the only trips that require a CHP. The ADF&G Owner and ADF&G Business Name refer to the owner and business licensed or registered as a sport fishing charter business to whom the logbook was issued. Using the CHP number, ADF&G staff merged the logbook trip summary data, which is associated with an ADF&G-licensed or registered sport fishing charter business and business owner, with NMFS' CHP holder database. The NMFS database identifies the CHP Holder Name (i.e., an individual, group of individuals, or entity name) and if reported, a CHP holder Business Name. The NMFS database also lists the type of CHP: regular, MWR, or CQE. Only regular CHPs were evaluated to answer this question, not MWR or CQE CHPs.

The next step involved matching CHP owners with CHP users. ADF&G first determined whether the individual named as the ADF&G Owner (who was issued the logbook) matched exactly the CHP holder name (i.e., an individual, group of individuals, or entity name) reported in the NMFS database. Exact matches are rare. When names did not match exactly, ADF&G manually compared logbook entries for each CHP by year to determine if the user of the CHP was part of the same business as the owner of the CHP by comparing the names listed as ADF&G Owner and ADF&G Business Name to the names listed as CHP Business Holder Name and CHP Holder Name. For each entry for which a match was not obvious, staff further investigated and used their knowledge of fishery participants, phone calls, and the Internet to determine matches.

The matching of names across datasets is often resource intensive, and a certain degree of subjectivity is inherent in determining the matches. In particular, the challenges here occur because CHP holders are not all registered as a single individual (in fact, many are not), and because the ADF&G logbook and NMFS CHP databases contain information from separate application processes (which could lead to a different representation of one's business or name). In some cases, businesses operated under multiple names and had multiple owners since implementation of the CHLAP, making matches ambiguous or difficult to determine. Therefore, these reported business and holder names often differ between the ADF&G logbook and NMFS CHP databases. Approximately 150 hours of ADF&G staff time were spent validating two years of data for this analysis.

To determine if a CHP was used by the owner of the CHP, ADF&G staff assigned each logbook entry a status: "Yes" if the logbook trip summary record indicated the CHP was used by the owner of the CHP; "No" if the record indicated the CHP was used by someone other than the owner of the CHP; or "Undetermined" if it could not be confidently ascertained whether the CHP user was the same business as the CHP owner. In some cases, a CHP was used by both the owner of the CHP and a non-owner in a year. Likewise, some CHPs were used by more than one non-owner or more than one owner of a business operated under multiple names or with multiple owners in a year.

The analysis to determine if a CHP was used by the owner of the CHP is restricted to data from 2014 and 2015. Although all manual comparisons and matching were completed for all years between 2011 and 2015, data validation was completed only for 2014 and 2015 for this analysis, and the validation resulted in changes to some of the CHPs used and the numbers of trips per CHP. Table 13 summarizes the results of this matching exercise.

Table 13 shows that in both years, the majority of the CHPs used were used only by the owner of the CHP (68% in 2014 and 71% in 2015). Entities other than the owner (non-owners) used 18% of the CHPs in 2014 and 20% in 2015. An even smaller percentage of CHPs were used by both the owner and a non-owner in a given year (14% in 2014, and 9% in 2015). CHPs used by non-owners typically were used only by a single non-owner business in a year. Only 6% and 4% of CHPs were used by more than one non-owner in 2014 and 2015, respectively. The maximum number of businesses using a CHP in both years was four. Matches with owners or non-owners could not be determined for one CHP in 2014 and one in 2015.

Because it was not always possible to recognize if the entities listed in the databases were part of the same or different businesses, more “No” statuses may have been assigned than actually exist. Therefore, the number of CHPs used by non-owners reported in Table 13 should be considered the maximum number of CHPs used by non-owners. Further investigation would likely reveal that some of these non-owners were actually part of the same business and would reduce the number of CHPs reportedly used by non-owners. For example, it was not always clear whether businesses that were owned by different family members should be considered the same or different businesses for this evaluation. Likewise, a parent company may own several businesses (e.g., a lodge and a charter fishing business) that would all fall under the ownership umbrella of the larger company but may not have been recognized as being the same business when the data were matched.

**Table 13 Number and percentages of CHPs used by owners and non-owners for both regulatory areas and transferability statuses combined, 2014 and 2015**

Year	CHPs with logbook trips reported	CHPs used only by CHP owner(s)	CHPs used only by non-owner(s)	CHPs used by both the owner and a non-owner	CHPs used by more than one non-owner	Maximum number of businesses using a CHP <sup>b</sup>
2014	797	540 (68%)	142 (18%)	114 (14%)	47 (6%)	4
2015	821	583 (71%)	163 (20%)	74 (9%)	32 (4%)	4

Source: ADF&G Saltwater Charter Logbooks; NMFS CHP database

<sup>a</sup> Percentages refer to the percentage of the number of CHPs used that year, not the percentage of the total number of CHPs

<sup>b</sup> Includes usage by owners and non-owners

NMFS staff extended the analysis to compare CHP use between owners of transferable and non-transferable CHPs (Table 14). The use of non-transferable permits by non-owners was 3% higher than the use of transferable permits by non-owners in both years. The majority of transferable and non-transferable permits were used by the owner of those permits in both years.

**Table 14 Number and percentages<sup>a</sup> of CHPs used by owners and non-owners by transferability status for both regulatory areas combined, 2014 and 2015**

Year	Transferable CHP?	CHPs with logbook trips reported	CHPs used only by CHP owner(s)	CHPs used only by non-owner(s)	CHPs used by both the owner and a non-owner of a CHP
2014	No	170	107 (63%)	34 (20%)	29 (17%)
	Yes	627	434 (69%)	108 (17%)	84 (13%)
2015	No	175	121 (69%)	38 (22%)	16 (9%)
	Yes	645	461 (71%)	125 (19%)	58 (9%)

Source: ADF&G Saltwater Charter Logbooks; NMFS CHP database

<sup>a</sup> Percentages refer to the percentage of the number of CHPs used that year, not the percentage of the total number of CHPs.

Question #3 asked: *How many CHPs have been used by more than one business during a calendar year?*

Data to answer this question were validated and compiled as described under Question #2. To answer question #3, the number of times a CHP was used in a year by more than one non-owner of a CHP or by the owner and one or more non-owners of a CHP were tallied. Table 15 summarizes these data. Overall, fewer than 20% of CHPs were used by more than one business in a year. Usage of CHPs by more than one business was more common in Area 2C (17% of CHPs), than Area 3A (11% of CHPs), but low in both areas. Within a regulatory area, the percentages of CHPs used by multiple businesses were similar between transferable and non-transferable CHPs.

**Table 15** Number of CHPs used by more than one business during by IPHC regulatory area and transferability status, 2014 and 2015

Regulatory Area	Transferable	Number and percentage of CHPs used by multiple businesses	
		2014	2015
<i>Area 2C</i> (n=534)	No (n=160)	22 (14%)	18 (11%)
	Yes (n=374)	68 (18%)	46 (12%)
	Total	90 (17%)	64 (12%)
<i>Area 3A</i> (n=434)	No (n=93)	8 (9%)	5 (5%)
	Yes (n=341)	39 (11%)	26 (8%)
	Total	47 (11%)	31 (7%)

Source: ADF&G Saltwater Charter Logbooks; NMFS CHP database

### 3.2.5.3 Location

The saltwater sportfishing logbook currently requires documentation of the primary statistical area where most of the targeted species were caught (separately recorded for salmon fishing and bottom fish) as well as the community or port where the trip ended (where fish or clients were off-loaded from the vessel). Table 16 illustrates the diversity in ending port locations. Some of the port sites listed would not be considered communities, but represent a landmark harbor, bay, or island that a charter operation relies on.

**Table 16 Number of charter trips by ending port, 2011 through 2014**

Port Site	Total trips	Port Site	Total trips	Port site	Total trips	Port site	Total trips
Southeast		Southeast Continued		Southeast Continued		Southcentral Continued	
Sitka	24,946	Tenakee	213	Hidden Inlet Lodge	5	Lowell Point	331
Ketchikan	8,335	Orr Island	189	Limestone Bay	5	Seldovia	268
Waterfall	6,826	False Island	180	Douglas	3	Raspberry Island	228
Craig	5,442	Shelter Island	177	Outer Point	3	Port Ashton	167
Gustavus	4,032	Cannery Cove	168	Rocky Point	3	Iliamna Bay	77
Elfin Cove	3,459	Gull Cove	163	Baranof	2	Ellamar	74
Auke Bay	3,307	Dove Island Lodge	127	Farragut Bay	2	Spruce Island	71
Yakutat	2,843	Sea Otter Sound	121	Hawk Inlet	2	Silver Salmon	62
Yes Bay	2,599	Sunnyside	109	Hood Bay	2	Williamsport	52
Petersburg	2,270	Sealing Cove	91	Snug Harbor	2	Chenega Bay	52
				Sitkoh Bay	2		
Angoon	1,803	Whalers Cove	85	Kodiak		Port Fidalgo	50
Klawock	1,603	Loring	73	Kodiak	3,276	Whiskey Gulch	42
Sportsman Cove	1,287	Keku Strait	68	Larsen Bay	1,387	Amalik Bay	39
Juneau	1,213	Shelter Cove Lodge	60	Port Lions	832	Icy Bay Lodge	23
El Capitan Lodge	1,174	Gut Bay	59	Old Harbor	822	Iliamna	20
Warm Springs Bay	1,101	Killisnoo	56	Seal Bay (Sc)	372	Anton Larsen Bay	17
Thorne Bay	1,058	Pybus Bay	50	Kiliuda Bay	281	Kukak Bay	14
Pybus Point	1,035	Kuiu Island	40	Uganik Bay	242	Eshamy Bay	8
Pelican	983	Gambier Bay	39	Zachar Bay	193	Kasitsna Bay	5
Hoonah	797	Funter Bay	34	Ugak Bay	188	Sheep Bay	3
Salmon Falls	772	Salmon Landing	30	Saltery Cove	166	Anchor River	3
Knudson Cove	707	Deep Cove	28	Port Wakefield	163	Tutka Bay	2
Apple Island	670	Holkham Bay	23	Parks Cannery	154		
Wrangell	482	Boardwalk	18	Port Vita	132		
Point Baker	405	Saginaw Bay	17	Amook Pass	122		
Port St Nicholas	397	Kake	16	Uyak Bay	29		
Clover Pass	394	Crescent Harbor	15	Kafliia Bay	28		
Coffman Cove	389	Freshwater Bay	15	Amook Island	7		
S Kaigani Bay	388	Cosmos Cove	14	Southcentral			
Steamboat Bay	370	Portage Bay	14	Homer	19,626		
Port Alexander	312	Naukati	10	Seward	15,655		
Pybus Point Lodge	293	Phonograph Cove	10	Deep Creek	11,633		
Bay Of Pillars	282	Security Bay	10	Anchor Point	4,943		
Sarkar Cove	262	Excursion Inlet	9	Whittier	2,344		
Whale Pass	256	Morne Island	9	Valdez	2,179		
Clover Bay	241	Cedars Lodge	8	Ninilchik	1,289		
Kelp Bay	236	Hobart Bay	7	Happy Valley	1,045		
Haines	228	Port Walter	7	Iron Creek	415		
Bartlett Cove	213	Hobbit Hole	6	Cordova	339		

Source: ADF&G Saltwater Charter Logbooks, sourced through AKFIN

Table notes: Only ports where at least two landings were made are included.

### **3.2.6 Enforcement and Data Verification**

The NMFS Office of Law Enforcement (OLE) uses the CHP database and charter logbook data to enforce program rules. Officers typically receive logbook data from ADF&G two times a year. The CHP data is electronically merged with logbook data. Officers then review and audit the information for inconsistencies and potential violations.

Many of the data inconsistencies, which include apparent invalid CHP entries in the logbook data, are transcription errors made by charter operators or data entry errors. Logbook errors are often corrected after OLE communicates with the charter operators and/or ADF&G to resolve the issues. OLE and ADF&G do not share a formal data correction process, although sometimes logbook errors found by OLE are passed to ADF&G for correction.

Some typical violations that involve the improper use of a CHP include using an invalid permit, fishing a CHP in an incorrect management area, or operating as a charter operator without a CHP. Each year, OLE investigates several cases where multiple versions of a single CHP have been used (e.g., Version A as well as Version B). Occasionally, the various versions of permits are used on the same day by more than one vessel. Many of these violations are difficult to discover and enforce in the field and become apparent only after officers scrutinize the combined CHP and logbook data.

Enforcement can be more effective if potential violations are identified quickly. Violations that are identified in the field allow the officer an opportunity to ask questions about the discrepancy. An important enforcement tool would be officers' real-time or at least near-term access to logbook data, which could be matched to an original CHP on a vessel at the point when it is boarded. Developments toward electronic charter vessel logbooks may serve this need. If a violation is not identified in the field, and it takes several months to audit these data, a CHP holder and/or charter guide may not remember the situation in question well enough to explain their case. Moreover, when the fishing season is over, OLE officers can have difficulty in tracking down associated parties to inquire about discrepancies in the data.

## 4 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. The analysis works to 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.”

To this effect, the costs and benefits of this action with respect to these attributes are described in the following sections by comparing the No Action Alternative 1 with the action alternative. The analysis includes a discussion on the benefits (i.e., why is this step important?), the costs (i.e., industry and administrative burden) including distributional impacts, and the logistic process that would need to be addressed for each step to be effective at achieving the stated benefits.

The benefits and costs of the CHP renewal process and additional options for information collection proposed in this analysis are evaluated through qualitative assessment derived from discussions with representatives from NMFS Sustainable Fisheries (SF), NMFS Restricted Access Management (RAM) program, NOAA Office of Law Enforcement (OLE), and ADF&G (see Section 7 for a list of persons consulted) as well as past public testimony. Estimates of the administrative cost for an annual renewal process were generated by the NMFS RAM program. This analysis also relies on background information in Section 3.2 that was prepared using data from ADF&G Saltwater Charter Sport Fishing Logbook data merged with CHP holder information, sourced on November 3, 2016.

This section concludes with a qualitative assessment of the net benefit to the Nation of the action alternative, compared to no action.

### 4.1 Analysis of Impacts: Alternative 1, No Action

The no action alternative is regulatory status quo. CHP ownership data was originally collected/ assigned when the CHLAP was implemented in 2011. This information includes permit holder name, business name (if provided), a mailing address, transferable or non-transferable status of permit, the type of permit (CHP, CQE charter permit or MWR charter permit), the angler endorsement for the permit, the assigned permit number, assigned version letter, and an NMFS identification number that was assigned to each holder.

Under Alternative 1, CHP ownership data would continue to be updated in the event that a CHP is transferred, there is a request for a reissued permit, or information is volunteered to NMFS. Section 3.2 provides thorough background on CHP regulations, use, enforcement and data verification, and previous considerations of changes.

Although there are Federal requirements to notify NMFS upon changes to both transferable and non-transferable CHP holder ownership, there are reasons to believe this information does not always get reported. For non-transferable CHPs, there is an incentive to not report changes in ownership, as this change indicates the CHP is no longer valid and will be revoked. Additionally, a change could be when the holder of a non-transferable CHP passes away, at which point, family members are expected to report this to NMFS and the CHP will become invalid. It is easy to imagine that this does not always occur. Public testimony in December 2016 identified several instances when this did not occur.

For transferable CHPs, changes in ownership may go unreported if the holder does not know they are required to apply for an official transfer through RAM, or if the holder perceives limited utility from the official transfer process and does not perceive a high risk of enforcement action. This is, in fact, a difficult aspect of the program to enforce. It is important to note that there could be very high compliance with the

requirement to report changes in CHP ownership. There is no way to accurately measure the level of CHP ownership change that goes unreported.

In light of the ways the CHP data is expected to be incomplete, the no action alternative would not achieve the purpose and need statement (Section 1.1) which describes a need for more “*complete information about the performance and usage of CHPs and to ensure that CHP holders are demonstrating active participation in the fishery.*”

Alternative 1 is the baseline against which the benefits and costs of the action alternative and its options will be compared in Section 4.2. The benefits and costs of this alternative are the inverse of the costs and benefits of the action alternatives. Therefore, this alternative is not further discussed in this section.

## **4.2 Analysis of Impacts: Alternative 2, Implement an Annual Renewal Process for CHPs**

In recent years, several Council documents have relied on CHP data to demonstrate charter halibut participation, latent capacity, and to better understand the diversity in charter halibut business structures (e.g., NMFS/NPFMC 2016; NPFMC 2015, 2016). Throughout these analyses it has become clear that CHP data could be more complete and accurate with an annual update.

### **4.2.1.1 Benefits of Action**

If the Council requires an annual CHP renewal, changes will be better accounted for through an annual check-in. It would still be possible for changes in ownership to go unreported if there is a deliberate attempt to hide a change. Similar to the current transfer process through NMFS, the renewal application could include certification that all information is valid and correct. The Council’s original intent with the creation of non-transferable CHPs is that once they are no longer held by the owner, they would be revoked, further reducing the fishing capacity over time (NMFS 2009b). A greater level of information collection on ownership and ownership structure could clarify and accelerate non-transferable CHPs being revoked from the fishery.

Revoking non-transferable CHPs when the holders passed away or the ownership is restructured would provide a better understanding of the active CHPs and the amount of latent capacity in the fishery. The Council has recently discussed the extent of latent capacity (both in terms of unused CHPs and CHP that are used less than they *could* be used) and the likelihood for that capacity to become active (NPFMC 2017). This is of interest to some participants as increases in effort can affect the annual management measure if it results in an increase in halibut harvest. In December 2017, the Council chose not to take action to permanently cap on effort through annual CHP trip limits. It was stated that this action could have negative distributional impacts on certain types of charter businesses, without necessarily providing stability in management measures or giving charter businesses more flexibility to choose how they respond to other influences, such as a drop in the charter catch limit when halibut biomass is down.

Despite the Council not taking action on this issue, there was discussion on the benefits of having a better understanding of the possibility of changing effort over time. An annual registration process may contribute to this understanding. There have been 28 CHPs that have not been used since the start of the implementation of the CHLAP (Table 11) and between 12 to 20 percent of the CHPs are unused on an annual basis (Table 12). This annual renewal process may help clarify some of the circumstances around those CHPs (e.g., Is the CHP holder deceased? Is the CHP holder aware they hold a CHP? Is the CHP holder not using their CHP now, but waiting to use their CHP after the charter management measures are less restrictive?). A CHP holder’s investment of time in the annual renewal process could be an indication of their interest in maintaining that holding.



Representatives of OLE have identified an additional enforcement benefit of an annual CHP renewal process. When a CHP is reissued (either due to a transfer or a specific request to RAM), it is issued as a different version (e.g., B, C, D, etc.). It is difficult for NOAA OLE or Wildlife Troopers to identify in the field if a charter halibut guide is using a valid version of the CHP. OLE representatives have dealt with cases where they discover repeated use of invalid versions of a CHP. Requiring an annual renewal process, in which the valid CHP includes the current year listed on the CHP, may decrease the number of invalid CHPs that are used and will facilitate enforcement in the field.

Finally, having more up-to-date information on the CHP holder, including their address, could facilitate better communication between the agency and the CHP holders. If the Council made future recommendations affecting the CHP holders and the charter halibut fishery, this would allow for better transfer of information from the Council staff, NMFS, or others to the CHP holders.

#### **4.2.1.2 Drawbacks of Action**

Any additional reporting requirement will impose some level of burden on CHP holders. The burden will include filling out and submitting paperwork. It is not expected to take any special skills to provide the information requested, and the three pieces of information requested in Alternative 2 should be readily available to the CHP holder.

One potential concern is the absence of an option for a temporary permit that could be put into use quickly (as discussed below in Section 4.2.1.3). Requiring a renewed CHP each season could cause delays in a charter operator's season. The proposed application process described in Section 4.2.1.3 does not provide an opportunity for walk-in assistance, unlike the services that ADF&G regional offices can provide for required State of Alaska guide licenses. CHP holders would likely need to renew online, by facsimile, or through the mail. Without adequate planning, and with a requirement to have a NMFS-issued CHP onboard before the fishing season begins, this aspect could cause a delay for some charter operations. In Section 4.2.1.3, NMFS suggests that there need be no application deadline for CHP renewal, and that halibut charter operator would just need to ensure the updated valid CHP was in their possession before conducting a charter halibut trip with anglers. This flexibility may alleviate some of the likelihood that a charter operator was delayed or unable to fish for a season due to a missed application deadline.

An additional reporting requirement will impose some level of burden on NMFS Alaska Region, and in turn, on U.S. taxpayers. Including CHPs, MWR charter permits, and CQE charter permits, and assuming a permit holder would renew all their permits together, NMFS RAM would need to process roughly 680 applications on an annual basis from the combined CHP holders of Areas 2C and 3A (Table 8). These 680 applications would amount to roughly 1,000 permits that would need to be printed and mailed out every year (Table 4). Discussions about charging a user fee, whether to include MWR and CQE permits, and whether to allow for a printable version of the CHP are all included below in Section 4.2.1.3.

Using cost estimates based on other programs with annual permit application process, RAM has provided estimates of what it may cost to provide for an annual renewal process for CHPs (Table 17). These estimates are somewhat overstated, as the agency currently incurs some cost whenever there is a transfer or a reissuance of a CHP. Annual expense would also be expected to decrease once certain fixed costs of establishing the reporting system were accounted for (e.g., PRA development, database expansion). In addition to the financial expense, this application process would likely require time to facilitate the resources to develop this system.

**Table 17 Administrative cost estimate for an annual CHP renewal**

Full Time Equivalent Employees	Function/Activities	Cost	On-going?
1	Regulation/PRA development	\$100,000	Intermittent related to PRA renewal/regulatory updates
1	IT Specialist - development of data entry/database to process applications/store information	\$100,000	Intermittent needs related to system maintenance/new feature development
1	Permit Assistant - review applications/enter data/issue permits	\$65,000	Y
0.5	Administrative Assistant - records management	\$32,500	Y
0	Mailing costs	\$500	Y
0	Mailing Supplies, Special Permit Paper to meet Original Permit requirements	\$2,500	Y
Total		\$300,500	

Source: NMFS RAM estimate

In addition to the increased expenses relating to the reporting burden, requiring the renewal of a Federal permit would be somewhat unique to this program. NMFS generally does not administer an annual renewal for other permits; however, every program is different. For example, there is no automatic renewal for License Limitation Program (LLP) permits. The LLP is linked to a vessel, and if the permit will be fished on a different vessel or it is sold to a new holder, then a transfer application form must be completed, which updates the permit holder information, similar to the status quo process for CHPs. Halibut and sablefish IFQ is issued on an annual basis because each year the QS units represent different pounds of IFQ. This occurs without QS holders needing to reapply. Although there is a requirement to notify NMFS if the QS holder passes away (similar to the CHP), it is logical to assume this does not always occur. Thus, similar to CHPs, it is possible that a QS holder listed in the IFQ database may be deceased. Several other programs (crab rationalization program, rockfish, Amendment 80) have annual application requirements to demonstrate cooperative membership. ADF&G requires an annual registration process for certain licenses (see Section 3.1), but those licenses expire within a year; they are not for the holdings of a long-term access privilege. Thus, charter businesses and charter guides are not *renewing* their ADF&H licenses *per se*, rather, they are, in effect, reapplying for a new license. Alternatively, State of Alaska limited entry commercial fishing permits and vessel licenses issued by the Commercial Fisheries Entry Commission are renewed annually, in a similar fashion as suggested by Alternative 2.

#### 4.2.1.3 Additional Discussion Points on Implementation

Using a question and answer format, this section includes a number of issues related to the implementation of a CHP renewal process, with input from NMFS management and enforcement representatives (SF, RAM, and OLE). Management and enforcement perspectives are included for context. **Absent clarification or recommendations from the Council, this section includes the default**

**assumptions and recommendations about how an annual CHP renewal process would be implemented.**

**Q: Would this action apply to CQE and MWR permits?**

The Council was not specific on whether the proposed action should include renewal of CQE and MWR permits. Absent further direction, staff assumes CQEs and MWR permits will also be subject to an annual permit renewal process. NMFS notes that updating these types of permits may also contribute towards the goal of enhanced information on usage and a more consistent protocol for enforcement. In the past, CQEs in particular have asked for replacement CHPs when they had difficulty retrieving an original back from the guide who had use of it. If CHPs are renewed on an annual basis, the entities would not need to retrieve permits at the end of the season. Moreover, keeping this process consistent with all other CHPs could aid on-the-water enforcement. If an enforcement officer looks at a CQE or MWR charter permit, they would consistently see the current year printed on the permit. Some CQE and MWRs may hold both their specialized charter permits as well as CHPs. This would keep the process consistent for all their permits.

As the intent of Options 2, 3, and 4 under Alternative 2 is to better monitor the relationship between the CHP holder and the person using the CHP, collecting this type of information from CQEs and MWRs, who are never the users of the CQE or MWR charter permits, may not be necessary. These permits are not held by individuals, thus a leasing (or “leasing-like”) scenario will always occur. If the Council adopts Options 2, 3, or 4, staff would assume this information would not be required from an CQE or MWR. The Council may clarify if this is the intent.

**Q: Currently, guides are required to carry an original, valid CHP issued by NMFS with them on the water. Is it important for each operator to use the official, original CHP or could a print-out copy suffice?**

The clear upside to allowing printed copies of CHPs for the year is that the CHP holder would have much easier access to the permit. They would not have to wait for the mail to get the new CHP before the season, or if they lose it or need to make a change, it would be a quicker process. That might decrease the number of incidents where people do not have the permit on board. It also reduces the time and cost burden on the agency from not having to print and mail CHPs annually.

The downside of not requiring an original version of the CHP to be on board—i.e., allowing CHP holders to print out their permit—is that it makes it easy for CHPs to be shared (or “leased”), by printing out multiple copies. There is nothing illegal about sharing or leasing CHPs right now as long as the CHP is only being used on one charter fishing trip at a time; however, as described in Section 4.2.4.2, the Council has expressed concern about CHP leasing in the past. The flexibility to print out a copy of a CHP may allow for an even easier pathway to leasing or sharing of CHPs than under the status quo. Since under the status quo, guides are required to have the original CHP issued by NMFS on board, it is not legal for two different vessels to use the same CHP at the same time. It is possible that this aspect has limited the amount of CHP sharing/leasing that has occurred, even though there are no explicit rules against sharing (or leasing) CHPs.

In addition, in Area 3A, 2016 and 2017 IPHC regulations state that a CHP can only be used for one charter fishing trip a day. This regulation limits some of the possible CHP sharing, even if a CHP holder were able to print out a copy of their CHP. This regulation has been and would continue to be difficult to enforce in the field. Enforcement would still need to rely on a post-season audit of the logbook data in order to identify potential violations; however, allowing a print-out version of the CHP may exacerbate the possibility that CHPs would be used on more than one charter fishing trip per day.

Area 2C has not had the same regulation stating that a CHP can only be used for one charter fishing trip a day. If the Council allowed for a print-out version of a CHP to be valid, the regulations would also need to be revised to prohibit a CHP from being used on more than one vessel at a time. This additional change

would be necessary to make it clear that whole fleet of charter vessels could not use the same CHP at the same time, which would be counter to the intent of the CHLAP of limiting the total number of operators in the fishery.

Providing CHP holders with flexibility to print out their permits each year would remove a tool (CHP issued by NMFS) that is enforceable in the field and is expected to make compliance with CHP use requirements only enforceable through post-season audit of the logbook data. Thus, both OLE and RAM believe that continuing to require a CHP issued by NMFS, and carried onboard participating vessels is an important requirement to enhance compliance with program rules and help enforcement.

**Q: What would the application process look like?**

This depends on whether the CHP holders could use a printed-out version of a CHP or if a NMFS-issued version continues to be required (as discussed in the previous question).

If an NMFS-issued version is required, NMFS proposes that similar to other annual application processes, RAM would send out reminder letters, with an application form or a link to the website where the form can be obtained, to CHP holders based on information provided to NMFS for current holder, which would need to be mailed or faxed back to the agency.

CHP holders may also have an opportunity to renew online. Renewal could not occur over the phone, as the process would require certification that the information provided is valid and correct. RAM would print the wallet-size CHP on special paper (as it currently does) and mail it to the updated address provided on the CHP renewal application form. Generally, CHP holders would not be able to register in person unless they come into the RAM office in Juneau during business hours.

NMFS proposes that there would be no application deadline. A CHP holder could register for the season any time after January of that year. This would help decrease the agency burden of having to process all the applications at once and would eliminate the possibility that a CHP holder misses the deadline. The charter guide would need a current, valid CHP before they could bring anglers halibut fishing.

**Q: Are there options to allow for a temporary CHP that can be used immediately?**

A temporary CHP could be used in emergency situations to prevent charter operators from losing fishing time if a CHP is lost or destroyed during the fishing season, by providing a limited period until a replacement CHP is processed and received.

Charter business and guides that apply for the ADF&G sport fishing licenses (guide, business, and guide/business combo; see Section 3.1) have the option of applying by mail, on the Internet, or for an expedited application process, they can go to one of the regional ADF&G offices and apply in-person (Powers & Sigurdsson 2016). Applicants who are licensed by going to an ADF&G office receive a copy of their application, which allows them to operate immediately. Those who applied on the Internet, or with the renewal application, are required to wait until they received their license in the mail prior to operating or providing guiding services. The temporary license is valid for 21 days, at which point the guide and/or business license card should be mailed to the applicant. Similarly, the flexibility to print or be issued a temporary CHP could reduce the number of situations in which a charter operation has a delayed fishing season.

However, both NMFS and OLE representatives believe that the same management and enforcement challenges that would exist with a temporary CHP that could exist for a printed-out CHP, as previously discussed. Specifically, copies of a temporary CHP could be made. Even if the temporary CHP had an expiration date, a CHP holder could continuously request temporary CHPs, effectively creating as many valid versions of their CHP as they wished for the year. ADF&G business and guide licenses are issued to a specific business or guide and therefore the “sharing” of licenses is not as much of a concern in that process. This element could also increase the costs of implementation and may also increase the time it takes to implementation. If this option were considered, OLE believes that temporary permits should be

considered only under certain circumstances that occur in-season, and they should be valid only for a short period of time.

**Q: What about charging a user fee to recover the agency costs of CHP renewal?**

The Council could consider implementing a permit fee system for the renewal of CHPs. However, the charter halibut fishery is managed under the Pacific Halibut Act (see Section 5) which does not grant this authority. Additional authority to levy such a fee has not been identified.

From a practical standpoint, it also possible this analysis could find that the costs to implement such a system outweigh the revenue the CHP renewal process is expected to bring in. A December 2004 NMFS Policy Directive (#30-120), called for the establishment of a uniform national policy for charging applicants for the cost of processing permit applications. In response, NMFS analyzed a joint FMP amendment package that would recover the administrative costs of processing applications for certain permits required by those plans, which had previously been issued without charge (NMFS 2009a).<sup>9</sup>

Subsequent analysis demonstrated that the cost to implement and maintain a system to recover the fees for these permits were much higher than previously estimated. The fee would need to be increased substantially to account for this additional expense, or the costs to implement the fee collection system could in fact exceed the revenue generated by the permit fee collection. Moreover, revenue accruing from the permit fees would be deposited in the U.S. Treasury and would not be recoverable to NMFS without Congressional appropriation. While this could provide some downstream benefits to U.S. taxpayers, it could put additional strain on NMFS Alaska Region as resources are directed towards establishing this system. Thus, fee authority has not been exercised for these programs.

Another point to consider, is that a high fee could be expected to motivate some less productive CHP holders to sell their CHP to more productive operations that place a higher value on its use. A CHP holder would now be weighing their costs to renew based on the annual value (and present value of future revenue) that permit brings their business. As has been demonstrated in a number of other Council documents (e.g., NMFS/NPFMC 2016; NPFMC 2015; NPFMC 2016) there is substantial latent capacity of CHPs. There are many reasons for this. The Council has recently expressed concern for the harvest potential of CHP holders suddenly increasing their use of latent permits, putting further strain on those sharing the resource. A high fee could incentivize movement of CHPs to more productive users, prompting latent capacity to become active.

**Q: At what point would NMFS RAM revoke a non-transferable CHP?**

NMFS does not recommend revoking unregistered non-transferable CHP after one season. There could be many situations in which a non-transferable CHP holder does not renew their CHP after one season. For instance, if a charter operation was responding to low angler demand due to strict management measures and chose to exclusive run salmon charter trips for a year, if they had a medical issue and could not participate in the fishery for a year, or if they downsized their charter operations for one year, retiring their CHP based on one year could negatively impact businesses.

Instead, the Council could consider establishing a certain number of consecutive years (e.g. three or four), after which an unregistered non-transferable CHP would be revoked after the CHP holder was provided due process under the Administrative Procedures Act (APA). This would allow for some flexibility in

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<sup>9</sup> Programs under which permits were issued and not subject to a fee-based application at the time of the 2009 analysis include: the Aleut Enterprise vessel nomination, Amendment 80, American Fisheries Act, Federal Fisheries Permit, Federal Processor Permit, Rockfish Program, Exempted Fishing Permit, Pacific Halibut Subsistence Registration Program, Groundfish License Limitation Program, Crab License Limitation Program, Scallop License Limitation Program, and Prohibited Species Donation program. The analysis had options to exempt prohibited species donation permits and exempted fishery permits. The Subsistence Halibut Registration Certificate was not included as an option in the discussion.

annual circumstances but allow for a more systematic process to revoke non-transferable CHPs when the CHP holder is deceased.

Alternatively, the Council could choose to not to have an automatic trigger for revoking non-transferable CHP based on a failure to renew. In this case, RAM may still revoke a CHP if it is identified that the CHP holder has “changed”, as specified in current regulations, and the CHP holder was provided due process under the APA. Non-transferable CHPs that are repeatedly not renewed, would create a smaller sample size of CHP holder for RAM and OLE for which to provide further investigation. If it is discovered through obituaries that a CHP holder has passed away, this change in ownership would constitute the revocation of a non-transferable CHP.

**Q: How specific does the Council need to be in the type of questions included and the specific language on the application form?**

The most important aspect of a CHP renewal application for the Council to weigh in on, is on the need for the information collected and in stating the intent of the information. This justification is necessary under the PRA, as information on these forms and the subsequent reporting burden on industry is assessed by OMB based on the stated need.

NMFS manages a multitude of types of fisheries applications every year. If the Council has a clear statement of intent for an annual renewal process, NMFS has some latitude to design and submit application contents to OMB that includes basic information (e.g., name, address, phone number (if available), email (if available)), without necessarily having the Council weigh in on each particular question. The details of these forms would need to be approved by OMB but would not necessarily be established verbatim in Federal regulations.

If the Council wants the CHP renewal application to include a higher-level of reporting, (for instance, any of the options under Alternative 2 in this proposal), it should establish a clear need and statement of intent for each of these reporting requirements. In particular, this is important for information that is required to be included for any type of permit/ quota/ license approval process. The more specificity the Council process can provide for the language of the questions the better; however, it may not be necessary to have the exact wording for each question. These application questions would also need to be approved by OMB but may not be included in regulations verbatim. This allows for a more expeditious process if the wording of the questions needs to be modified.

#### **4.2.2 Alternative 2, Option 1: CHP Ownership Structure**

During CHLAP implementation, eligibility for a CHP was limited to individuals or non-individuals owning an ADF&G business owner license. As demonstrated in Table 6 for non-transferable CHPs, partnerships and other types of non-individual holders are common. This is also the case for transferable CHPs as well. Given the allowance of non-individual CHP holdings, charter businesses were required to submit information about the ownership structure so that RAM could verify compliance with CHP use caps in the event of a transfer. CHLAP regulations use the AFA standard of “10-percent” ownership attribution. This rule attributes 100 percent ownership or use of limited access privileges to an entity if they hold at least 10 percent equity in the QS holding entity. If ownership structure changes, either through a transfer or reorganization of a business, the CHP holder is required to notify NMFS of this change. These requirements apply for both transferable and non-transferable CHPs; however, once RAM is aware of a change occurring for the holder of a non-transferable CHP, that CHP is no longer valid.

The following sections discuss the benefits and cost, including the distributional impacts of requiring an annual update to the ownership structure of the CHP holder (for non-individual holders), and concludes with a discussion of the logistics and questions of clarification.

#### **4.2.2.1 Benefits of Action**

Similar to the description of benefits of a general CHP renewal process (Section 4.2.2.1), requiring updated information on the CHP ownership structure changes could improve the ability to monitor changes in CHP holdings that have not be voluntarily reported in the past. Although there are Federal requirements to notify NMFS upon changes to CHP holder ownership structure, there are incentives that may discourage a CHP holder from doing so. Since non-transferable CHPs become invalid if there is a change in ownership, this annual reporting requirement could allow for more accurate validation of non-transferable CHPs. Again, it would still be possible for changes in ownership to go unreported if there is a deliberate attempt to hide a change. A renewal form could require certification that all information is valid and correct.

In addition, having updated ownership information could provide for better enforcement of CHP use caps.

This information may also improve the analytical capacity to link CHP holders with CHP users; a task that proved challenging in the recent discussion paper on CHP usage (NMFS/NPFMC 2016). However, even with this additional information on ownership structure, linking CHP holder and CHP user still requires matching names; a task that will always include some level of subjectivity and extra effort.

#### **4.2.2.2 Drawbacks of Action**

The largest challenge in assessing the costs and benefits of this option is that there is there is no way to accurately measure the level of CHP ownership structural change that goes unreported. Thus, it is possible there could be total or near compliance with the current requirements to report changes in CHP ownership structure. If this is the case, an additional reporting requirement would be redundant.

In addition, requiring information on ownership structure on an annual basis again imposes a burden on the part of both the CHP holders as well as the NMFS Alaska Region.

#### **4.2.2.3 Additional Discussion Points on Implementation**

If the Council wanted to ensure compliance with this information request, RAM could hold the CHP until all required information was provided. Ownership information, if missing from the renewal application, could constitute the denial of a CHP. Note that NMFS does routinely follow-up with industry to provide additional opportunity to complete forms.

#### **4.2.3 Alternative 2, Option 2 and 3: List of People, Vessels, Ports**

Option 2 and Option 3 under Alternative 2 are analyzed together in this section given their similar nature and expected impacts. These options are not mutually exclusive. They would restrict use of CHPs to persons, vessels, and/ or ports identified during the annual registration process. Specifically, Option 2 would require the CHP holder to provide a list of the natural person(s) and/or vessel(s) that would use the CHP during that season on the annual CHP renewal application. The list of natural person(s) and/ or vessel(s) eligible to use the CHP would be available for enforcement representatives to monitor compliance both in the field and through post-trip audits of logbook data. Option 2 contains a sub-option that if a non-transferable CHP is used by a natural person(s) and/or vessel(s) that was not submitted to NMFS during the annual registration, the CHP would not be valid for use during the following fishing year. Option 3 would require a non-transferable CHP holder to provide a list of beginning and/or ending port(s) for trips where the CHP is used to NMFS. Under the sub-option, if a non-transferable CHP is used for a trip that begins or ends in a port that was not submitted to NMFS during the annual registration, the CHP would not be valid for use during the following year.

Based on recent discussion by the Council (see Section 4.2.4.1) the analyst assumes the intention of these two options is to monitor the users of CHPs, and to identify and discourage “leasing-like” behavior, particularly from non-transferable CHPs. As the term “leasing” remains undefined with regards to CHP usage, it is unclear precisely what type of behavior the Council may wish to track and/ or discourage. Amidst the philosophical/ policy debate about whether leasing of CHP *should* be restricted (see Section 4.2.4.1), there continues to be the challenge of identifying what types of relationships constitute leasing and how to monitor its practice given the diverse types of charter businesses. Throughout this section, the analyst considers leasing in terms of the financial transaction that may occur for the use of another holder’s CHP. This classification was not established by the Council, nor is it intended to be a formal definition, but it is necessary to clarify in order provide an evaluation about the effectiveness of the present options. For instance, if the definition of lease was a CHP being used by an individual who was not the CHP holder, this could substantially change the type of business relationships that fall into the “leasing” category. This example would include a lodge owner that was issued six CHP and allows six different lodge-employed guides to run trips with their CHPs, free of charge. For purposes of this paper, the analyst is not considering this to example to represent a lease.

This rest of this section of the analysis considers the cost and benefits of the proposed requirements in terms of their effectiveness at monitoring leasing (or “leasing-like”) behavior, as well as logistical aspects of the options and points of clarification. This section also includes some discussion on the merits of pursuing future action to control leasing of CHPs and other steps the Council might consider. While the current proposal does not include alternatives or options for an outright restriction/ prohibition on CHP leasing, this is still a necessary policy issue to consider at this time, as the benefits and cost of monitoring leasing (or “leasing-like”) behavior, and the type of information necessary to collect, depend somewhat on the intent of future action.

#### **4.2.3.1 Benefits of Action**

Alternative 2 Option 2 and Option 3, could discourage some leasing-like activity. Under status quo, leasing of a CHP might be used by some CHP holders as an in-season flexible business option. For example, if at certain times of year, a charter operator decided to target other species of fish, or to engage in something other than halibut fishing, or if an operator suffer personal circumstances where they are temporarily unable to fish, they may seek to mitigate their business losses by leasing their CHP. In these circumstances, the CHP holder might identify a charter contact that could benefit from the temporary use of their CHP to increase their angler capacity. Leasing options as these examples may be unplanned. Thus, the proposed options of requiring a list of eligible people, vessels, and/or port prior to the CHP holder’s fishing season could reduce this type of leasing.

The sub-options include an enforcement response that would be more likely to ensure charter operators abided by their list of people, vessels, and/ or ports.

#### **4.2.3.2 Drawbacks of Action**

Options 2 and 3 would not monitor or restrict leasing, as long as the leasing transaction was planned at the time of CHP registration. Instead, CHP holders would have an incentive to list the names of all people, vessels, and/or ports that may possibly be used, regardless whether this CHP use constitutes a lease or not.

Given the initial allocation of a CHP to ADF&G business owners (including both individuals and non-individuals), paired with the diversity in charter businesses, there are many non-leasing reasons why a CHP holder may rely on multiple guides/ vessels/ ports. For instance, a list of guide names and CHP holder information, even broken down to the individual level, may not be sufficient to illuminate the relationship between these individuals in order to identify if leasing is occurring (based on the analyst’s



consideration of leasing). Sometimes the guide and the CHP holder are the same person, in which case the relationship would be clear. However, there are many other types of relationships which would still not be identifiable as a lease, even with the additional requirements under Alternative 2, Option 2. For example, if a business owner (CHP holder) hires multiple guides to be employed through the business and provides the CHPs free of charge.

Likewise, limited information could be gleaned on the leasing relationship between the vessel and the CHP holder based on the requirements in Alternative 2, Option 2. Sometimes the CHP holder uses one vessel, sometimes they have a fleet of vessels and a CHP may be used on any of the vessels. Sometimes a vessel may be shared by two different CHP holders. These relationships may or may not constitute leasing.

Alternative 2, Option 3 would track the ports used by a CHP holder; however, there are several non-leasing reasons why a charter operation may rely on multiple ports for their business. For instance, multi-day charter may begin in one port and end in another. In areas where there are ports close together, some single-day charters may start and end in different locations. Additionally, some businesses adjust their starting/ending port each day based on the ocean and weather conditions.

None of these options propose a restriction on the number of people, vessels, and/or port. Having restrictions on the number of people, vessels, and/or port, may not achieve the intended effect of discouraging leasing behavior. It may also disadvantage those operations that do not lease. For instance, one lease arrangement could be between a CHP holder and one individual with their own vessel, operating out of one port. A limit on the number of people, vessels, and/or ports would not discourage this exchange. Conversely, a lodge owner who holds five CHPs, uses five different vessels, hires five different charter guides, and uses different ports depending on ocean and weather conditions could be disadvantaged in this restriction.

If the intention of Alternative 2, Options 2 and 3 is primarily rooted in understanding who is using CHPs and where, it is important to highlight the information that is currently available. An example of the ADF&G Saltwater Charter Logbook page is attached as an appendix. The appendix demonstrates that a CHP number is required to be reported on logbook page for each charter trip in Area 2C and 3A in which halibut is targeted. For trips with multiple CHPs, a new logbook page is used for each CHP. The guide will also record their unique ADF&G guide license number on each logbook page that is used. Additionally, the guide is required to report the community or port where the trip ended. Since a logbook is issued to a specific ADF&G business/ vessel pair, the logbook (and CHP number used on each trip) can also be linked to the vessel that used it.

Thus, a CHP can currently be linked with the guides and vessels that have used it, as well as the ending port for each trip that it is used. Some examples of information could be pulled from existing data includes:

- The number of vessels that use the same CHP.
- The number of vessels that use more than one CHP.
- The number of CHPs that are being used by more than one vessel.
- The number of guides using the same CHP.
- The number of guides using more than one CHP.
- The number of CHPs that are being used by more than one guide.
- The number of CHP that have ended trips in different ports (see Table 16).
- The number of ports CHPs use.

Note that while these data requests could be made, as explained in Section 3.2.5.1, CHP data has not been systematically cleaned; therefore, data exploration requires increased effort. Additionally, as previously

stated, these data requests are not expected to illuminate the level of CHP leasing that exists in the charter halibut sector.

Finally, if the Council moves forward with the sub-options to Alternative 2, Options 2 and 3 which would prevent fishing with a non-transferable CHP after a year in which the CHP was used by a vessel, person, and/or port which was not registered in the CHP annual renewal, this option could create the most disruption to charter operations. The Council will need to include clear justification about the importance of requiring CHP holders to provide this additional information for enforcing this type of registration.

#### **4.2.3.3 Additional Discussion Points on Implementation**

It is unclear if Alternative 2, Option 2 would only apply to non-transferable CHPs or to all CHPs.

An ADF&G registered guide number may be a useful substitute to listing “natural person(s)”. A person’s name without a unique identification number is of limited utility in a dataset (i.e., people can use nicknames or abbreviations when writing their name). ADF&G requires each guide to apply for a sport fishing guide license before they fish. Using this same number would allow for comparison with the logbook data.

NMFS would consider sub-options to Alternative 2, Options 2 and 3 an administrative action, not an enforcement action. Administratively, it is important distinction and it cannot be considered both. It would be considered an administrative action because the consequences have to do with whether or not they receive a permit in the next fishing year and would not result in a fine or seizure of fish. The Council adopted Option 2 and/ or Option 3 and not the sub-options, there may be default enforcement action linked with use of a CHP by an unregistered person, vessel, and/ or at an unregistered port.

NMFS highlighted that enforcement requirements of the sub-options to Alternative 2, Options 2 and 3 may be challenging given the availability of logbook data. As described in Section 3.2.6, OLE receives logbook data twice a year and depending on other enforcement pending issues, fully auditing the logbook data can take significant time. RAM may not have the information necessary to identify CHP holders that used guides, vessels, or ports outside of their list before the following season. Thus, if the Council wished to include the consequences detailed in the sub-options, these may not be able to apply until the following year (e.g., if a charter guide used a CHP they were not registered to use 2020, that CHP may be invalid for the 2022 season).

#### **4.2.4 Alternative 2, Option 4: Use by a Non-owner**

Alternative 2, Option 4 was added to the amendment package in October 2017. This option would add a question to the CHP renewal application that would ask about use of CHPs by non-CHP holders and the general terms of those arrangements. Specifically, the questions suggested in Option 4 would be:

- 1) In the last year, was this CHP used by an operator who is not part of the CHP ownership structure?
- 2) If yes, what were the agreed upon compensation terms for the use of the CHP?
  - a. No compensation; operator is an employee of the CHP holder
  - b. A flat fee paid to the permit holder
  - c. A fee that is the percentage of gross earnings
  - d. Combination of flat fee and percentage

In April 2018, the Council added a new question, which was later adopted as a PA. Specifically, the Council included: “**Did you receive financial compensation for use of a CHP in the preceding year?**”

Similar to the two-part multiple-choice question considered, the Council's yes/ no question includes similar intent to gain insight into "leasing-like" behavior of CHPs based on financial compensation received for the use of the CHP by another fishing guide.

The following sections are meant to provide context for the consideration of gathering these types of CHP use and ownership information. First, this section documents the Council's previous consideration of restricting CHP leasing and includes a brief policy discussion on the reasons leasing may or may not be desirable in the charter fishery. The third section discusses the Council's possible responses to Option 4 and highlights the tradeoffs between making this question mandatory or voluntary.

#### **4.2.4.1 Previous Consideration of CHP Leasing by the Council**

In March 2007, when the Council took final action on the charter moratorium program, it recommended issuing CHPs to qualified ADF&G licensed fishing guide business owners.<sup>10</sup> An ADF&G business owner is the individual or entity that registers for a logbook. Thus, the basic unit of measuring participation in order to receive a CHP was a logbook fishing trip. CHPs could be held by U.S. citizens or U.S. businesses (with 75 percent U.S. ownership of the business, unless grandfathered in). This decision means that CHPs are not necessarily linked to a charter guide, or a particular vessel. CHP holders consist of individuals, groups of individuals, and other non-individual entities.

The Council's preliminary preferred alternative for the charter moratorium program also included a provision under Issue 6 to prohibit leasing in the moratorium program (NMFS 2008).<sup>11</sup> However the Council realized that given the issuance of CHPs to business owners, the nature of private temporary transfers of the charter harvest privileges that could take place, and the variety of business relationships that can exist between CHP holders and users, regulating a broad prohibition on leasing may not be enforceable. Thus, the Council instead passed a motion in March 2007 that attempted to deter leasing by specific charter logbook requirements. These logbook requirements were later clarified<sup>12</sup> to not explicitly require a charter vessel operator to have onboard the vessel a charter logbook issued in the name of the CHP holder.

The Council continued to voice concern about the leasing behavior of CHPs. In April 2010, in response to NMFS' interpretation of "Issue 6" from the charter halibut moratorium motion, the Council made a motion to initiate a discussion paper which laid out several alternatives and options to limit the leasing of CHPs.<sup>13</sup> The Council's problem statement noted concerns that leasing could change the character of the halibut charter fleet (i.e., creating absentee ownership), leasing would likely decrease the sale and transfer of CHPs, and may inhibit new entry level opportunities for new charter halibut operators as well as increase the price of entry.

In December 2010, a discussion paper was produced by interagency staff in response to the Council's April 2010 motion.<sup>14</sup> The discussion paper highlighted some of the substantial challenges that would need to be addressed in order for regulations to produce the intended effect. Unintended effects could include substantial negative consequences on certain types of existing operations (e.g., a charter business owner that holds multiple CHPs, and assigns one to each of the company's guides for the season) and/ or an

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<sup>10</sup> The March 2007 Council motion recommending the charter halibut moratorium: <http://www.npfmc.org/wp-content/PDFdocuments/halibut/CharterHalibutMotion307.pdf>

<sup>11</sup> The March 2007 Council motion recommending the charter halibut moratorium: <http://www.npfmc.org/wp-content/PDFdocuments/halibut/CharterHalibutMotion307.pdf>

<sup>12</sup> The language limiting leasing was later dropped see 76 FR 34890: <https://www.gpo.gov/fdsys/pkg/FR-2011-06-15/pdf/2011-14854.pdf>

<sup>13</sup> The April 2010 Council motion initiating a discussion paper on limiting leasing of CHPs: <http://www.npfmc.org/wp-content/PDFdocuments/halibut/MoratoriumLeasing410motion.pdf>

<sup>14</sup> Note this discussion paper was presented during staff tasking during the December 2010 Council meeting.

incentive for CHP holders to restructure their relationship with an entity they wish to lease to (e.g., if the CHP is transferable, a CHP holder could transfer equity in a CHP in order to continue leasing to a “partner”).

The discussion paper highlighted what NMFS might be able to do, could do (with impediments), and could not do to address leasing. Given the diverse types of charter operations and different types of entities that hold CHPs, this type of regulation would need to be carefully crafted in order to produce the intended effect. Operations by some businesses may be difficult to distinguish from leasing. In addition to the discussion paper, representatives from multiple agencies responded to the April 2010 Council motion with substantial questions of clarification.<sup>15</sup>

In response to this discussion paper in December 2010, representatives of the charter sector testified that the concerns about leasing were speculative, solutions to address leasing would be highly disruptive to the industry and requested that the sector have the most flexibility possible in addressing the new constraints of the moratorium. These testifiers asked the Council to take no further action and wait to see how the program developed. The Council considered but rejected a motion that would have: (1) required permit holder names to match ADF&G business license; (2) defined “leasing”; (3) set up an expiration date for non-transferable permits (5, 10, or 15 years after program implementation); and (4) delayed all action until 2015.

In Council discussion, it was clear that Council members chose to take no action at that time to address permit leasing for a variety of reasons. Some Council members indicated that it was premature to assume future problems with leasing. Some Council members were not philosophically opposed to the idea of permits being leased, and some spoke to the practical challenges with implementation, monitoring, and enforcement.

Most recently, a discussion paper was issued in December 2016 from the Council’s direction to reconsider feasible measures to limit the use of CHPs by persons who are not the permit holder (i.e., leasing). With the obstacles to an outright prohibition on leasing demonstrated in previous Council documents, this discussion paper was tasked with three specific data requests in an effort to better understand CHP latency, usage, and active participation. Results from these data requests have been incorporated into Section 3.2.5.1 through 3.2.5.3.

The 2016 discussion paper highlighted some of the challenges associated with the CHP database, including a verification process to notify whether non-transferable permits are still active (e.g., if the permit holder has passed away). It also demonstrated how the names that identify CHP holders (personal names, business names, groups of individuals) do not easily match up with other personal identifiers of those using the permit (guides, vessels, or businesses) and how this subjectivity could increase the difficulty in enforcing a prohibition on leasing. In response, the Council requested this current analysis to consider improving the information about CHP holders and CHP use.

#### **4.2.4.2 Tradeoffs of CHP Leasing**

Leasing of limited access privileges has been a continuous point of discussion throughout many North Pacific limited access programs. Many of these programs have shared the same challenging decision point of balancing the negative distributional impacts that can manifest from the ability to lease a limited access privilege with the positive distributional impacts. The Council response to leasing has been distinct for each program and is often influenced by the type of operations that existed prior to the limited access privilege.

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<sup>15</sup> Interagency staff comments on the April 2010 motion: <http://www.npfmc.org/wp-content/PDFdocuments/halibut/PermitLeaseAttach410.pdf>

Previous discussions and testimony have highlighted some of the positive distributional impacts of allowing CHPs to be leased. Including this opportunity in a program allows for flexibility in short-term participation. The need to purchase a CHP is a significant investment for many charter operators. Thus, leasing may allow for participation in the fishery at a lower cost for the short-term. It may allow for diversity in the types of businesses offering charter halibut fishing by allowing an opportunity for businesses that may not be the most productive (in terms of angler effort) or specialized. For example, perhaps a new operator wants to focus their operations on salmon fishing, but also would like to allow anglers the opportunity to request halibut fishing. The ability to sporadically lease a CHP from their neighbor could benefit their business and allow their neighbor to earn a lease rate. Leasing of CHPs may allow charter operators to adjust to inter-annual or even inter-seasonal variation around their business or personal circumstances without the commitment created in a permanent transfer. This could be especially relevant in emergency-type situation (e.g., illness, death, vessel breakdowns, military service, etc.). The opportunity to have annual flexibility may be particularly meaningful under the adoption of the Catch Sharing Plan (CSP), which since 2014 has managed the charter sector under an allocation that has constrained the charter harvests. This new management system has thus far resulted in increasingly strict management measures for the charter sector in both Area 2C and 3A. Leasing can provide operators some flexibility in entry and exit if a charter operator's anglers are particularly sensitive to these changes in management measures.

Despite these benefits to leasing, there can be adverse impacts as well. Leasing can have a negative long-term effect on the ability of a new entrant to both identify and afford a CHP for sale. If CHP prices increase, a charter operator looking to begin offering charter halibut trips or expand their current operations may have more of an incentive to lease. However, CHP holders place a value on a permit that is equal to the present value of the net benefits they expect to receive from holding the CHP during its lifetime. The opportunity to lease a CHP could drive up the sale price of that permit. In this circular fashion, some potential new entrants may be priced out of the market. The ability to lease could also incentivize a CHP holder to hold onto the CHP past the point when they would no longer participate in the halibut charter fishery in order to earn a lease rate. The original analyses for the charter moratorium demonstrated that the Council was particularly concerned about the potential for "absentee ownership" (NMFS 2008; NMFS 2009b). CHP holders retaining access privilege longer than they are able or willing to participate in the halibut charter industry could diminish supply of CHPs on the market as well.

#### **4.2.4.3 Monitoring CHP Leasing Activity**

As illustrated, a discussion of both the practical challenges, as well as the philosophical/policy debate about whether leasing of CHP *should* be restricted has persisted throughout several Council meetings. Previous efforts were not able to identify an enforceable way to prohibit leasing without also disrupting many current charter operations. The conversation has turned to whether it is important to attempt to monitor leasing, and if so, how that would be accomplished.

The Initial Review Draft (NPFMC 2017) suggested ways to attempt to track and understand leasing if the Council wished to monitor this activity. One way would be through a question that could be added to the annual permit renewal to specifically ask about the user of the CHP and the type of royalty the CHP holder may receive from that use. The Council decided to include this question for consideration, after removing the language related to the amount of compensation received. It was determined the amount of compensation received may not be necessary or appropriate in simply understanding the leasing behavior that takes place in the fishery. The sample question reads:

- 1) In the last year, was this CHP used by an operator who is not part of the CHP ownership structure?
- 2) If yes, what were the agreed upon compensation terms for the use of the CHP?
  - a. No compensation; operator is an employee of the CHP holder

- b. A flat fee paid to the permit holder
- c. A fee that is the percentage of gross earnings
- d. Combination of flat fee and percentage

There are probably situations for which this question does not make sense for all charter operations leasing a CHP. For example, a CHP could be used by multiple people each year and each of those people have a different type of relationship with the CHP holder, the CHP holder may not know how to answer this question. The question could be modified to provide an opportunity to indicate multiple CHP use scenarios, or by adding a “e. other \_\_\_\_\_” write in option.

At the April 2017 meeting, the Council chose to substitute different wording for a question that would collect information on “leasing-like” behavior of the CHPs. Specifically, the Council included: **“Did you receive financial compensation for use of a CHP in the preceding year?”** While this yes/no question includes similar intent to gain insight into “leasing-like” behavior of CHPs based on financial compensation received for the use of the CHP by another fishing guide, it is different from the original two-part, multiple-choice question in that it does not ask about terms of compensation or collect information on use of CHP by a non-owner that did not involve financial compensation.

Potential benefits to tracking CHP use and leasing behavior through these types of questions includes a better understanding of the diverse types of charter halibut businesses in Area 2C and 3A and the ways CHPs are used. This information could inform future policy decisions that may affect the charter sector. Analysts may have more information to describe the types of impacts that could occur, based on a better understanding of the relationship between the CHP owner and the CHP user, or the extent of CHP leasing-like behavior.

On the other hand, the self-reported information collected is unlikely to mitigate the practical challenges previously mentioned with enforcing and implementing a restriction on leasing. A primary challenge is that however leasing may be defined, if this action is restricted, some operators would have an incentive to adjust their business so that they did not fall under the definition of leasing. Merely monitoring leasing without a threat of enforcement actions would create less of an incentive for a business to change its practice. In contrast, if leasing was prohibited based on the type of compensation received, CHP holders may be incentivized to adjust the type of royalty they would receive from sharing their CHP to work around this definition. If the definition was based around the vessel, port, or person using the CHP, the CHP holder might have an incentive to change their ownership structure, or other business practices. As previously discussed, basing a restriction on leasing around vessel, port, or person using the CHP could also have unintended negative impacts on charter businesses whose CHP use might resemble leasing, but may in fact be a “self-lease” or “internal-lease”.

### 4.3 Affected Small Entities

Section 603 of the Regulatory Flexibility Act (RFA) requires that an initial regulatory flexibility analysis (IRFA) be prepared to identify if a proposed action will result in a disproportionate and/ or significant adverse economic impact on the directly regulated small entities, and to consider any alternatives that would lessen this adverse economic impact to those 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 Council final actions on this issue.

This section provides information that NMFS will use to prepare the IRFA for this action, namely a description and estimates of the number of *small, directly regulated entities* associated with the action alternative (Alternative 2). The operative action in this alternative is to require CHP holders to submit an annual renewal application. The options under Alternative 2 would require additional information from

CHP holders, outside of what has previously been provided to NMFS. There are several types of entities that could be expected to experience indirect, induced, secondary, and distributive economic impacts from Alternative 2. However, the RFA is focused on entities that are being *directly regulated* by the action alternative. In light of this guidance, the pool of entities considered directly regulated by Alternative 2 is limited to CHP holders, and potentially CQE and MWRs.

The RFA recognizes and defines three kinds of “small” entities: (1) small businesses, (2) small non-profits organizations, and (3) small government jurisdictions. The RFA defines “small organization” as any not-for-profit enterprise that is independently owned and operated and is not dominant in its field. CQEs are included in this category. Table 8 demonstrates that there were 12 CQEs that hold charter permits in Area 2C and 9 CQEs that hold charter permits in Area 3A; 21 small entities in total.

MWRs, due to their affiliation with the Federal government are not considered either large or small entities. There is a total of three entities that hold seven MWR charter permits: Eielson Air Force Base MWR (holds both an Area 3A permit and Area 2C permit), Seward Army Resort, and the US Army Morale Welfare and Recreation (Ft. Greely).

CHP holder is the third type of directly regulated entity in the proposed action. Table 13 demonstrates that there are instances where one CHP is shared between businesses. There can also be instances where one business uses CHPs registered to more than one individual/ non-individual entity. To count the number of small businesses directly regulated, this analysis examines the number of ADF&G sport fishing businesses that have submitted saltwater logbooks indicating landed halibut.<sup>16</sup> In 2015, 485 sport fishing businesses submitted saltwater logbooks indicating landed halibut.

The thresholds applied to determine if an entity or group of entities is considered a “small” business under the RFA depends on the industry classification for the entity or entities. In order to be considered a “small” charter business, total gross receipts may not exceed \$7.5 million, by SBA standards (NAICS code 487210). There is no systematic data collection of gross revenues for the charter halibut sector. In order to understand the likelihood of a charter halibut business exceeding this size standard, this section relies on the analysis done for the catch sharing plan (NPFMC/NMFS 2013). This analysis demonstrated that, based on the estimates of gross revenue earned by an average charter operation in Area 2C, the average CHP holder would need to hold about 140 CHPs to generate \$7.0 million (which was the SBA size standard at that time) in gross revenue from charter fees only. In Area 3A, a CHP holder would need to hold about 110 CHPs to reach a \$7.0 million-pound threshold. Revenues from other sources, like food and lodging would reduce the number of CHPs needed to reach this threshold. While it is not uncommon for an operation to hold multiple CHPs and run multiple vessels, this demonstrates that even with changes in the average charter price, it is likely nearly all if not all the charter halibut business would be considered small entities for purposed of RFA.

It is possible a charter halibut operation that is associated with a resort, lodge, or other type of multi-faceted business may exceed the \$7.5 million threshold in total operations. However, these data are unavailable, thus, all business entities are assumed to be small. Thus, effects of the proposed Alternative 2 described in Section 4.2 would apply to all of the potential small entities.

#### **4.4 Summation of the Alternatives with Respect to Net Benefit to the Nation**

The no action alternative (Alternative 1), would not create a reporting burden for the industry. However, it would also not address the Council’s purpose and need for action. This alternative would not allow for

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<sup>16</sup> Table 3 demonstrates the number of active saltwater businesses; however, these data include businesses that provide saltwater trips that do not target halibut (e.g. salmon charter trips), which would not be relevant to the proposed action.

the improvement in the quality of information on CHP stakeholders; which may be vital in understanding current and potential future impacts on the fishery with any future Council amendments. It would continue to foster challenges for enforcement in the event that multiple version of a CHP are used on the water at the same time and continue to make it difficult to track the retirement of non-transferable CHPs.

No part of the proposed action in Alternative 2 is expected to affect the amount of halibut harvested, the footprint of the fishery, the length of the season, the gear used to fish, or non-target species. Thus, the action is not expected to have environmental consequences.

The socio-economic distributional impacts of the action alternative (Alternative 2) are discussed throughout this RIR. The action of requiring CHP holders, as well as potentially CQEs and MWRs to renew their permit annually with a CHP number, holder name, and address would impose a level of burden on CHP holders and the agency. At its lowest degree of burden, this requirement would entail time and effort on the part of CHP holders to complete and possibly notarize the additional paperwork. At its most intrusive level, if the CHP application was not submitted in time, it could lead to a delay in a charter fishing season and loss of associated revenue.

The benefits of renewing CHPs would be expected to manifest in the form of more current and accurate CHP holder information, a better understanding of latent CHP capacity, a decrease in the enforcement issues around having multiple versions of a CHP, and a more systematic process for the retirement of non-transferable CHPs.

Similarly, Alternative 2, Option 1 would create additional reporting burden; requiring CHP holder to update their ownership structure. Again, this could allow for the benefits of more accurate information on CHP holders which could provide a better understanding of latent CHP capacity and a more systematic process for the revocation of non-transferable CHPs.

Option 2 and 3 are not part of the Council's PA. As described in Section 4.2.3 the requirement to report the person/ vessel (Option 2) or ports (Option 3) that the CHP would be used by/ at prior to the season would not necessarily achieve the objective of tracking or mitigating some of the CHP leasing behavior. It would increase the reporting burden, and primarily penalize those that did not had unplanned circumstances throughout the season in which they did not anticipate the use of vessel, skipper, or port. Information collected from this additional reporting requirement would not provide a level of detail over what can currently be gleaned from logbooks. A CHP can currently be linked with the guides and vessels that have used it, as well as the ending port for each trip that it is used. However, as described in Section 4.2.4.3, there are challenges associated with using this information to enforce a certain level of "action participation". These challenges would continue to exist even if the information suggested by Option 2 and 3 are required.

Asking a question about whether compensation was received for the use of a CHP (as in Alternative 2, Option 4), may be one way to show the amount of CHP leasing that takes place in the charter fishery. This could help the Council understand how CHPs are used. In any future analysis of changes to the charter halibut limited access program, this information could help demonstrate the type and extent of impacts by better characterizing the dynamics of the halibut charter fishery. The addition of this information would also constitute an additional reporting burden to the CHP holders and require marginal addition effort in information collection and recording from NMFS.

The Council's PA would also not be expected to affect who would harvest halibut compared to the status quo. Anglers and the consuming public would not be expected to be impacted by the action alternative. Therefore, the proposed action is likely to have a negligible effect on the Nation.



## 5 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.

The proposed action would implement an annual registration process for transferable and non-transferable charter halibut permits (CHP). The intent of this action would be to provide updated or expanded information on CHP holders and use in order to evaluate whether changes to the CHP Program are necessary as a result of changes in ownership and participation of CHPs, facilitate retirement of non-transferable permits when ownership changes, and improve the ability of enforcement agents to ensure valid permits are being used. This action is consistent with the Halibut Act in that it would not discriminate by residents of different states and it is not in conflict with regulations adopted by the International Pacific Halibut Commission.

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## **8 Appendix: ADF&G Saltwater Charter Logbook and Vessel Registration, Including Sample Logbook Page**

[http://www.adfg.alaska.gov/static/license/prolicenses/pdfs/logbook-page\\_sw\\_combined.pdf](http://www.adfg.alaska.gov/static/license/prolicenses/pdfs/logbook-page_sw_combined.pdf)