

**NMFS's Determination of Logical Outgrowth  
For Potential Changes to the Halibut Catch Sharing Plan  
NMFS, Alaska Region**

**Summary**

This document evaluates the Council's December 2011 (1) suggested responses to public comments 1 through 6 in the December 2011 NMFS report, and (2) request for analysis of charter management measures not included in the CSP Preferred Alternative (Part 4) to determine if each is a logical outgrowth of the Council's Preferred Alternative, as proposed in the rule published on July 22, 2011 (76 FR 44156).

The proposed CSP would (1) establish sector allocations of a combined catch limit to the commercial and charter halibut fisheries in Area 2C and in Area 3A, (2) implement harvest restrictions (CSP restrictions) for charter vessel anglers in each area that would be intended to limit charter harvest to within the target harvest range around that sector's catch limit for that area, and (3) authorize transfers of commercial halibut IFQ as guided angler fish (GAF) to charter halibut permit holders for harvest by charter vessel anglers in the charter halibut fishery.

If NMFS determines that a potential change to the CSP Preferred Alternative is a logical outgrowth of the CSP proposed rule, NMFS can proceed to final rulemaking.

If NMFS determines that a potential change to the CSP Preferred Alternative is not a logical outgrowth of the CSP proposed rule, NMFS would be required to prepare and accept public comment on a new proposed rule for the revised CSP. Following the public comment period on the new proposed rule, NMFS would consider public comments from the July 22, 2011 rule and the new proposed rule when preparing the final rule to implement the CSP.

**Logical Outgrowth**

NMFS rulemaking is subject to the requirements of the Administrative Procedure Act, or APA (Public Law 79-404). The APA governs the process by which federal agencies develop and issue regulations. It includes requirements for publication of notices of proposed and final rulemaking in the *Federal Register* and opportunities for the public to comment on notices of proposed rulemaking (notice and comment). The notice and comment provisions of the APA are intended to encourage public participation in the rulemaking, to help educate the agency, and to produce more informed agency decisions.

To further these goals, courts have consistently held that a notice of proposed rulemaking must fairly notify interested persons of the issues involved in the rulemaking. Unless an exemption applies, failure to publish a proposed rule in the *Federal Register* may result in a court setting aside the final rule. The rule may also be set aside when the notice of proposed rulemaking was

inadequate to afford the public a meaningful opportunity to comment on the issues involved in the rulemaking. In this type of case the test is whether the final rule is a “logical outgrowth” of the proposed rule such that the public could reasonably have anticipated the final rulemaking from the proposed rule.

**Logical Outgrowth Determination for the Council’s December 2011 response to public comments 1 through 6 in the NMFS report**

In December 2011, the Council reviewed a NMFS report of 47 issues for which the agency was seeking Council input in order to proceed with final rulemaking. At that meeting, the Council provided responses to six public comments received on the CSP proposed rule as requested by NMFS. The Council also requested a report from NMFS at its March 2012 meeting as to whether the Council responses to the six public comments would result in the need for a new proposed rule, so that the Council may establish a timeline for implementing the CSP. This section of the paper presents NMFS’s determinations regarding logical outgrowth for the Council’s suggested responses to comments 1 through 6 in the December 2011 NMFS report. NMFS made these determinations based on advice from the Office of NOAA General Counsel, Alaska Section.

***Comment 1:*** In reviewing the program objectives and likely outcomes under the CSP, we support moving forward with implementation of the program in Area 2C. Circumstances in Area 2C necessitate immediate action to meet management objectives identified by the Council. The Area 2C commercial sector has experienced significant cuts in catch limits, while the charter sector GHL has remained stable for three years and actual charter harvests have exceeded the GHL since 2004. In contrast to Area 2C, current conditions in Area 3A do not necessitate an urgent need to have the CSP in place. The Area 3A CSP allocation to the charter sector represents a substantial change from the sector’s GHL at current CEY levels, and it is not clear that the proposed CSP management structure meets the Council’s management objectives for this area. We encourage NMFS to request the Council to review its recommendation for the proposed CSP in Area 3A and to maintain GHL management during the review.

*Council Suggested Response:* At this time the Council continues to support implementation of the CSP concurrently in Areas 2C and 3A.

*Logical Outgrowth Determination:* Not applicable (N/A); the Council’s suggested response does not change the CSP preferred alternative.

***Comment 2:*** The Council has not yet approved ADF&G logbooks for use as the final estimate of charter harvest in Area 2C and Area 3A. Final estimates are currently based on harvest estimates from the ADF&G mail survey. It will not be practical to request reporting of GAF and non-GAF

halibut harvest in the mail survey. Therefore, GAF and non-GAF charter harvest will be confounded in the estimates from the survey. Should the Council not adopt logbooks to manage charter harvests, ADF&G would likely adjust charter harvest estimates from the mail survey, using the non-GAF proportion of charter harvest reported in logbooks. Should the Council adopt use of logbooks, it may want to address differences between the levels of charter harvest estimated from the mail survey and reported in logbooks because the allocations in the CSP are based on estimated mail survey harvests.

*Council Suggested Response:* The Council and NMFS rely on the expertise of ADF&G to estimate charter harvests using the best information available. The Council and NMFS agree that it would not be practical to request anglers to report GAF and non-GAF charter harvest in statewide harvest surveys. If the status quo method of using statewide harvest survey data to estimate charter harvests in Area 2C and Area 3A is maintained under the CSP, the Council and NMFS concur with the proposed method to adjust charter harvest estimates from the mail survey using the non-GAF proportion of charter harvest reported in logbooks under the CSP.

*Logical Outgrowth Determination:* N/A; the Council's suggested response does not change the CSP preferred alternative.

**Comment 3:** The proposed method of converting IFQ to GAF using the average weight of all halibut harvested in each regulatory area during the previous year prevents accurate accounting of IFQ harvest and charter harvest. The average weight of GAF is expected to exceed the average weight of non-GAF charter halibut. This will result in underreporting of IFQ harvest, as well as overestimation of the charter average weight and possible imposition of management measures that are stricter than necessary to meet the allocation. The proposed rule should include a method for obtaining an average weight for GAF fish only.

The commenters suggested the following methods for obtaining an average weight for GAF halibut:

1. Require the use of electrical nylon strip ties or other similar device by the charter operator to mark GAF halibut to facilitate efficient estimation of GAF in the field by technicians and allow separation of average weight estimates for GAF and non-GAF charter harvest.
2. Distribute to each GAF permit holder a fixed number of locking tags equal to the number of GAF authorized by the permit. This will facilitate efficient estimation of GAF in the field by technicians and allow separation of average weight estimates for GAF and non-GAF charter harvest.
3. Issue GAF in poundage and require charter operators to report the lengths of all GAF to NMFS.

*Council Suggested Response:* The Council recommends using Method 3 to convert IFQ to GAF and for calculating an average GAF weight.

*Logical Outgrowth Determination:* NMFS determined that implementation of Method 3 would not be a logical outgrowth of the CSP proposed rule.

Under Method 3, NMFS would issue GAF to charter operators in pounds of fish, rather than in number of fish as recommended in the Council preferred alternative and in the CSP proposed rule. Under Method 3, net pounds of IFQ transferred from the IFQ permit holder would be equal to the pounds transferred to the GAF permit holder. Method 3 would require charter operators wishing to lease commercial IFQ as GAF to estimate the number of pounds of halibut to lease rather than the number of halibut, which could potentially be challenging to determine in advance.

Method 3 also would add one reporting requirement to the CSP for charter operators. Once charter operators receive and use GAF halibut, they would be required to report the length of retained GAF halibut to NMFS through the NMFS-approved electronic reporting system, as specified in the proposed regulations. NMFS would use the Halibut Length/Weight Chart provided by the IPHC, which has been widely used for years by the sector, to estimate the weight of the retained GAF. NMFS would then debit this calculated number of pounds from the charter operator's GAF account.

*Supplemental Information Related to Comment 3:* Since December 2011, staff discussions have highlighted two additional issues related to Comment 3. The first issue addresses whether issuing GAF in pounds rather than numbers of fish should result in a revision to proposed restrictions on the number of GAF that could be assigned to one GAF permit. The second issue addresses the need for the CSP to include a marking requirement for retained GAF halibut.

The Council's CSP Preferred Alternative includes restrictions on the amount of IFQ that an IFQ permit holder could transfer as GAF and on the number of GAF that could be assigned to one GAF permit. The restrictions on transfers between IFQ and GAF are intended to prevent a particular individual, corporation, or other entity from acquiring an excessive share of halibut fishing privileges as IFQ or GAF. The proposed rule would implement the Council's recommendations for three GAF transfer restrictions. First, IFQ holders would be limited to transferring up to 1,500 pounds (680.4 kg) or 10 percent, whichever is greater, of their annual halibut IFQ for use as GAF. Second, no more than a total of 400 GAF would be assigned during one year to a GAF permit assigned to a charter halibut permit that is endorsed for six or fewer anglers. Third, no more than a total of 600 GAF would be assigned during one year to a GAF permit assigned to a charter halibut permit endorsed for more than six anglers.

If the Council recommends using Method 3, NMFS would issue GAF to charter operators in pounds of fish, rather than in numbers of fish. This also raises the question whether the 400 and 600 GAF transfer limits proposed for charter operators should be expressed in pounds rather than numbers of fish. Maintaining the limits on GAF usage could be accomplished using numbers of fish (currently the preferred alternative) or pounds of IFQ to match the GAF accounting system. Both options limit the use of GAF but depending on the option selected it will have differential impacts on the amount of IFQ that may be leased. Page 23 of the supplemental analysis prepared for Part 3 of the C-4(b) agenda item includes a discussion of the impacts of establishing the GAF limits in numbers of fish or pounds.

The second issue to arise regarding Comment 3 since December 2011 is relevant whether or not the Council recommends using Method 3 to issue GAF to charter operators. The proposed CSP does not include a requirement for anglers to mark a GAF halibut in order to distinguish it from a non-GAF halibut retained on the same charter vessel fishing trip. This significantly reduces the ability of port samplers to distinguish GAF from non-GAF fish, and thus, the ability to accurately estimate the average weight of non-GAF fish. To accurately account for non-GAF charter harvest, ADF&G cannot include GAF halibut measurements in the estimate of average weight for non-GAF harvest. The estimate of non-GAF average weight is a fundamental component of charter harvest estimates. Without a marking requirement, it would be difficult and time consuming for ADF&G to measure all halibut and compare the lengths of all fish to the reported lengths of GAF in order to determine which halibut were GAF and which were not. Requiring anglers to mark GAF would be a much more efficient and effective method to assist with ADF&G sampling and estimation of the average weight of non-GAF halibut.

The marking requirement could be similar to the State of Alaska's marking requirement for personal use salmon: require the angler to remove the tips of the upper and lower lobes of the tail. This requirement would have a fairly low burden on the angler and would be consistent with marking requirements for other species of fish an angler may be targeting on a charter vessel fishing trip. If the Council reaffirms its support for using Method 3 in the CSP, NMFS recommends including a requirement for anglers to mark GAF by removing the tips of the upper and lower lobes of the tail.

*Regulatory Changes Required for Method 3:* Using Method 3 to issue GAF would require changes to the proposed CSP regulations to remove the need for NMFS to convert pounds of IFQ halibut to number of GAF fish to be issued to charter operators. Implementation of Method 3 also would require NMFS to revise the proposed estimate of the Paperwork Reduction Act (PRA) recordkeeping and reporting burden for charter operators. The burden would change for the following reasons:

1) The IFQ permit holder and charter permit holder would be required to express the amount of halibut in pounds needed when the Application for Transfer Between IFQ and GAF is submitted to NMFS. The charter permit holder would be required to determine how many pounds of GAF are needed by estimating how much retained GAF will weigh on a charter halibut trip before the trip takes place.

2) The charter permit holder would be required to report the length of retained GAF in the NMFS-approved electronic reporting system. NMFS would debit the GAF permit account after converting the GAF permit holder's reported length of the halibut retained under a GAF permit into pounds by using the IPHC Halibut Length/Weight Chart. The charter permit holder would track GAF use by verifying pounds remaining in their GAF permit account.

3) If the GAF marking requirement is recommended by the Council, the charter permit holder would be required to ensure the proper marking requirements were completed for each GAF halibut.

*NMFS recommendation:* NMFS supports the Council's recommendation to use Method 3 for issuing GAF under the CSP. Using Method 3 would avoid the potential for inaccurate accounting of IFQ harvest and charter harvest if IFQ were converted to GAF using the average weight of all halibut harvested in each regulatory area during the previous year. The average weight of GAF is expected to exceed the average weight of non-GAF charter halibut. Converting IFQ to GAF using an average weight for non-GAF halibut could result in underreporting of IFQ harvest, as well as overestimation of the charter average weight and possible imposition of management measures that are stricter than necessary to limit charter harvest to the CSP allocation.

If the Council recommends using Method 3, NMFS recommends converting the proposed limits on number of GAF assigned to a GAF permit to pounds for the revised CSP. NMFS recommends multiplying the current proposed limits (400 GAF to a GAF permit assigned to a charter halibut permit that is endorsed for six or fewer anglers and no more than a total of 600 GAF to a GAF permit assigned to a charter halibut permit endorsed for more than six anglers) by the 1995 through 2010 average weights of charter halibut harvested for each area to determine the GAF limits for Area 2C and Area 3A.

***Comment 4:*** The proposed rule requirement for charter operators to complete a report in the NMFS electronic reporting system by midnight each day GAF are retained is infeasible. Many charter operators take multi-day trips and often do not have internet access.

*Council Suggested Response:* The Council recommends that the provision allowing charter operators to return GAF to an IFQ holder at any time during the season be removed from the CSP and that the CSP retain the mandatory return date.

*Logical Outgrowth Determination:* NMFS determined that removing the provision allowing charter operators to return GAF to an IFQ holder at any time during the season would be a logical outgrowth of the CSP proposed rule.

The Council and NMFS agree that under the CSP proposed rule requirements, charter operators who do not have internet access would not be able to comply with the daily electronic reporting requirement and therefore may not be able to offer GAF to their clients. NMFS proposed near real-time electronic reporting to maintain updated GAF balances because the Council's Preferred Alternative allowed for the return of unused GAF either (1) at any time during season, or (2) on the mandatory return date for 15 days prior to the end of the commercial fishing season.

The Council recommended the mandatory GAF return date because it recognized that some GAF permit holders could have a balance of unharvested GAF at the end of the sport fishing season. Although the charter halibut fishery has typically been open from February 1 through December 31 in recent years, most fishing in the charter fishery occurs from May through August. ADF&G data for 2006 indicate that less than 1 percent of charter halibut harvest occurred after September 30, in either Area 2C or Area 3A. The commercial halibut fishing season typically opens in March and closes in mid-November. Based on this information, the Council recommended that NMFS return remaining unused GAF to the IFQ permit holder 15 days prior to the end of the commercial halibut fishing season because it would not significantly affect charter vessel business operations in aggregate. Further, this timeline would provide the IFQ holder with an opportunity to harvest the IFQ before the end of the commercial fishing season for that year. The IFQ holder also may choose to count the IFQ returned from GAF toward an underage for his or her halibut IFQ account for the next fishing year, as specified in regulations.

Removing the ability for charter operators to return GAF to the IFQ holder at any time during the season from the CSP enables NMFS to extend the deadline for electronic reporting of GAF to the end of the charter trip on which GAF were retained. This revision could accommodate the business plans of multi-day charter operators while obtaining the required information to track GAF use in a timely manner. The Council recommended that the CSP retain the mandatory GAF return date (15 days prior to the end of the commercial halibut fishing season) in order to preserve an opportunity for an IFQ holder receiving returned GAF halibut to harvest the IFQ before the commercial fishing season closes for the year.

Removing the within-season GAF return provision reduces administrative costs and paperwork burden for charter operators and IFQ holders. However, removing GAF returns would reduce

some flexibility for charter and commercial halibut operators to adjust to unexpected conditions during the fishing season that result in a charter operator not using all of the GAF issued on his or her GAF permit.

If the Council recommends revising the CSP Preferred Alternative to remove the within-season GAF return provision, NMFS would modify the proposed daily electronic reporting regulations to require that the GAF electronic report be completed by midnight on the last day of a charter vessel fishing trip on which GAF were retained. NMFS also would revise the proposed PRA recordkeeping and reporting burden estimate for charter operators to complete a GAF electronic report.

***Comment 5:*** The Council and NMFS did not provide a rationale for its assertion that charter overages and underages will balance out over time. Recent management history shows there will be an asymmetric variation around the charter allocation and a strong bias for overharvest under the CSP. This will compromise overall management of the resource.

Council motion: The Council agrees with NMFS's suggested response regarding the rationale for believing that charter overages and underages will balance out over time.

*Council Suggested Response:* Section 2.6 of the CSP analysis notes that the Council acknowledged the difficulty in managing charter harvest to a precise amount; therefore, it identified a harvest percentage range that it considers to be an acceptable margin of error. The Council anticipates that under the CSP, projection methods will continue to improve and the projection error will be close to the 3.5% target harvest range around the charter allocation.

*Logical Outgrowth Determination:* N/A; the Council's suggested response does not change the CSP preferred alternative.

***Comment 6:*** ADF&G and the SSC have commented that errors in harvest projections are likely to exceed the proposed plus or minus 3.5 percent charter harvest range built into the CSP. The Council and NMFS have not provided a rationale for why it selected the range of plus or minus 3.5 percent given this input from its scientific advisory body and ADF&G.

In a January 2009 discussion paper presented to the SSC, ADF&G staff noted that the 3.5% target harvest range is meant to absorb some of the difference in harvest under each management regime, but would also absorb some of the projection error.

(<http://alaskafisheries.noaa.gov/npfmc/PDFdocuments/halibut/HarvestProjectionsDisc709.pdf>) It is doubtful, yet uncertain whether this range will absorb all of the projection error. Under the CSP, analysts will be asked to determine whether the projected harvest is within a specified allocation range. Applying the retrospective projections made in 2007 using the best method for each area, ADF&G calculated the errors in determining the charter allocation, i.e., the difference

between the charter allocations calculated using projected and final harvests. The errors ranged from - 3.1% to +2.7% for Area 2C and from -2.3 to +1.1% for Area 3A. To reiterate, these are the ranges of errors observed in one-year retrospective projections. Under the CSP, there will be additional error due to forecasting harvest two years ahead and forecasting mean weight (rather than using observed values), as well as errors associated with predicting the effects of bag limit and size limit changes. In some years, these errors may be offsetting, but the projections are likely to fall outside of this 3.5 percentage point buffer at least occasionally.

The SSC comments on the ADF&G discussion paper noted that forecast methods used in the discussion paper are suitable, given current data limitations.

(<http://alaskafisheries.noaa.gov/npfmc/PDFdocuments/minutes/SSC209.pdf> ) While the resulting forecasts have had large errors, errors of this magnitude are not surprising given the uncertainties in the data, variability in the processes affecting the halibut stock and its fisheries, and the shortness of the time series. Consequently, the SSC believed that the magnitude and range of uncertainties will prevent the forecast accuracy to be anywhere near the  $\pm 3.5\%$  allowed in the charter range allocation of the preferred alternative.

*Council Suggested Response:* NMFS proposed the 3.5% target harvest range around the CSP charter allocation based on the Council's recommendation of the preferred alternative in its October 2008 motion. The Council recommended the management variance not to exceed  $\pm 3.5$  percentage points around the charter sector allocations. The proposed CSP stated that regulations imposed at each trigger level are expected to keep the charter angler's harvest within the 3.5% target harvest range around the CSP charter allocation. Under the CSP, the Council and NMFS anticipated that ADF&G will use projections of charter angler's harvest to determine the percentage of the combined catch limit that is anticipated to be harvested by charter clients in those areas in the upcoming year. If the projected harvest falls within the acceptable range, the management measures for that trigger point would be implemented. If the charter harvest is projected to exceed the acceptable percentage, stricter charter regulations would be imposed to reduce the percentage of halibut harvested by the charter sector. If the charter sector is projected to harvest a percentage of the combined catch limit that is lower than the range, charter client harvest regulations may be relaxed to allow the sector to harvest more halibut. If the actual charter harvest varies from the projected amount, ADF&G may use that information in future years to modify its harvest estimation methods.

If the projection error exceeds the 3.5% target harvest range, it is possible that harvest restrictions determined by the CSP matrix and projected charter harvest could be too restrictive or too liberal to limit harvest to the target harvest range. As noted in the response to Comment 5, the Council acknowledged the difficulty in managing charter harvest to a precise amount. However, one of the Council's primary objectives for the CSP was to provide pre-season specification of sector allocations and charter harvest restrictions that would not be adjusted in-

season adjustments in order to provide the maximum amount of notice for charter operators and anglers. While the Council acknowledged the difficulties of projecting charter harvest with precision, it anticipates that under the CSP, projection methods will continue to improve and the projection error will be close to the 3.5% plus or minus around the charter allocation.

*Logical Outgrowth Determination:* N/A; the Council's suggested response does not change the CSP preferred alternative.

### **Logical Outgrowth Determination for the Council's December 2011 request for analysis of charter management measures not included in the CSP Preferred Alternative**

**Council motion:** The Council requests feedback from NMFS as to whether the additions and revisions to the CSP result in the need for a new proposed rule, so that the Council may establish a timeline for implementing the CSP.

*Potential revisions to the CSP Preferred Alternative:* The Council requested NMFS's feedback on the following potential management measure changes:

- *Annual limits allowing for the retention of at least one fish of any size.*
- *Restricting captain and crew retention of fish.*
- *Trip limits, reverse slot limits, and two fish of a maximum size*
- *Two fish with maximum size on second fish that brings harvest to charter allocation (suggested in public testimony)*

The potential revisions affect component 2 of the proposed CSP, which would implement harvest restrictions (CSP restrictions) for charter vessel anglers in each area that would be intended to limit charter harvest to within the target harvest range around that sector's catch limit for that area, as shown in the CSP management matrix:

<b>Preferred Alternative: Area 2C</b>				
Combined Catch Limit (million lb)	Allocation	Charter Fishery Bag & Size Limit Regulations		
		If charter harvest within allocation range	If charter harvest projected to exceed allocation range	If charter harvest projected to be below allocation range
Tier 1 <5	Comm alloc = 82.7% Charter alloc = 17.3% Charter range = 13.8-20.8%	One fish	Maximum size limit imposed that brings harvest to <17.3%	One fish
Tier 2 ≥5 - <9	Comm alloc = 84.9% Charter alloc = 15.1% Charter range = 11.6-18.6%	One fish	Maximum size limit imposed that brings harvest to <15.1%	Two fish, but one must be less than 32" in length
Tier 3 ≥9 - <14	Comm alloc = 84.9% Charter alloc = 15.1% Charter range = 11.6-18.6%	Two fish, one must be less than 32" in length	One fish	Two fish
Tier 4 ≥14	Comm alloc = 84.9% Charter alloc = 15.1% Charter range = 11.6-18.6%	Two fish	Two fish, but one must be less than 32" in length	Two fish
<b>Preferred Alternative: Area 3A</b>				
Combined Catch Limit (million lb)	Allocation	Charter Fishery Bag & Size Limit Regulations		
		If charter harvest within allocation range	If charter harvest projected to exceed allocation range	If charter harvest projected to be below allocation range
Tier 1 <10	Comm alloc = 84.6% Charter alloc = 15.4% Charter range = 11.9-18.9%	One fish	Maximum size limit imposed that brings harvest to <15.4%	One fish
Tier 2 ≥10 but <20	Comm alloc = 86.0% Charter alloc = 14.0% Charter range = 10.5-17.5%	One fish	Maximum size limit imposed that brings harvest to <14.0%	Two fish, but one must be less than 32" in length
Tier 3 ≥20 but <27	Comm alloc = 86.0% Charter alloc = 14.0% Charter range = 10.5-17.5%	Two fish, one must be less than 32" in length	One fish	Two fish
Tier 4 ≥27	Comm alloc = 86.0% Charter alloc = 14.0% Charter range = 10.5-17.5%	Two fish	Two fish, but one must be less than 32" in length	Two fish

*Logical Outgrowth Determination:* NMFS determined that changes to charter management measures presented in the management matrix would not be a logical outgrowth of the CSP proposed rule.

NMFS made this determination based on advice from the Office of NOAA General Counsel, Alaska Section.

*Discussion:* The proposed CSP would establish non-discretionary management measures for charter vessel anglers prior to the fishing season based on projected harvests and charter catch limits for that year. Prior to 2012 under the GHL, restrictions for charter vessel anglers in Area 2C were implemented by separate NMFS rulemaking after the GHL was exceeded. The pre-season specification of the charter management measures under the CSP is intended to limit charter harvest to the target before an overage occurs, as opposed to the retroactive GHL approach that implements corrective action after the overages have occurred. NMFS proposed that the annual CSP catch limits for the commercial and charter sectors and the CSP management measures for charter vessel anglers be codified in Federal regulations and implemented each year as IPHC annual management measures. Regulations developed by the IPHC are subject to acceptance by the Secretary of State with concurrence from the Secretary of Commerce. After acceptance by the Secretary of State and the Secretary of Commerce, NMFS publishes the IPHC regulations in the *Federal Register* as annual management measures pursuant to 50 CFR 300.62.

The pre-season specification of CSP restrictions is consistent with the Council's objective to maintain the charter season length in effect in recent years (February 1 through December 31) with no inseason changes to harvest restrictions. The Council developed this objective based on public testimony from charter vessel operators indicating that inseason changes to harvest restrictions would be disruptive to charter operators and anglers.

The Council recommended, and NMFS proposed, that the annual CSP catch limits for the commercial and charter sectors and the CSP restrictions for charter vessel anglers should be determined and implemented by a predictable and standardized methodology as part of the IPHC's annual recommendations for halibut fishery conservation and management. The proposed rule outlined the procedure for determining the CSP restrictions for each area in order to provide a systematic method for limiting projected charter harvest to the target harvest range determined by the CSP.

The proposed rule also described that the charter management measures implemented under the CSP would be limited to daily bag limits of one or two halibut, which may be implemented with or without restrictions on the maximum size of halibut retained under the daily bag limit. Based on this deliberate limitation on the proposed suite of management measures that could be implemented under the CSP, NMFS determined that the public could not have anticipated that the CSP management measures implemented in the final rule would include measures other than those outlined in the proposed rule. Therefore, changing the management measures in the CSP final rule would not have afforded the public an opportunity to comment on those alternative management measures. NMFS determined that proceeding with a final rule that modified the proposed management measures would fail the logical outgrowth test because the public could not have reasonably anticipated the final rulemaking from the proposed rule. As a result, NMFS determined that if the Council revises the CSP management measures, NMFS would notice the public of changes to the proposed CSP management matrix by undertaking proposed and final rulemaking for the revised CSP.