

## Public Review Draft

# Regulatory Amendment To Revise Permit Endorsements for Charter Halibut Businesses that Are Qualified to Receive Multiple Permits

## Regulatory Impact Review – Initial Regulatory Flexibility Analysis

March 2010

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**Abstract:** This document contains a Regulatory Impact Review (RIR) and an Initial Regulatory Flexibility Analysis (IRFA) of a regulatory amendment to revise the approach used to assign angler endorsements to charter halibut permits held by charter halibut businesses receiving more than one permit under the halibut charter moratorium program in IPHC Areas 2C and 3A. The effect of the action is to more closely align angler endorsements with the distribution of highest client loads for vessels used by qualifying applicants. The RIR addresses cost-benefit analysis requirements contained in E.O. 12866, and the IRFA addresses the requirements to analyze implications for small entities contained in the Regulatory Flexibility Act.

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## Executive Summary

The North Pacific Fishery Management Council is considering recommending an amendment to regulations that implemented a limited entry program for the charter halibut sector in International Pacific Halibut Commission Area 2C (Southeast Alaska) and Area 3A (South Central Alaska). This document contains a Regulatory Impact Review (RIR) with a cost-benefit analysis of proposed revisions and an Initial Regulatory Impact Review (IRFA) with an analysis of impacts on small entities. The analyses in this document address the statutory requirements of the Presidential Executive Order 12866 (E.O. 12866) and of the Regulatory Flexibility Act (RFA).

On January 5, 2010, NMFS published a final rule implementing a moratorium, or limited entry, program in the halibut charter fishery in International Pacific Halibut Commission (IPHC) Areas 2C and 3A. The program, as published, will create a limited number of permits for the fishery in each area. Halibut charter business operators will be required to have a charter halibut permit onboard beginning on February 1, 2011. After the permit application period is complete, each permit will be issued with an angler endorsement, limiting the number of anglers authorized to catch and retain halibut on a fishing trip. Permits will be issued to firms, and the endorsement on each permit issued to a firm will be equal to the largest number of clients (as recorded in State of Alaska logbooks) taken on a groundfish fishing trip by the firm in 2004 or 2005. The program adopted by NMFS was based on recommendations passed by the Council.

At its February 2010 meeting, the Council indicated that NMFS has misinterpreted its intent with respect to the way endorsements would be assigned to permits. The Council had intended that NMFS use a method that created a firm-specific set of endorsements that corresponded more closely to the distribution of the largest client loads on the vessels the firm had used to qualify for its permits. In a problem statement adopted in February, the Council said, “The methodology used to assign angler endorsements to charter halibut permits held by charter halibut businesses initially issued more than one permit could result in excessive fishing capacity in the charter halibut fishery. The Council intends to more closely align angler endorsements with the actual greatest number of anglers for each vessel that gave rise to each charter halibut permit.”

The **purpose** of this action is to clarify regulatory language to more accurately reflect the intent of the Council’s March 2007 preferred alternative for a charter halibut limited entry program. This action is **needed** to clarify the regulatory text, following clarification of Council intent regarding the methodology used by NMFS to determine the maximum number of permit endorsements, which occurred in February 2010. The **objectives** of this action are to revise the regulatory text to modify the regulations to match Council intent to reduce excessive fishing capacity in the charter halibut fishery from the status quo, without changing other elements of the program, and without delaying the effective date of the program in the 2011 charter halibut fishing season.

The alternatives under consideration for this action are:

Alternative 1. Status quo. **All** permits issued to a business receiving multiple permits would be issued with an angler endorsement equal to the greatest number of charter vessel anglers onboard any vessel used by the business to generate a permit as reported to ADF&G on any bottom fish logbook trip in 2004 or 2005, but not less than 4.

Alternative 2. **One** permit would be issued to a business with an endorsement equal to the greatest number of charter vessel anglers onboard any vessel used by the business to generate a

permit as reported to ADF&G on any bottom fish logbook trip in 2004 or 2005, but not less than 4. **Each subsequent** permit issued to the same business would be issued with an endorsement equal to the next greatest number of charter vessel anglers onboard any other vessel used by the business to generate a permit, whose catch history has not already been used by the business to determine an angler endorsement, as reported to ADF&G on any trip in 2004 or 2005, until all permits are issued. The year selected for determining angler endorsements must be the year selected by the applicant for permit qualification.

### *Regulatory Impact Review*

This action will not affect the numbers of qualified applicants for permits, or the numbers of permits, transferable permits, or nontransferable permits that will be issued. There are an estimated 229 qualified applicants in Area 2C, and an estimated 501 permits. Of the permits, an estimated 341 will be transferable. There are an estimated 291 qualified applicants in Area 3A, and an estimated 410 permits. Of the 3A permits, an estimated 316 will be transferable.

Under the status quo, NMFS estimates that 3,001 angler endorsements will be issued in Area 2C; an estimated 2,103 will be assigned to transferable permits and 898 will be assigned to nontransferable permits. In Area 3A, there will be an estimated 3,524 angler endorsements. Of these, 2,813 will be assigned to transferable permits, and 711 will be assigned to nontransferable permits.

The problem statement and Alternative 2 as proposed by the Council in February 2010 (Option 1 in this analysis), would change the methodology for assigning angler endorsement to permits issued to businesses receiving multiple permits.

#### Option 1

##### **Problem Statement**

The methodology used to assign angler endorsements to charter halibut permits held by charter halibut businesses initially issued more than one permit could result in excessive fishing capacity in the charter halibut fishery. The Council intends to more closely align angler endorsements with the actual greatest number of anglers for each vessel that gave rise to each charter halibut permit.

##### Alternatives for **businesses that would be issued multiple permits:**

- Alternative 1. Status quo. **All** permits issued to a business receiving multiple permits would be issued with an angler endorsement equal to the greatest number of charter vessel anglers onboard any vessel used by the business to generate a permit as reported to ADF&G on any bottom fish logbook trip in 2004 or 2005, but not less than 4.
- Alternative 2. **One** permit would be issued to a business with an endorsement equal to the greatest number of charter vessel anglers onboard any vessel used by the business to general a permit as reported to ADF&G on any bottom fish logbook trip in 2004 or 2005, but not less than 4. **Each subsequent** permit issued to the same business would be issued with an endorsement equal to the next greatest number of charter vessel anglers onboard **any other vessel** used by the business to generate a permit, whose catch history has not already been used by the business to determine an angler endorsement, as reported to ADF&G on any trip in 2004 or 2005, until all permits are issued. The year selected for determining angler endorsements must be the year selected by the applicant for permit qualification.

Option 1 would use two different methodologies to assign angler endorsements to the first charter halibut permit issued to a business, depending on whether the business would be issued a single permit or multiple permits. For businesses receiving multiple permits, the angler endorsement assigned to the first permit would be equal to the greatest number of charter vessel anglers reported onboard any vessel in the year selected by the applicant (2004 or 2005) as its “best” year for purposes of determining the number and transferability status of the permits it receives (applicant-selected year). Each subsequent permit would be issued with an angler endorsement equal to the next greatest number of charter vessel anglers in the applicant-selected year onboard any other vessel used by the business to generate a permit that has not been used to determine an angler endorsement. This procedure would continue until all of the business’s permits were issued. For businesses issued a single permit, the angler endorsement on the single permit would be equal to the greatest number of charter vessel anglers recorded by that business on a logbook fishing trip in 2004 or 2005.

These different approaches to assigning angler endorsements to the first permit issued to a business may not meet the fair and equitable requirement under the Halibut Act. The first permit issued to a business receiving multiple permits under the status quo method of assigning angler endorsements does not contribute to potential excessive fishing capacity in the charter sector because the angler endorsement would be based on the greatest number of anglers reported in 2004 or 2005 on a vessel that gave rise to a permit for that business. Thus, under Option 1, it is unclear why it would be fair and equitable for the angler endorsement for the first permit issued to businesses receiving multiple permits to be determined differently than the angler endorsement for businesses receiving a single permit under Alternative 2. If the Council recommends Option 1, it should provide a clear rationale for why using different methodologies for determining angler endorsements for single and multiple permit businesses meets the requirements of the Halibut Act.

The Council also could consider two options for revising Option 1, to address the fair and equitable requirement of the Halibut Act: (1) expand the scope of this action by using the applicant-selected year to determine the angler endorsement for permits issued to all businesses, or (2) remove the requirement to use the applicant-selected year for determining angler endorsements, maintain the status quo methodology for assigning angler endorsements to the first permit issued to all businesses, and change the methodology for assigning angler endorsements to each subsequent permit issued to businesses receiving multiple permits. The first of these two options is Option 2, and the second is Option 3 in this analysis.

### Option 2

Option 2 would explicitly expand this action to apply to all businesses that would be issued charter halibut permits. The Council could revise its problem statement and statement of intent that Alternatives 1 and 2 would apply only to businesses that would be issued multiple permits. Alternative 2 would not be revised:

### **Problem Statement**

The methodology used to assign angler endorsements to charter halibut permits held by charter halibut businesses ~~initially issued more than one permit~~ could result in excessive fishing capacity in the charter halibut fishery. The Council intends to more closely align angler endorsements with the actual greatest number of anglers for each vessel that gave rise to each charter halibut permit.

### ~~Alternatives for businesses that would be issued multiple permits:~~

Alternative 1. Status quo. **All** permits issued to a business receiving multiple permits would be issued with an angler endorsement equal to the greatest number of charter vessel anglers onboard any vessel used by the business to generate a permit as reported to ADF&G on any bottom fish logbook trip in 2004 or 2005, but not less than 4.

Alternative 2. **One** permit would be issued to a business with an endorsement equal to the greatest number of charter vessel anglers onboard any vessel used by the business to general a permit as reported to ADF&G on any bottom fish logbook trip in 2004 or 2005, but not less than 4. **Each subsequent** permit issued to the same business would be issued with an endorsement equal to the next greatest number of charter vessel anglers onboard **any other vessel** used by the business to generate a permit, whose catch history has not already been used by the business to determine an angler endorsement, as reported to ADF&G on any trip in 2004 or 2005, until all permits are issued. The year selected for determining angler endorsements must be the year selected by the applicant for permit qualification.

### Option 3

Option 3 would leave the problem statement unchanged from Option 1 and revise Alternative 2 to maintain the focus of this action on businesses that would be issued more than one permit and address concerns about meeting the fair and equitable allocation requirement of the Halibut Act. Alternative 2 could be revised to remove the requirement that the applicant-selected year be used to determine the angler endorsement on all permits received by a business that would be issued multiple permits:

#### **Problem Statement**

The methodology used to assign angler endorsements to charter halibut permits held by charter halibut businesses initially issued more than one permit could result in excessive fishing capacity in the charter halibut fishery. The Council intends to more closely align angler endorsements with the actual greatest number of anglers for each vessel that gave rise to each charter halibut permit.

Alternatives for **businesses that would be issued multiple permits**:

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Options 1, 2 and 3, were developed by ranking a firm's endorsements generated by individual vessels and matching them to the firm's permits. The largest endorsements were matched to transferable permits, and lower endorsements to the firm's nontransferable permits. If a firm had more vessels than permits, the excess endorsements, the firm's lowest, were dropped, and not matched to a permit. The estimated numbers of endorsements under each option are compared to those under the status quo in the following tables.

Estimated endorsement issuance in Area 2C under the action options

	Status quo	Action Alternative		
		Option 1: Council language	Option 2: Apply to all businesses	Option 3: Vessel's best year
Numbers of businesses, permits, transferable permits, and nontransferable permits				
Businesses	229	229	229	229
Total permits	501	501	501	501
Tran permits	341	341	341	341
Ntrans permits	160	160	160	160
Numbers of endorsements, transferable endorsements, and nontransferable endorsements				
Total end.	3,001	2,533	2,499	2,618
Tran end.	2,103	1,772	1,743	1,830
Ntran end.	898	761	756	788
Change in numbers of endorsements from status quo				
Chg total end	n.a.	-468	-502	-383
Chg trans end	n.a.	-331	-360	-273
Chg ntrans end	n.a.	-137	-142	-110
Percent change in the numbers of endorsements from the status quo				
Pct chg total end	n.a.	-16%	-17%	-13%
Pct chg trans end	n.a.	-16%	-17%	-13%
Pct chg ntrans end	n.a.	-15%	-16%	-12%
Notes: NMFS, AKR. A-aa1-diagnostic.do, A-aa2-diagnostic.do, A-aa3-diagnostic.do.				

Estimate endorsement issuance in Area 3A under the action options

	Status quo	Action Alternative		
		Option 1: Council language	Option 2: Apply to all businesses	Option 3: Vessel's best year
Numbers of businesses, permits, transferable permits, and nontransferable permits				
Businesses	291	291	291	291
Total permits	410	410	410	410
Tran permits	316	316	316	316
Ntrans permits	94	94	94	94
Numbers of endorsements, transferable endorsements, and nontransferable endorsements				
Total end.	3,524	3,053	2,914	3,122
Tran end.	2,813	2,501	2,379	2,537
Ntran end.	711	552	535	585
Change in numbers of endorsements from status quo				
Chg total end	n.a.	-471	-610	-402
Chg trans end	n.a.	-312	-434	-276
Chg ntrans end	n.a.	-159	-176	-126
Percent change in the numbers of endorsements from the status quo				
Pct chg total end	n.a.	-13%	-17%	-11%
Pct chg trans end	n.a.	-11%	-15%	-10%
Pct chg ntrans end	n.a.	-22%	-25%	-18%
Notes: NMFS, AKR. A-aa1-diagnostic.do, A-aa2-diagnostic.do, A-aa3-diagnostic.do.				

While the three action alternative options reduced the number of total endorsements, a comparison of the remaining endorsements with industry activity in 2008 suggested that the action under any of the options presented in this analysis would not have more than a *de minimus* impact on current industry capacity, or on its ability to expand that capacity.

There are two potential timing scenarios for implementing the action alternative. In the first scenario, NMFS would initially issue charter halibut permits to all qualifying business owners after the regulatory amendment for this action, if approved, was implemented. This scenario would be feasible if the final rule for this regulatory amendment is effective by mid-December 2010. The second scenario would occur if the approved regulatory amendment was implemented any time after mid-December 2010. Under both scenarios, NMFS would notify all business owners affected by an angler endorsement change on the business's permit(s). Business owners could challenge the modified angler endorsement(s) and would also have an opportunity to appeal if their challenge is denied.

The action may impose some costs through impacts on permit flexibility and implementation expenses. Costs associated with impacts on harvest are expected to be minimal.

This program will have distributional impacts by reducing the allocation of endorsements to individuals. These costs would tend to be incurred by the original recipients of the permits. Persons who subsequently enter the fishery by buying permits would be compensated, on average, for any reduced earning potential because they would pay a lower price to buy the permit.

#### *IRFA*

The entities directly regulated by this action are guided charter businesses that would qualify for halibut charter moratorium permits in IPHC Areas 2C and 3A. There are an estimated 229 qualifying firms in Area 2C and 291 in Area 3A. As discussed in earlier analyses of this industry, while quantitative information on individual firm revenues is lacking, almost all of these firms are believed to be small entities under the terms of the RFA. The only exceptions may be some lodge-based operations in Southeast Alaska. (NMFS, 2009).

Options 1 and 3 would only directly regulate qualifying businesses receiving more than one permit. NMFS estimates that under the status quo, 89 firms will receive more than one permit in Area 2C and that 69 firms will receive more than one in Area 3A.

An IRFA should include “a description of the projected reporting, recordkeeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record...” The procedure for implementing this action is described in Section 1.6 of the RIR. NMFS will notify qualified applicants of the status of their permit endorsements, and of changes in that status. The implementation process does not impose additional reporting, recordkeeping, or other compliance requirements on directly regulated entities.

An IRFA should include “An identification, to the extent practicable, of all relevant Federal rules that may duplicate, overlap or conflict with the proposed rule...” This analysis did not reveal any Federal rules that duplicate, overlap, or conflict with the action.

One of the requirements for an IRFA is that “Each initial regulatory flexibility analysis shall also contain a description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities. Consistent with the stated objectives of applicable statutes, the analysis shall discuss significant alternatives...” It is impossible to address this requirement pending Council action to choose an alternative and provide a rationale for its decision.

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# 1 Regulatory Impact Review

## 1.1 Introduction

The North Pacific Fishery Management Council is considering an amendment to federal regulations that implemented its March 2007 preferred alternative for a limited entry program for the charter halibut sector in International Pacific Halibut Commission Area 2C (Southeast Alaska) and Area 3A (South Central Alaska). The action analyzed in this RIR would amend regulations to conform with Council intent for the methodology to be used by the National Marine Fisheries Service (NMFS) to assign angler endorsements<sup>1</sup> to charter halibut limited entry permits held by charter halibut businesses that qualify for more than one permit. The proposed changes are needed to revise federal regulations, following clarification by the Council of its intent for implementation of its March 2007 preferred alternative for a limited entry program for the charter halibut sector.

This RIR is required under Presidential Executive Order (E.O.) 12866 (58 FR 51735, September 30, 1993). The requirements for all regulatory actions specified in E.O. 12866 are summarized in the following statement from the order:

*In deciding whether and how to regulate, agencies should assess all costs and benefits of available regulatory alternatives, including the alternative of not regulating. Costs and benefits shall be understood to include both quantifiable measures (to the fullest extent that these can be usefully estimated) and qualitative measures of costs and benefits that are difficult to quantify, but nonetheless 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 further 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, local or tribal governments or communities;
- Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in this Executive Order.

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<sup>1</sup> The Alaska Department of Fish & Game (ADF&G) provided NMFS with saltwater charter logbook data to implement the limited entry program. NMFS used the “total clients” field for individual fishing trips reported by charter operators in ADF&G logbooks to determine angler endorsements on permits. The charter halibut permit, once issued with its angler endorsement, will limit the number of charter vessel anglers authorized to catch and retain halibut on the permitted vessel. The term “charter vessel angler” is defined by this action to include all persons, paying or non-paying, who use the services of the charter vessel guide. NMFS used the term angler endorsement to conform to a current regulatory definition.

## 1.2 Statutory Authority

The International Pacific Halibut Commission (IPHC) and NMFS manage fishing for Pacific halibut through regulations established under the authority of the Northern Pacific Halibut Act of 1982. The IPHC promulgates regulations governing the Pacific halibut fishery under the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the North Pacific Ocean and Bering Sea, signed in Ottawa, Ontario, on March 2, 1953, as amended by a Protocol Amending the Convention, signed at Washington, D.C., on March 29, 1979.

Additional regulations that are not in conflict with approved IPHC regulations may be recommended by the Council. Council action must be approved and implemented by the U.S. Secretary of Commerce. Regulations implementing the Halibut Act in Convention waters in and off Alaska appear at 50 CFR part 300.60-300.66.

## 1.3 History of this action

At its March 2007 meeting, the Council adopted a motion to implement a moratorium, effectively a limited entry program, on vessels used in the guided halibut sport charter fishery in IPHC Areas 2C and 3A (covering the Southeastern and South Central Alaska coasts). The Council's problem statement explained:

The Pacific halibut resource is fully utilized and harvest by the charter sector is demonstrating steady growth. To provide long term stability of the charter sector and lessen the need for regulatory adjustments, which destabilize the sector, the Council is embarking on development of a new management framework. In the interim, to address allocation issues between the charter and commercial sectors, the former is operating under a guideline harvest level (GHL). Harvest data since 2004 indicate that the GHLs in Area 2C have been exceeded, and are near guideline levels established for Area 3A. This has resulted in a renewed effort to find a long-term solution. To that end, the Council formed a stakeholder committee of affected charter and commercial user groups to consider management options and formulate recommendations for Council consideration in developing a management plan for the charter sector. Some of the options previously considered include limiting entry or awarding quota share based on past participation in the fishery. To address the potential rush of new entrants into the charter fishery, the Council is considering establishing a moratorium on the charter sector. The moratorium is to provide an interim measure of stability in the guided sport halibut sector during the step-wise process toward a long-term solution. In doing so, however, the Council is also concerned with maintaining access to the halibut charter fishery by small, rural, coastal communities. To address this, the Council is considering establishing a separate program to allow these communities to enter the halibut charter fishery. (Council, 2009)

The Council's final motion, on March 31, 2007, provided for permits that would be issued to businesses meeting qualifying period and recency participation requirements. Each permit would carry endorsements specifying the largest number of clients that might be carried onboard the vessel for a trip authorized by the permit:

### **Issue 7. Permit Endorsement for Number of Halibut Clients on Board**

Highest number on any trip in 2004 or 2005, with minimum endorsement of 4.

Permits issued under the military hardship provision would receive a halibut client endorsement of 6. (Council, 2007)<sup>2</sup>

NMFS interpreted this language to require that each charter halibut permit would have an angler endorsement number. The angler endorsement number on the permit would be the maximum number of anglers who are catching and retaining halibut that a vessel operator can have on board the vessel. The angler endorsement would not limit the number of passengers that a charter vessel operator could carry, only the number who may catch and retain halibut. (NMFS, 2009; NMFS, 2010a)

NMFS also interpreted this language as recommending that the angler endorsement number on an applicant's permits would be the highest number of clients that the applicant reported on any logbook fishing trip in 2004 or 2005, subject to a minimum endorsement of four. The final rule used the term "angler" rather than "client." The term "angler" includes all persons, paying or nonpaying, who use the services of the charter vessel guide. The charter halibut permit, once issued, would limit the number of charter vessels anglers—paying or nonpaying persons who use the services of a charter vessel guide—who can catch and retain halibut. Under the rule, the "angler endorsement number" on the permit would be the highest number reported in the "total clients" field for any of the applicant's logbook fishing trips in 2004 or 2005. (NMFS 2009; NMFS 2010a)

The proposed rule was published on April 21, 2009, and the final rule was published on January 5, 2010. NMFS opened an application period for permits on February 4, 2010. This period was scheduled to run until April 5, 2010. Charter halibut operators will be required to carry their new permit on board starting February 1, 2011. (NMFS, 2010b) Under the original implementation plan, NMFS intended to issue the permits in October or November of 2010.

In February 2010, the Council<sup>3</sup> received a report from NMFS regarding implementation of the program. At that time, the Council expressed its concern that the final rule implemented a more liberal permit endorsement system than the Council intended. The Council felt that excessive fishing capacity in the charter halibut sector could result from the methodology used to assign angler endorsements (the number of anglers allowed to catch and retain halibut on a trip) to charter halibut permits held by charter halibut businesses that would be initially issued more than one permit. The Council indicated that for permits issued to businesses initially issued more than one permit, it had intended to more closely align angler endorsements with the actual greatest number of anglers for each vessel that gave rise to each permit.

To address its concerns regarding excessive fishing capacity, the Council initiated a new analysis to amend the regulations to consider two alternatives. Under Alternative 1 (Status quo) all permits issued to a business receiving multiple permits would be issued an angler endorsement equal to the greatest number of charter vessel anglers onboard any vessel used by the business to generate a permit as reported to ADF&G on any bottom fish logbook trip in 2004 or 2005, but not less than 4. Under Alternative 2, for businesses that would be issued multiple permits, one permit would be issued with an endorsement equal to the greatest number of charter vessel anglers onboard any vessel used by the business to generate a permit as reported to ADF&G on any bottom fish logbook trip in 2004 or 2005, but not less than 4. Each *subsequent* permit issued to the same business would be issued with an endorsement equal to the next

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<sup>2</sup> The key change under Alternative 2 would implement an approach that was used in the initial review and public review drafts of the RIR (NPFMC 2009) to illustrate the effects of the proposed permit endorsement element and options. This approach was not stated explicitly in the Council motion in which it identified its preferred alternative. In February 2010, the Council clarified that the approach used in the RIR was the Council's intent for implementing what the Council termed "client" endorsements to the limited entry permits.

<sup>3</sup> This paragraph, and the one that follows, are taken, except for minor changes, on a description of this action in the Council's February 2010 newsletter.

greatest number of charter vessel anglers onboard any *other* vessel used by the business to generate a permit, whose catch history has not already been used by the business to determine an angler endorsement, as reported to ADF&G in either 2004 or 2005, until all permits are issued. The Council clarified that, in determining whether 2004 or 2005 would be used to determine the angler endorsement, “[t]he year selected for determining angler endorsements must be the year selected by the applicant for permit qualification.” The Council scheduled final action for April 2010. The Council intended that this amendment be implemented in regulation prior to issuance of charter halibut permits to businesses that would be issued multiple permits.

## 1.4 Problem Statement

In February 2010, the Council adopted the following problem statement:

The methodology used to assign angler endorsements to charter halibut permits held by charter halibut businesses initially issued more than one permit could result in excessive fishing capacity in the charter halibut fishery. The Council intends to more closely align angler endorsements with the actual greatest number of anglers for each vessel that gave rise to each charter halibut permit.

The **purpose** of this action is to clarify regulatory language to more accurately reflect the intent of the Council’s March 2007 preferred alternative for a charter halibut limited entry program. This action is **needed** to clarify the regulatory text, following clarification of Council intent regarding the methodology used by NMFS to determine the maximum number of permit endorsements, which occurred in February 2010. The **objectives** of this action are to revise the regulatory text to modify the regulations to match Council intent to reduce excessive fishing capacity in the charter halibut fishery from the status quo, without changing other elements of the program, and without delaying the effective date of the program.

## 1.5 The Alternatives

In February 2010, the Council adopted the following alternatives for this action:

### Option 1

Alternatives for **businesses that would be issued multiple permits**:

- Alternative 1. **Status quo.** All permits issued to a business receiving multiple permits would be issued with an angler endorsement equal to the greatest number of charter vessel anglers onboard any vessel used by the business to generate a permit as reported to ADF&G on any bottom fish logbook trip in 2004 or 2005, but not less than 4.
- Alternative 2. **One** permit would be issued to a business with an endorsement equal to the greatest number of charter vessel anglers onboard any vessel used by the business to general a permit as reported to ADF&G on any bottom fish logbook trip in 2004 or 2005, but not less than 4. **Each subsequent** permit issued to the same business would be issued with an endorsement equal to the next greatest number of charter vessel anglers onboard **any other vessel** used by the business to generate a permit, whose catch history has not already been used by the business to determine an angler endorsement, as reported to ADF&G on any trip in 2004 or 2005, until all permits are issued. The year selected for determining angler endorsements must be the year selected by the applicant for permit qualification.

The Council also could consider two options for revising Option 1, to address the fair and equitable requirement of the Halibut Act: (1) expand the scope of this action by using the applicant-selected year to determine the angler endorsement for permits issued to all businesses, or (2) remove the requirement to use the applicant-selected year for determining angler endorsements, maintain the status quo methodology for assigning angler endorsements to the first permit issued to all businesses, and change the methodology for assigning angler endorsements to each subsequent permit issued to businesses receiving multiple permits. The first of these two options is Option 2, and the second is Option 3 in this analysis.

### Option 2

Option 2 would explicitly expand this action to apply to all businesses that would be issued charter halibut permits. The Council could revise its problem statement and statement of intent that Alternatives 1 and 2 would apply only to businesses that would be issued multiple permits. Alternative 2 would not be revised:

#### **Problem Statement**

The methodology used to assign angler endorsements to charter halibut permits held by charter halibut businesses initially issued more than one permit could result in excessive fishing capacity in the charter halibut fishery. The Council intends to more closely align angler endorsements with the actual greatest number of anglers for each vessel that gave rise to each charter halibut permit.

#### ~~Alternatives for businesses that would be issued multiple permits:~~

- Alternative 1. Status quo. **All** permits issued to a business receiving multiple permits would be issued with an angler endorsement equal to the greatest number of charter vessel anglers onboard any vessel used by the business to generate a permit as reported to ADF&G on any bottom fish logbook trip in 2004 or 2005, but not less than 4.
- Alternative 2. **One** permit would be issued to a business with an endorsement equal to the greatest number of charter vessel anglers onboard any vessel used by the business to generate a permit as reported to ADF&G on any bottom fish logbook trip in 2004 or 2005, but not less than 4. **Each subsequent** permit issued to the same business would be issued with an endorsement equal to the next greatest number of charter vessel anglers onboard **any other vessel** used by the business to generate a permit, whose catch history has not already been used by the business to determine an angler endorsement, as reported to ADF&G on any trip in 2004 or 2005, until all permits are issued. The year selected for determining angler endorsements must be the year selected by the applicant for permit qualification.

### Option 3

Option 3 would leave the problem statement unchanged from Option 1 and revise Alternative 2 to maintain the focus of this action on businesses that would be issued more than one permit and address concerns about meeting the fair and equitable allocation requirement of the Halibut Act. Alternative 2 could be revised to remove the requirement that the applicant-selected year be used to determine the angler endorsement on all permits received by a business that would be issued multiple permits:

#### **Problem Statement**

The methodology used to assign angler endorsements to charter halibut permits held by charter halibut businesses initially issued more than one permit could result in excessive fishing capacity in the charter halibut fishery. The Council intends to more closely align angler endorsements with the actual greatest number of anglers for each vessel that gave rise to each charter halibut permit.

#### Alternatives for **businesses that would be issued multiple permits:**

- Alternative 1. Status quo. **All** permits issued to a business receiving multiple permits would be issued with an angler endorsement equal to the greatest number of charter vessel anglers onboard any vessel used by the business to generate a permit as reported to ADF&G on any bottom fish logbook trip in 2004 or 2005, but not less than 4.
- Alternative 2. **One** permit would be issued to a business with an endorsement equal to the greatest number of charter vessel anglers onboard any vessel used by the business to generate a permit as reported to ADF&G on any bottom fish logbook trip in 2004 or 2005, but not less than 4. **Each subsequent** permit issued to the same business would be issued with an endorsement equal to the next greatest number of charter vessel anglers onboard any other vessel used by the business to generate a permit, whose catch history has not already been used by the business to determine an angler endorsement, as reported to ADF&G on any trip in 2004 or 2005, until all permits are issued. ~~The year selected for determining angler endorsements must be the year selected by the applicant for permit qualification.~~

## 1.6 Cost and benefit analysis

### 1.6.1 Numbers of businesses and permits under both alternatives

Under the program adopted by NMFS, halibut sport charter fishing firms qualify to receive transferable or nontransferable permits. A set of rules determines the number of each type of permit received by each qualifying firm. The rules governing whether or not a firm qualifies to receive permits, or how many of each type of permit would be issued to a qualifying firm, are not affected by the proposed action. This section describes current expectations about the numbers of qualifying firms and the numbers of permits they may receive, as background to later sections analyzing the status quo and action alternative options.<sup>4</sup>

The program awards permits to applicants that participated as ADF&G licensed fishing guide business owners in a qualifying period and in a recent participation period. An applicant that operated a charter halibut fishing business during the recent participation period, but not the qualifying period, would not qualify for a charter halibut permit. Conversely, an applicant that operated a charter halibut fishing business during the qualifying period, but not the recent participation (recency) period, would not qualify for a charter halibut permit.

The qualifying period was the sport fishing seasons established by the IPHC in 2004 and 2005. The sport fishing season in both of those years was February 1 through December 31. The recency period for this action was the sport fishing season in 2008, which was February 1 through December 31.

To qualify for a permit, an applicant must have reported at least five logbook trips during the qualifying period and five logbook trips during the recency period. Charter halibut permits would not be awarded to persons who purchased a charter fishing business that met some or all of the participation requirements but who themselves do not meet the participation requirements.

If an applicant qualifies for one or more permits, NMFS will issue the applicant a number of permits equal to (a) the applicant's total number of bottom fish logbook fishing trips in 2004 or 2005, divided by 5, or (b) the number of charter vessels operated by the applicant during 2004 or 2005, whichever number

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<sup>4</sup> This section does not describe the relationship between the Council's motion and NMFS's final rule or discuss the rationale for any of the program elements. Discussion of these issues may be found in the analysis for the moratorium program (NMFS, 2009).

is lower. The applicant would select which year in the qualifying period—2004 or 2005— NMFS would use.

Consider the example of an applicant reporting 23 logbook trips using three vessels in a self-selected qualifying year (applicant-selected year); assume one vessel made 16 trips, another vessel made five trips, and another vessel made only two trips. NMFS would calculate  $23 \div 3 = 7.67$  which would be rounded down to four. NMFS would choose the lesser of one-fifth of the number of trips, or the number of vessels. In this case the number of vessels was three. Hence, the applicant would be awarded three permits.

Estimates of the number of qualified businesses and of the permits to be issued under the Council’s preferred alternative are reported in Table 1.<sup>5</sup> An estimated 501 permits will be issued to 229 businesses for IPHC Area 2C and an estimated 410 will be issued to 291 businesses for Area 3A. Table 1 implies that, although there are fewer businesses in Area 2C than in Area 3A, they should receive a larger average number of permits. The reason is that businesses in Area 2C tend to operate larger numbers of vessels.

**Table 1 Estimated number of permits that would be issued and the number of businesses receiving the permits under the Council’s preferred alternative**

IPHC Area	Permits	Businesses
2C	501	229
3A	410	291

Source: ADF&G Saltwater Logbook data, 2004, 2005, and 2008. These estimates differ slightly from those in the corresponding table in the analysis of the moratorium itself. The changes reflect edits and corrections made to the underlying data set between the time that analysis was completed in September 2009 and March 2010, when the current analysis was completed.

The numbers of permits to be issued are smaller than the numbers of vessels that operated in 2008. While 501 permits will be issued to 229 businesses in Area 2C, as shown in Table 2, 722 vessels were reported to have taken bottomfish trips in Area 2C, based on the 2008 ADF&G Saltwater Logbook. Similarly, in Area 3A an estimated 410 permits will be issued to 291 businesses, while there were 603 active vessels in Area 3A in 2008.

**Table 2 Participation in the fisheries in the qualifying and recency years**

Year	2C			3A		
	Trips	Vessels	Trips/Vessel	Trips	Vessels	Trips/Vessel
2004	19,103	619	31	23,283	534	44
2005	20,255	649	31	23,250	568	41
2007	27,320	726	38	25,399	646	39
2008	26,231	722	36	23,286	603	39

Source: ADF&G Saltwater Logbook data from 2004, 2005, 2007 and 2008. Although 2007 is not a qualifying or recency year, the information has been made available by ADF&G and it has been used here for context. These estimates differ slightly from those in the corresponding table in the analysis of the moratorium itself. The changes reflect edits and corrections made to the underlying data set between the time that analysis was completed in September 2009 and March 2010, when the current analysis was completed.

It is not vessels that are being permitted. Businesses are receiving permits to operate vessels. Businesses will be subject to excessive share limits of five permits. NMFS will not approve a transfer that would result in the person receiving the transferred permit holding more than five permits. Two exceptions to this excessive share limit, however, allow a person to hold more than five permits. Under the first exception, a person that is the initial recipient of more than five permits would be able to continue to hold all of the permits

<sup>5</sup> The estimated number of qualified businesses, permits, and endorsements, may differ from those ultimately issued. It is possible, for example, that not everyone that appears to be eligible will apply. Conversely, persons who do not appear to be eligible may have unavoidable circumstances which will ultimately lead to permit issuance. At the time this analysis was prepared (the first half of March 2010) the application process was not complete.

for which the person initially qualified. No approval would be granted for additional permits to be transferred to a person holding more than five permits under this exception.

This exception would not apply if an individual permit holder dies or a corporate permit holder dissolves or changes its ownership by adding one or more new owner(s) or partner(s). In this event, NMFS would consider a successor-in-interest or a changed corporate structure to be a different entity from the one that was the initial recipient of the permits and the exception to the excessive share limit would not apply to the new entity. Upon notification of a business change, NMFS would require the permit holder to divest the number of transferable permits greater than five. To prevent the changed business from using transferable permits held in excess of the share limit, NMFS would invalidate the number of permits greater than five until the permit(s) were transferred to an eligible recipient. The permit holder would determine which permits would be invalidated until transfer. Upon notification of a business change for a nontransferable permit holder, NMFS would revoke all nontransferable charter halibut permits issued to the initial recipient.

Under the second exception, NMFS would approve a transfer that resulted in the person receiving the transfer holding more than five permits if the person were to meet the following three conditions:

- The existing permit holder that holds more than five permits under the first exception would be transferring all of the transferable permits that were initially issued;
- The existing permit holder would be transferring all assets—such as vessels owned by the business, lodges, fishing equipment, etc.—of its charter vessel fishing business along with the permits; and
- The person that would receive the permits in excess of the excessive share limit does not hold any permits at the time of the proposed transfer.

The Council and NMFS recognize that a corporate entity at the excessive share limit of five permits may be closely affiliated with another corporate entity that is under the limit and could apply to receive a transferred permit. To prevent a permit holder from exceeding the limit by affiliation, the program imposes the 10 percent ownership criterion used for implementing the American Fisheries Act and defined at 50 CFR 679.2. Under this definition, two entities are considered the same entity if one entity owns or controls 10 percent or more interest in the other entity.

After determining the total number of permits, NMFS will determine which permits are transferable and which are nontransferable. An applicant will receive a transferable permit for each vessel that made at least 15 trips in the applicant–selected year (2004 or 2005) and at least 15 trips in the recent participation year (2008). The same vessel must have made all the trips within a year; however, the same vessel did not have to be used in the qualifying year and the recent participation year. The rest of the applicant’s permits, if any, will be non-transferable permits.

Applicants that do not have the minimum of 15 logbook fishing trips in each period but qualify for one or more permit(s) with a minimum of five logbook fishing trips, would receive only nontransferable permit(s). Hence, in the earlier example of an applicant with 23 logbook trips using three vessels, that applicant would receive three permits. Based on the 15–trip minimum criterion, however, this applicant would receive only one transferable permit and the other two permits would be nontransferable.

This two–tiered qualification criterion will create two types of permits: a nontransferable permit that will cease to exist when the entity that holds the permit no longer exists and a transferable permit that could be transferred to another business when the permit holder decides to leave the fishery.

Using data from the qualification period and the recency period, NMFS estimates that 341 transferable permits would be issued for Area 2C and 317 would be issued for Area 3A (see Table 3). NMFS estimates that 160 nontransferable permits would be issued in Area 2C, and 94 in Area 3A.

**Table 3 Estimated numbers of transferable and nontransferable permits that could be issued under the Council’s preferred alternative**

	Area 2C			Area 3A		
	Transferable	Nontransferable	Total	Transferable	Nontransferable	Total
Permits (#)	341	160	501	316	94	410
Permits (%)	68%	32%	100%	77%	23%	100%

Source: ADF&G Saltwater Logbook data, 2004, 2005, and 2008. Note: The number of permits will be reduced if the businesses do not report sufficient landings in the year prior to implementation. These estimates differ slightly from those in the corresponding table in the analysis of the moratorium itself (NMFS, 2009). The changes reflect edits and corrections made to the underlying data set between the time that analysis was completed in September 2009 and March 2010, when the current analysis was completed.

Because permits held by a business are not linked to one another, the businesses that are issued both types of permits would be allowed to transfer their transferable permit(s).

### **1.6.2 Alternative 1 under all options: Status quo approach to endorsements**

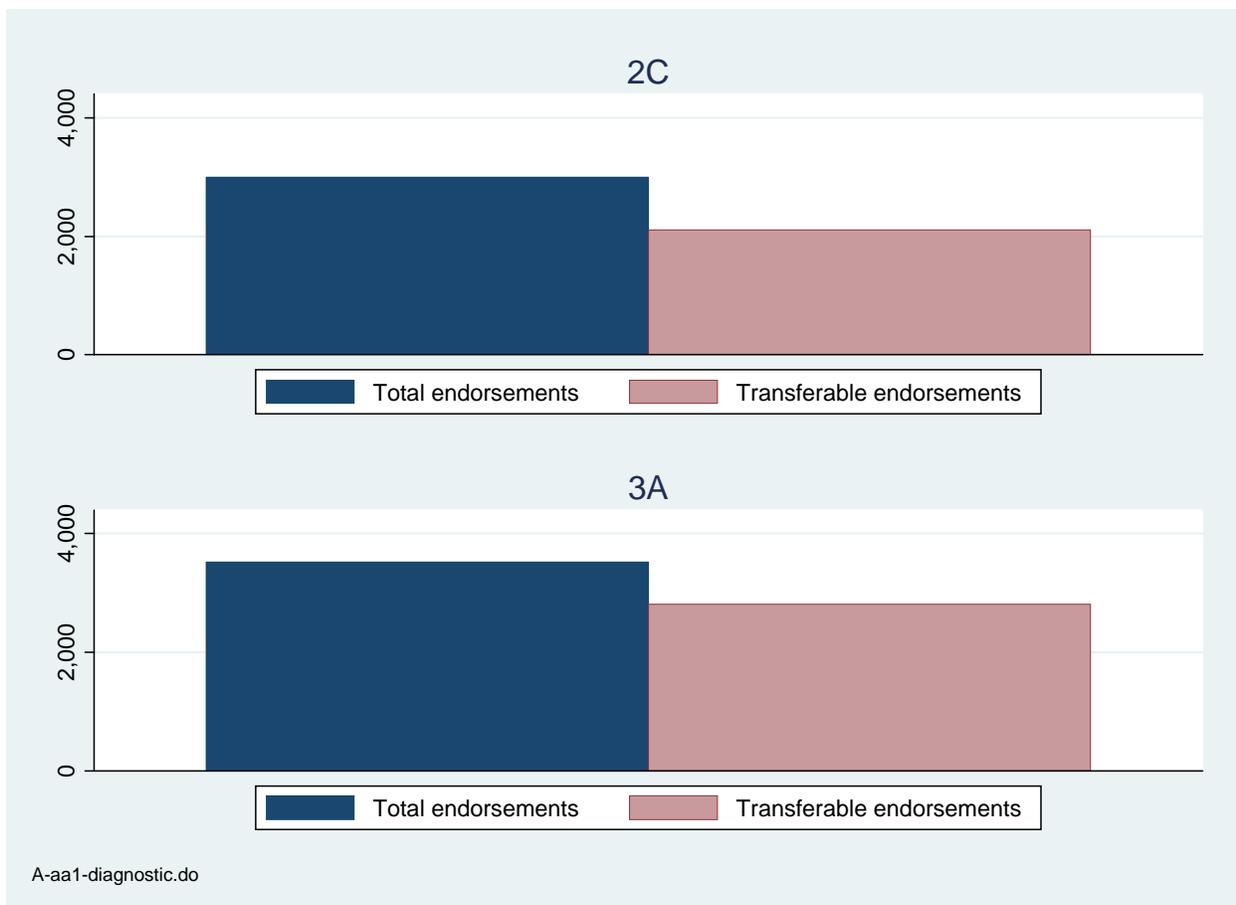
Under the status quo, each charter halibut permit has an angler endorsement number. The angler endorsement on the permit is the maximum number of charter vessel anglers catching and retaining halibut that a vessel operator can have on board the vessel during a fishing trip.<sup>6</sup> The angler endorsement does not limit the number of passengers that a charter vessel operator can carry, only the number who may catch and retain halibut.

Each qualifying applicant is assigned an angler endorsement for the applicant’s permits equal to the highest number of “total clients” that the applicant reported on any logbook fishing trip in 2004 or 2005, subject to a minimum endorsement of four. The term “charter vessel angler” means all persons, paying or nonpaying, who use the services of the charter vessel guide.

The applicant-selected year, used to determine the number of permits, does not apply to the determination of angler endorsements under the status quo. NMFS will endorse the permits with an angler endorsement equal to the highest number of anglers on any of the applicant’s logbook trips in 2004 or 2005, except as noted above for a minimum angler endorsement. Thus, the applicant-selected year, 2004 or 2005, that NMFS would use to determine the number and type of permits, may not be the same year that NMFS would use to determine the angler endorsement number on those permits. For example, an applicant may select 2004 for purposes of determining the number and type of permits, but the highest number of anglers recorded on any trip during the qualification period may have occurred in 2005. In this case, NMFS would award the applicant the number and type of permits based on the applicant’s 2004 trips and would endorse the permits with an angler endorsement number based on a 2005 trip. Permits issued under the military hardship provision would receive a halibut angler endorsement of 6.

Endorsements are attached to permits, and may not be transferred between them. Endorsements attached to transferable permits are transferred when those permits are transferred; endorsements attached to nontransferable permits disappear when authorizations for those permits end. Figure 1 shows the estimated total endorsements and total transferable endorsements estimated to be issued in each IPHC area. Tables 4 and 5 provide more detailed breakouts.

<sup>6</sup> The angler endorsement on a permit would not supersede USCG licensing or other safety rules or regulations.



**Figure 1** Estimated total endorsements and total transferable endorsements issued by IPHC area.

**Table 4** Area 2C estimated endorsements

Endorsement level	Permits			Endorsements		
	Total	Transferable	Nontrans	Total	Transferable	Nontrans
4	78	36	42	312	144	168
5	91	63	28	455	315	140
6	229	157	72	1374	942	432
7	38	34	4	266	238	28
8	31	24	7	248	192	56
9	9	6	3	81	54	27
10	19	18	1	190	180	10
12	4	2	2	48	24	24
13	1	0	1	13	0	13
14	1	1	0	14	14	0
<b>Grand Total</b>	<b>501</b>	<b>341</b>	<b>160</b>	<b>3001</b>	<b>2103</b>	<b>898</b>

Source: ADF&G Saltwater Logbook data from 2004, 2005, and 2008. These estimates differ slightly from those in the corresponding table in the analysis of the moratorium itself. The changes reflect edits and corrections made to the underlying data set between the time that analysis was completed in September 2009 and March 2010, when the current analysis was completed.

State of Alaska regulations at 5 AAC 47.036(c) stipulate that in Southeast Alaska (Area 2c), the maximum number of fishing lines that may be fished from a vessel engaged in sport fishing charter activities is equal to the number of paying clients on board the vessel. The number of fishing lines may

not exceed six lines in Area 2C, as specified in 5 AAC 47.030(b). Thus, according to state regulations in place at the time of this analysis (please consult state regulations for current requirements), no more than six lines can be in the water fishing at the same time. However, the data show that in some cases, trips in Area 2C were made with more than six anglers in the qualifying years. As shown in Table 4, it is estimated that some Area 2C vessels will receive more than six endorsements, despite the six line limit in place in Area 2C under state regulation. If the vessel operator's Coast Guard endorsement allows a vessel to carry more than six passengers, an operation may do so, as long as no more than six are fishing at the same time. Thus, while logbooks for some trips show more than six anglers, this doesn't necessarily mean that anything illegal occurred.

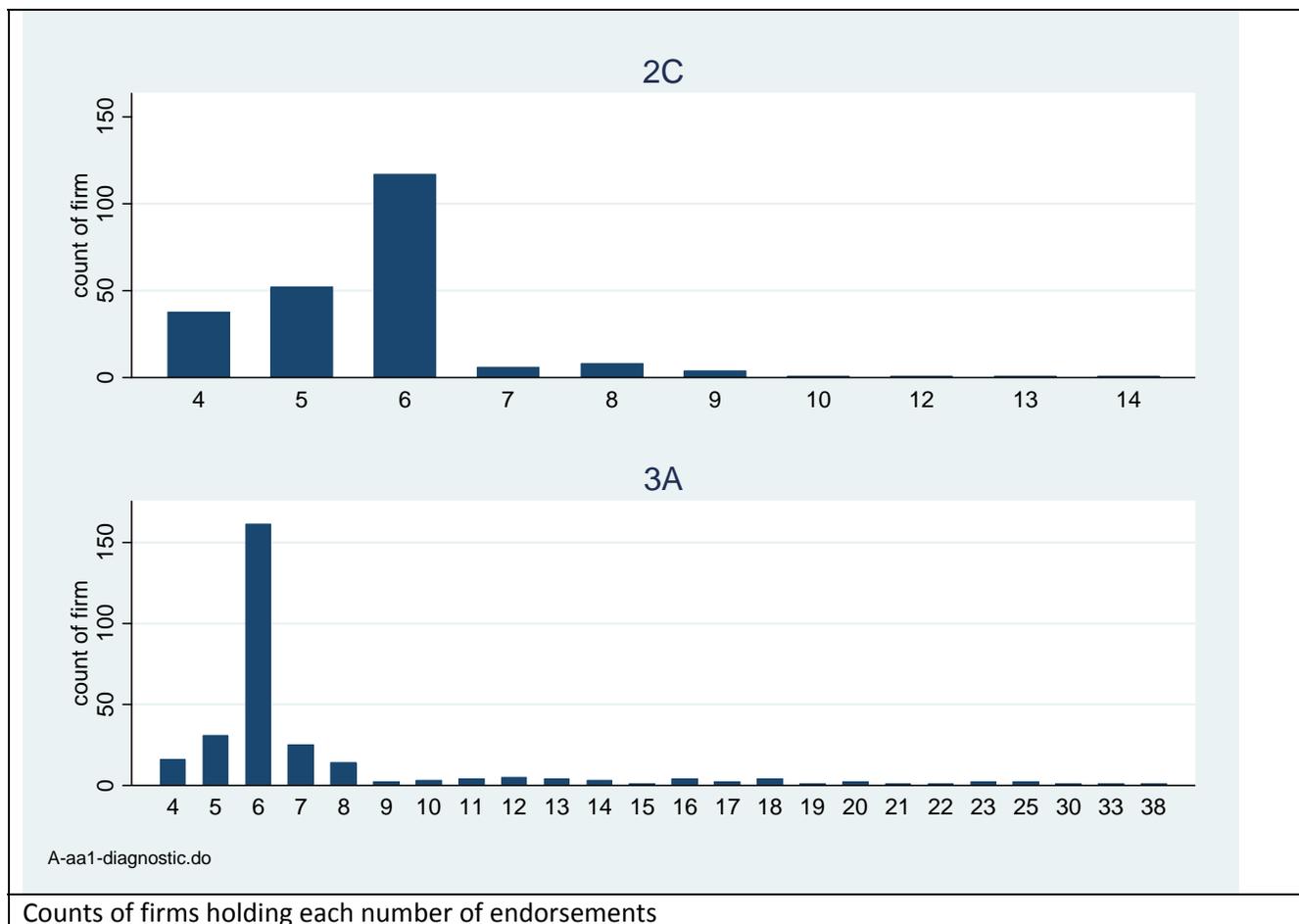
Vessels that do receive more than six endorsements in Area 2C, will only be able to have six lines in the water at a time, pursuant to State of Alaska regulations in place at the time of this analysis (please consult state regulations for current requirements).

**Table 5 Area 3A estimated endorsements**

Endorsement level	Permits			Endorsements		
	Total	Transferable	Nontrans	Total	Transferable	Nontrans
4	21	13	8	84	52	32
5	44	26	18	220	130	90
6	207	160	47	1242	960	282
7	33	29	4	231	203	28
8	18	18	0	144	144	0
9	2	2	0	18	18	0
10	5	3	2	50	30	20
11	5	4	1	55	44	11
12	6	4	2	72	48	24
13	4	4	0	52	52	0
14	5	5	0	70	70	0
15	1	1	0	15	15	0
16	9	7	2	144	112	32
17	5	1	4	85	17	68
18	10	7	3	180	126	54
19	5	5	0	95	95	0
20	5	4	1	100	80	20
21	4	4	0	84	84	0
22	1	1	0	22	22	0
23	6	6	0	138	138	0
25	7	5	2	175	125	50
30	1	1	0	30	30	0
33	2	2	0	66	66	0
38	4	4	0	152	152	0
<b>Grand Total</b>	<b>410</b>	<b>316</b>	<b>94</b>	<b>3524</b>	<b>2813</b>	<b>711</b>

Source: ADF&G Saltwater Logbook data from 2004, 2005, and 2008. These estimates differ slightly from those in the corresponding table in the analysis of the moratorium itself. The changes reflect edits and corrections made to the underlying data set between the time that analysis was completed in September 2009 and March 2010, when the current analysis was completed.

The distributions of endorsement levels for qualifying businesses in Areas 2C and 3A are shown in Figure 2. Endorsements received by businesses tend to be higher in Area 3A than in Area 2C. Figure 2 highlights regional differences in guided charter business models: lodges using large numbers of small vessels appear to be relatively more common in Area 2C; large party boats are relatively more common in Area 3A.



**Figure 2 Firms by endorsement level for Areas 2C and 3A.**

### 1.6.3 Alternative 2: Council’s February 2010 clarification

*Separate approaches for two types of businesses*

As discussed in Section 1.3, at its February 2010 meeting, the Council recommended that NMFS adopt a regulatory amendment to implement a permit issuance process that would better address the Council’s intent in this action. The Council recommended that endorsements to charter halibut permits issued to businesses that would be issued multiple permits be assigned using the following procedure in Alternative 2:

**One** permit would be issued to a business with an endorsement equal to the greatest number of charter vessel anglers onboard any vessel used by the business to generate a permit as reported to ADF&G on any bottom fish logbook trip in 2004 or 2005, but not less than 4. **Each subsequent** permit issued to the same business would be issued with an endorsement equal to the next greatest number of charter vessel anglers onboard any other vessel used by the business to generate a permit, whose catch history has not already been used by the business to determine an angler endorsement, as reported to ADF&G on any trip in 2004

or 2005, until all permits are issued. The year selected for determining angler endorsements must be the year selected by the applicant for permit qualification.

The Council motion (Option 1 in this analysis) specifies that this action should apply only to businesses that would be issued multiple permits and thus, would not affect businesses that would be issued a single permit.

Alternative 2, as proposed by the Council in February 2010, would result in NMFS using two different methodologies to assign angler endorsements to the first charter halibut permit issued to a business, depending on whether the business would be issued a single permit or multiple permits. This results from the last sentence of Alternative 2, which specifies that “[t]he year selected for determining angler endorsements must be the year selected by the applicant for permit qualification.” Under this method, the angler endorsement for the first permit issued to a business receiving multiple permits would be equal to the greatest number of charter vessel anglers reported onboard any vessel used by the business to generate a permit in the applicant-selected year. Each subsequent permit would be issued with an angler endorsement equal to the next greatest number of charter vessel anglers in the applicant-selected year onboard any other vessel used by the business to generate a permit that has not been used to determine an angler endorsement. This procedure would continue until all of the business’s permits were issued.

For businesses issued a single permit under Alternative 2, as proposed by the Council in February 2010, the angler endorsement on the single permit would be equal to the greatest number of charter vessel anglers recorded by that business on a logbook fishing trip in 2004 or 2005. NMFS would use the greatest number of charter vessel anglers reported by the business in 2004 or 2005, regardless of the applicant-selected year.

#### *Applicant-selected year*

In its charter halibut motion from March 31, 2007, the Council recommended that the number of permits issued to a charter fishing business be “based on the number of trips summed for all vessels in [its] best year of the qualification period.” Although the Council motion refers to an applicant’s “best year of the qualification period,” the Council was silent on how an applicant’s “best year” is determined. For purposes of implementation, NMFS proposed that the applicant should select its best year. Thus, the proposed and final rules used the term “applicant-selected year”. The applicant-selected year means the year in the qualifying period—2004 or 2005—that the applicant selects for NMFS to use in determining how many permits the applicant will receive and whether the permits will be transferable or nontransferable.

NMFS proposed that the applicant select the applicant’s best year because applying the rules for the number of permits and transferable permits could have different results for individual businesses. For example, an applicant may receive a greater number of permits using the applicant’s participation in one year but a greater number of transferable permits using the applicant’s participation in another year. Because the year selected could make a difference, NMFS determined that the applicant should choose which outcome is more important to the applicant. NMFS provided applicants with information to inform this choice during the charter halibut permit application period.

The charter halibut permit application period opened on February 4, 2010 and closed on April 5, 2010. In late January 2010, NMFS created the official charter halibut record to determine the number of permits an applicant may be awarded and whether those permits would be transferable or nontransferable. NMFS derived the official record from ADF&G logbook records. For each applicant that NMFS determined would qualify for one or more charter halibut permits based on the official record, NMFS summed the

total number of trips that the applicant reported in 2004 and 2005, divided those numbers by five, and rounded them down to the nearest whole number. NMFS also determined the number of vessels used by the business in 2004 and 2005 because this would limit the total number of permits a business would receive, as indicated by Issue 10 in the Council motion:

**Issue 10. Qualification period**

Option 10.1. Each licensed guide business owner(s) who reported a minimum of 5 bottomfish logbook trips during 2004 or 2005 and year prior to implementation would be issued a permit(s) based on the number of trips summed for all vessels in his best year of the qualification period, unless an unavoidable circumstance occurred. A business would be limited to the number of permits equal to the highest number of vessels used in any one year during the qualifying period. *(Staff note: this means businesses are restricted to a maximum number of permits equal to or less than the maximum number of vessels that submitted logbooks in 2004 or 2005).*

NMFS compared the calculations for number of permits based on number of trips and number of vessels and used the lower number of the two calculations to determine how many permits a business would receive for 2004 and 2005.

NMFS determined how many of a business’s permits would be transferable and how many would be nontransferable in 2004 and 2005 based on the qualifying criteria.<sup>7</sup> NMFS also determined the angler endorsement that would be assigned to all permits issued to the business based on the status quo method, i.e., all permits received by a business would have the same angler endorsement. Thus, the angler endorsement determination would have been identical for both years for all of an applicant’s permits, regardless of differences in the number of permits or the number of nontransferable permits in 2004 and 2005.

NMFS informed applicants of these determinations for the years 2004 and 2005 in a “Summary of Official Charter Halibut Record” that was mailed to apparently qualified applicants. Only those applicants that received the summary would have had information from the official record available to consider in their determination of the applicant-selected year. Applicants that did not receive a summary from NMFS would have elected 2004 or 2005 as the applicant-selected year based on their own documentation of participation in the qualifying years. The official record summary had the following format:

XYZ Charters (Example only – not an actual official record summary)

For Area 3A:	2004	2005
Estimated # of permits	3	2
Estimated # of transferable permits	1	2
Estimated # of nontransferable permits	2	0
Angler endorsement	6	6

<sup>7</sup> An applicant will receive a transferable permit for each vessel that made at least 15 trips in the applicant-selected year (2004 or 2005) and at least 15 trips in the recent participation year (2008). The same vessel must have made all the trips within a year; however, the same vessel did not have to be used in the qualifying year and the recent participation year. The rest of the applicant’s permits, if any, will be non-transferable permits. Applicants that do not have the minimum of 15 logbook fishing trips from the same vessel in each period but qualify for one or more permit(s) with a minimum of five logbook fishing trips, will receive only non-transferable permit(s).

The following logbook records for an individual business would have resulted in the summary shown above. In 2004 the applicant reported 23 logbook trips using three vessels. One vessel made 16 trips, another vessel made five trips, and another vessel made only two trips. NMFS would calculate  $23 \div 5 = 4.6$  which would be rounded down to four. But this number of permits would be limited by the number of vessels that made the logbook trips, which was three. The number of transferable permits would be limited to the number of vessels that made 15 or more trips in the applicant-selected year. Hence, the applicant would be awarded three permits for the applicant-selected year of 2004. The applicant would receive one transferable permit and two nontransferable permits.

In 2005, the same applicant reported 30 logbook fishing trips using two vessels. Each vessel made 15 trips. NMFS would calculate  $30 \div 5 = 6$ . The number of permits would be limited by the number of vessels that made all the logbook trips, which was two. If the applicant-selected year was 2005, the applicant would receive two transferable permits.

The official record summary did not inform applicants whether the greatest number of charter vessel anglers was reported in 2004 or 2005, or by how much (if at all) the greatest number of charter vessel anglers reported differed between 2004 and 2005. Thus, applicants considering only the official record summary when determining the applicant-selected year potentially would have selected 2004 or 2005 without knowledge as to which year it had reported a greater number of charter vessel anglers on a vessel used to generate a permit. The instructions included with the charter halibut permit application notified applicants that for determination of angler endorsements, NMFS would consider activity in both qualifying years, regardless of which year was the applicant-selected year, and use the greatest number of anglers that the applicant reported on any one logbook fishing trip during 2004 and 2005.

In the example above, if the greatest number of charter vessel anglers reported in 2004 by XYZ Charters was 4 and the greatest number of charter vessel anglers reported in 2005 was 6, NMFS would have determined that all permits received by the business based on the applicant-selected year would have an angler endorsement of 6, as indicated on the summary.

For most businesses, the selection of 2004 or 2005 did not make a difference in the total number of permits or number of transferable permits. However, for approximately 22% of businesses, the choice of applicant-selected year did change the number of total and/or transferable permits the business would receive. In cases where a business would be issued a larger number of permits in one of the qualifying years but the number of transferable permits would be the same in both years, it is reasonable to assume that the applicant would have selected the year that would result in it receiving the greatest number of permits. However, in cases similar to the XYZ Charters example, applicants had to determine whether they would prefer to maximize the total number of permits or the total number of transferable permits in their choice of 2004 or 2005 as the applicant-selected year. In these cases, there is no clear determination for the behavior of applicants in selecting the applicant-selected year.

#### *Fair and equitable allocation of fishing privileges*

Applying the Alternative 2 methodology under the Council's motion (Option 1) for assigning angler endorsements only to businesses that would be issued multiple permits raises concerns whether this method would meet the Halibut Act requirement for fair and equitable allocations of fishing privileges. The Halibut Act at 16 U.S.C. 773c(c) states, in part:

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...

Under the status quo, the charter angler endorsement assigned to permits issued to all businesses would be equal to the greatest number of charter anglers reported by the business for a logbook fishing trip in 2004

or 2005. The methodology for assigning angler endorsement to businesses receiving a single permit is the same methodology used for assigning angler endorsement to businesses receiving multiple permits.

Alternative 2, or the action alternative in Option 1, would change the methodology used to assign the angler endorsement to permits issued to a business receiving multiple permits. This different approach to assigning angler endorsements may not meet the fair and equitable requirement under the Halibut Act, because the first permit issued to a business receiving multiple permits would be determined using a different methodology than the one used for a business receiving one permit. Under the status quo, the angler endorsement assigned to the first permit issued to all businesses would be based on the greatest number of anglers reported in 2004 or 2005 on a vessel that gave rise to a permit for that business. The Council expressed concern only about the angler endorsements on subsequent permits issued to businesses receiving multiple permits potentially contributing to excessive fishing capacity. Thus, under Alternative 2 in Option 1, it is unclear why the angler endorsement for the first permit issued to businesses receiving multiple permits should be determined differently than the angler endorsement for businesses receiving a single permit.

The Council initiated this analysis for a regulatory amendment based on concerns that the status quo method of assigning angler endorsement to each subsequent permit issued to a business that would be issued more than one permit would create a potential for increased fishing capacity. Under the status quo, the angler endorsement for each subsequent permit issued to a business would be derived from the vessel used to determine the angler endorsement on the first permit issued to that business, which was the vessel with the greatest reported number of charter vessel anglers in either 2004 or 2005. In some cases, the number of charter vessel anglers reported on the vessel used to determine the angler endorsement on all of the permits issued to a business could have been significantly more than number of charter vessel anglers reported on most or all of the other vessels that the business used to qualify to receive charter halibut permits. The Council targeted this action toward businesses receiving more than one permit because it was concerned that the status quo angler endorsement methodology could result in these businesses receiving unintended benefits from the charter halibut permit program by receiving permits with angler endorsements significantly greater than those that would have been derived from the other vessels used by the business.

If the Council recommends Alternative 2 as adopted in February 2010 (Option 1), which would require using the applicant-selected year to determine the angler endorsement for all permits issued to businesses receiving multiple permits, it should provide a clear rationale for why using different methodologies for determining angler endorsements is consistent with the Halibut Act. Alternatively, the Council could consider two options for revising its motion.

#### Option 2

Option 2 would explicitly expand this action to apply to all businesses that would be issued charter halibut permits. The Council could revise its problem statement and statement of intent that Alternatives 1 and 2 would apply only to businesses that would be issued multiple permits. Alternative 2 would not be revised:

#### **Problem Statement**

The methodology used to assign angler endorsements to charter halibut permits held by charter halibut businesses ~~initially issued more than one permit~~ could result in excessive fishing capacity in the charter halibut fishery. The Council intends to more closely align angler endorsements with the actual greatest number of anglers for each vessel that gave rise to each charter halibut permit.

#### ~~Alternatives for businesses that would be issued multiple permits:~~

Alternative 1. Status quo. **All** permits issued to a business receiving multiple permits would be issued with an angler endorsement equal to the greatest number of charter vessel anglers

onboard any vessel used by the business to generate a permit as reported to ADF&G on any bottom fish logbook trip in 2004 or 2005, but not less than 4.

Alternative 2. **One** permit would be issued to a business with an endorsement equal to the greatest number of charter vessel anglers onboard any vessel used by the business to generate a permit as reported to ADF&G on any bottom fish logbook trip in 2004 or 2005, but not less than 4. **Each subsequent** permit issued to the same business would be issued with an endorsement equal to the next greatest number of charter vessel anglers onboard **any other vessel** used by the business to generate a permit, whose catch history has not already been used by the business to determine an angler endorsement, as reported to ADF&G on any trip in 2004 or 2005, until all permits are issued. The year selected for determining angler endorsements must be the year selected by the applicant for permit qualification.

Option 2 would expand the scope of this action. NMFS would determine angler endorsements based on the applicant-selected year for all businesses that would be initially issued charter halibut permits. In considering whether to use the applicant-selected year to determine angler endorsements under Option 1 and Option 2, the Council also should consider that the charter halibut permit application period closed on April 5, 2010. Thus, persons submitting applications have already chosen the year to be used for selection of transferable and nontransferable permit numbers by the time the Council acts. Applicants would have selected 2004 or 2005 as the applicant-selected year without knowledge of its implications for the angler endorsements assigned to each of the permits it would receive under Option 1 and Option 2.

### Option 3

Option 3 would leave the problem statement unchanged from Option 1 and revise Alternative 2 to maintain the focus of this action on businesses that would be issued more than one permit and address concerns about meeting the fair and equitable allocation requirement of the Halibut Act. Alternative 2 could be revised to remove the requirement that the applicant-selected year be used to determine the angler endorsement on all permits received by a business that would be issued multiple permits:

### **Problem Statement**

The methodology used to assign angler endorsements to charter halibut permits held by charter halibut businesses initially issued more than one permit could result in excessive fishing capacity in the charter halibut fishery. The Council intends to more closely align angler endorsements with the actual greatest number of anglers for each vessel that gave rise to each charter halibut permit.

Alternatives for **businesses that would be issued multiple permits:**

Alternative 1. Status quo. **All** permits issued to a business receiving multiple permits would be issued with an angler endorsement equal to the greatest number of charter vessel anglers onboard any vessel used by the business to generate a permit as reported to ADF&G on any bottom fish logbook trip in 2004 or 2005, but not less than 4.

Alternative 2. **One** permit would be issued to a business with an endorsement equal to the greatest number of charter vessel anglers onboard any vessel used by the business to generate a permit as reported to ADF&G on any bottom fish logbook trip in 2004 or 2005, but not less than 4. **Each subsequent** permit issued to the same business would be issued with an endorsement equal to the next greatest number of charter vessel anglers onboard any other vessel used by the business to generate a permit, whose catch history has not already been used by the business to determine an angler endorsement, as reported to ADF&G on any trip in 2004 or 2005, until all permits are issued. ~~The year selected for determining angler endorsements must be the year selected by the applicant for permit qualification.~~

Under Option 3, NMFS would assign angler endorsements to the first permit issued to all businesses equal to the greatest number of charter vessel anglers reported on a vessel used by the business in 2004 or 2005, regardless of the applicant-selected year. This is the methodology used to assign angler endorsements under the status quo. The revised alternative would be consistent with the Council's intent to focus this action on businesses receiving multiple permits by changing the methodology used to assign angler endorsements only for each subsequent permit issued to businesses receiving more than one permit. Each subsequent permit issued to a business receiving multiple permits would receive an angler endorsement equal to the number of charter vessel anglers reported on other vessels used by the business to generate charter halibut permits. Each vessel would be used only once to assign an angler endorsement to a business's permits.

Option 3 also would address the concern about using a different method to assign angler endorsements to charter halibut permits for businesses that would be issued single permits and businesses that would be issued more than one permit. The proposed revision would adopt the same method for assigning angler endorsements to the first permit issued to all businesses, then would specify a method for assigning angler endorsements to each subsequent permit issued to businesses that would be issued multiple permits.

Regardless of which option the Council adopts, NMFS would provide an opportunity for all charter halibut permit recipients affected by the action to appeal any changes to modified angler endorsements on charter halibut permits (see the "Implementation issues" section of this analysis). An action alternative that would use the applicant-selected year to determine angler endorsements (Option 1 and Option 2) would change NMFS's use of the applicant-selected year for implementing the charter halibut permit program from the status quo, which could increase the number of appeals. Adopting Option 2 to broaden this action to include all businesses that would be issued permits could result in a greater number of appeals relative to Option 1 and Option 3.

#### *Impact of alternatives on numbers of endorsements<sup>8</sup>*

Under all three options, endorsements, generated by vessel activity in 2004 and/or 2005, are ranked by firm and in descending order of endorsement level (14, 13, 10, ..., 5, 4). Permits are ranked by firm and transferability. The vessel-generated endorsements (which exceed the numbers of permits because there are more vessels generating potential endorsements than there are permits) are matched to the permits so that the largest endorsement levels are attached to transferable permits and the lower endorsement levels are attached to nontransferable permits. Since there are often more vessel-generated endorsements than permits for a firm, the lowest endorsement levels are often dropped from consideration. This approach to assigning endorsements to permits follows the procedure used in the analysis before the Council in 2007 (Brannon, pers. comm., March 8, 2010).

Table 6 provides estimates of the numbers of endorsements, transferable endorsements, and nontransferable endorsements, which would be issued in Area 2C under the status quo, and under each of the three action alternative options. Table 7 provides similar information for Area 3A. Each of these tables has four blocks of information.

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<sup>8</sup> The estimates in this section were prepared by applying the permit and endorsement allocation rules contained in the action, to logbook data collected by the State of Alaska in 2004, 2005, and 2008. This data set and these rules are those that will eventually be used to identify permit and endorsement recipients. Actual permit and endorsement issuance may differ from these estimates for a number of reasons: (a) some eligible recipients may not apply; (b) new information may be brought forward in the allocation process and in associated appeals, that will modify some of the conclusions in this analysis; (c) the analysis assumes the applicant-selected year will be the one providing the most permits, but applicants may use other strategies. With respect to this last point, NMFS has done some calculations to assume year choice is made to maximize the number of permits and compared them with calculations done assuming applicants maximize the number of transferable permits. The numbers of permits issued varied very little in response to this change in assumptions about how a business would make its decision. There was no difference in permit numbers in Area 3A, and only a three permit difference in Area 2C. Therefore, for simplicity, only one set of results is reported: the result of assuming that businesses select the year so as to maximize their total number of permits.

The first block shows the number of qualifying businesses, and the numbers of total, transferable, and nontransferable permits that would be issued under the program. The options under consideration in this action will change the numbers of endorsements attached to permits, but they will not change the number of qualifying businesses, permits, or transferable permits. Thus, the estimates in this block remain constant across options. This block has been included to provide the information, and to act as a reminder that these numbers are not changed by the options.

The second block shows the numbers of total, transferable, and nontransferable endorsements associated with the status quo, and with each of the action options. Blocks three and four show the changes in the numbers of these endorsements, and the percentage changes in the numbers.

Table 6 Estimated endorsement issuance in Area 2C under the action options

	Status quo	Action Alternative		
		Option 1: Council language	Option 2: Apply to all businesses	Option 3: Vessel's best year
Numbers of businesses, permits, transferable permits, and nontransferable permits				
Businesses	229	229	229	229
Total permits	501	501	501	501
Tran permits	341	341	341	341
Ntrans permits	160	160	160	160
Numbers of endorsements, transferable endorsements, and nontransferable endorsements				
Total end.	3,001	2,533	2,499	2,618
Tran end.	2,103	1,772	1,743	1,830
Ntran end.	898	761	756	788
Change in numbers of endorsements from status quo				
Chg total end	n.a.	-468	-502	-383
Chg trans end	n.a.	-331	-360	-273
Chg ntrans end	n.a.	-137	-142	-110
Percent change in the numbers of endorsements from the status quo				
Pct chg total end	n.a.	-16%	-17%	-13%
Pct chg trans end	n.a.	-16%	-17%	-13%
Pct chg ntrans end	n.a.	-15%	-16%	-12%

Notes: NMFS, AKR. A-aa1-diagnostic.do, A-aa2-diagnostic.do, A-aa3-diagnostic.do.

Table 7. Estimate endorsement issuance in Area 3A under the action options

	Status quo	Action Alternative		
		Option 1: Council language	Option 2: Apply to all businesses	Option 3: Vessel's best year
Numbers of businesses, permits, transferable permits, and nontransferable permits				
Businesses	291	291	291	291
Total permits	410	410	410	410
Tran permits	316	316	316	316
Ntrans permits	94	94	94	94
Numbers of endorsements, transferable endorsements, and nontransferable endorsements				
Total end.	3,524	3,053	2,914	3,122
Tran end.	2,813	2,501	2,379	2,537
Ntran end.	711	552	535	585
Change in numbers of endorsements from status quo				
Chg total end	n.a.	-471	-610	-402
Chg trans end	n.a.	-312	-434	-276
Chg ntrans end	n.a.	-159	-176	-126
Percent change in the numbers of endorsements from the status quo				
Pct chg total end	n.a.	-13%	-17%	-11%
Pct chg trans end	n.a.	-11%	-15%	-10%
Pct chg ntrans end	n.a.	-22%	-25%	-18%

Notes: NMFS, AKR. A-aa1-diagnostic.do, A-aa2-diagnostic.do, A-aa3-diagnostic.do.

*Impacts on the industry's capacity*

Can the guided charter industry accommodate current levels of angler demand under limited access, and will it be able to accommodate potential increases in demand? This is not simply a question of physical capacity, but of whether or not an increase in demand can be accommodated under limited entry at levels of incremental costs that are close to those that would occur under the status quo. In general, it appears that this is likely to be the case. Ultimately, this is a question about the supply curve for an angler-trip in the guided charter fleet, with and without limited entry. NMFS does not have empirical information about how this curve will shift. However, a qualitative analysis suggests it is not likely to change significantly with limited entry.

Two measures of potential output under the limited access system were used in the analysis of the moratorium itself: the number of potential trips by vessels (vessel-trips), and the number of potential trips by anglers (angler-trips) (NMFS, 2009). The two measures are related by the average number of anglers per vessel. The number of anglers per vessel will depend on the business practices of each firm, and on the constraints imposed by the firm's endorsement status.

The current action does not affect the numbers of permits to be issued, only the numbers of endorsements attached to those permits. The number of permits (estimated here to be 501 in Area 2C and 410 in Area 3A) will be the same under the status quo and each of the three action alternative options. Thus, an analysis based on the number of potential trips by vessels, which uses the number of permits as its basis, is not included here, since it would not provide a way of discriminating among the alternatives. The following analysis focuses on potential angler-trips, which may be impacted by the alternatives.

This analysis distinguishes between the numbers of angler-trips the fleet might supply in the short run (before the expiration of any nontransferable permits) and in the long run (after the expiration of all the nontransferable permits). The rate at which nontransferable permits leave the industry cannot be predicted. Permits issued to a business which has multiple permits and a long expected life-time may stay in the fishery for many years. A business that receives a single nontransferable permit may extend the life of the permit by hiring a series of guides to use it. It is possible that individuals operating sole-proprietorships, who leave the region, could retain ownership of a nontransferable permit, but turn day-to-day management over to a permit management firm, similar to the real-estate management firms that often take care of the day-to-day leasing and maintenance of rental property and homes. Given these considerations, it seems likely that at least some nontransferable permits will remain in the Area 2C and 3A fisheries after 10 years.

Individual permits will differ considerably in the number of anglers they may authorize. The minimum number of endorsements per permit is four. The maximum status quo endorsement level in Area 2C is estimated to be 14, while some boats in Area 3A may be endorsed for as many as 38 anglers under the status quo. Endorsement numbers pertain only to the maximum number of charter anglers that may catch and retain halibut during a given trip. They are not an *authorization* to carry passengers (halibut anglers or otherwise). That authority is governed by U.S. Coast Guard regulations, among other laws. In 2008<sup>9</sup>, Area 2C trips averaged about 4.0 anglers, while Area 3A trips averaged about 5.9.

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<sup>9</sup> The year 2008 was chosen as the basis for this analysis of capacity since it is the recency year used in the rule. Activity in 2008 may have been affected by the recession that began in December 2007. Information on numbers of vessel-trips from Table 2 shows a 5% decline from 2007 in vessel-trips in Area 2C and a 9% decline in Area 3A. Person-trips drop 4 percent in 2C and 9.5 percent in 3A. However, in both areas 2008 vessel-trips and person-trips were above 2004 and 2005 levels. Halibut guided charter halibut harvest declined by about 15 percent between 2007 and 2008 in Area 3A, but rose by about 5 percent in Area 2C. Factors that may affect demand in 2010 and later include the one-fish bag limit adopted in Area 2C in 2009, and the ongoing impacts of the 2007-2009 recession (the third quarter 2009 Survey of Professional Forecasters, reported by the Federal Reserve Bank of Philadelphia, projects unemployment of 8 percent or more through 2012, <http://www.phil.frb.org/research-and-data/real-time-center/survey-of-professional-forecasters/2009/survq309.cfm>). Both of these factors are likely to depress demand

Tables 8 and 9 below show estimates of the average number of permit or vessel trips that would be required to produce the numbers of angler trips estimated to have taken place in 2008 for the status quo, and for each of the action options. The first block within each table may be thought of as a “short-run” block. This shows the total number of annual trips that will be needed for each permit given the total number of permits (including transferable and nontransferable) that are estimated to be issued under the program. In the long-run, the nontransferable permits and endorsements will gradually expire. The second block of the tables, therefore, is based only on the transferable permits that will continue to exist in the long-run.

Table 8 shows that in Area 2C in the short run, the number of required trips would have to increase from about 35 per year under the status quo, to about 40 to 42 under the action options to produce 2008 angler-trips. It shows that in the long run the required number of trips would have to increase from about 50 a year to about 58-61 a year. Table 9 shows that in Area 3A in the short run, the number of required trips would have to increase from about 39 per year under the status quo, to about 44 to 47 under the action options to produce 2008 angler-trips. It shows that in the long run the required number of trips would have to increase from about 49 a year to between about 54 to 58 a year.

Table 8. Estimated average permit trips required in Area 2C to produce 2008 angler-trip levels

Area 2C Short run			
Option	2008 angler trips	Endorsements	Average permit trips required
Status quo	105,532	3,001	35.2
1	105,532	2,533	41.7
2	105,532	2,499	42.2
3	105,532	2,618	40.3
Area 2C Long run			
Option	2008 angler trips	Endorsements	Average permit trips required
Status quo	105,532	2,103	50.2
1	105,532	1,772	59.6
2	105,532	1,743	60.5
3	105,532	1,830	57.7
Notes: 2008 angler trips from NMFS, 2009; endorsements from Table 6; average permit trips required equals angler trips divided by endorsements. This is equivalent to dividing total trips by anglers per permit to calculate the number of permit trips required, and then dividing that by the number of permits.			

Table 9. Estimated average permit trips required in Area 3A to produce 2008 angler-trip levels

Area 3A Short run			
Option	2008 angler trips	Endorsements	Average permit trips required
Status quo	137,192	3,524	38.9
1	137,192	3,053	44.9
2	137,192	2,914	47.1
3	137,192	3,122	43.9
Area 3A Long run			
Option	2008 angler trips	Endorsements	Permit trips required
Status quo	137,192	2,813	48.8
1	137,192	2,501	54.9
2	137,192	2,379	57.7
3	137,192	2,537	54.1
Notes: 2008 angler trips from NMFS, 2009; endorsements from Table 7; average permit trips required equals angler trips divided by endorsements. This is equivalent to dividing total trips by anglers per permit to calculate the number of permit trips required, and then dividing that by the number of permits.			

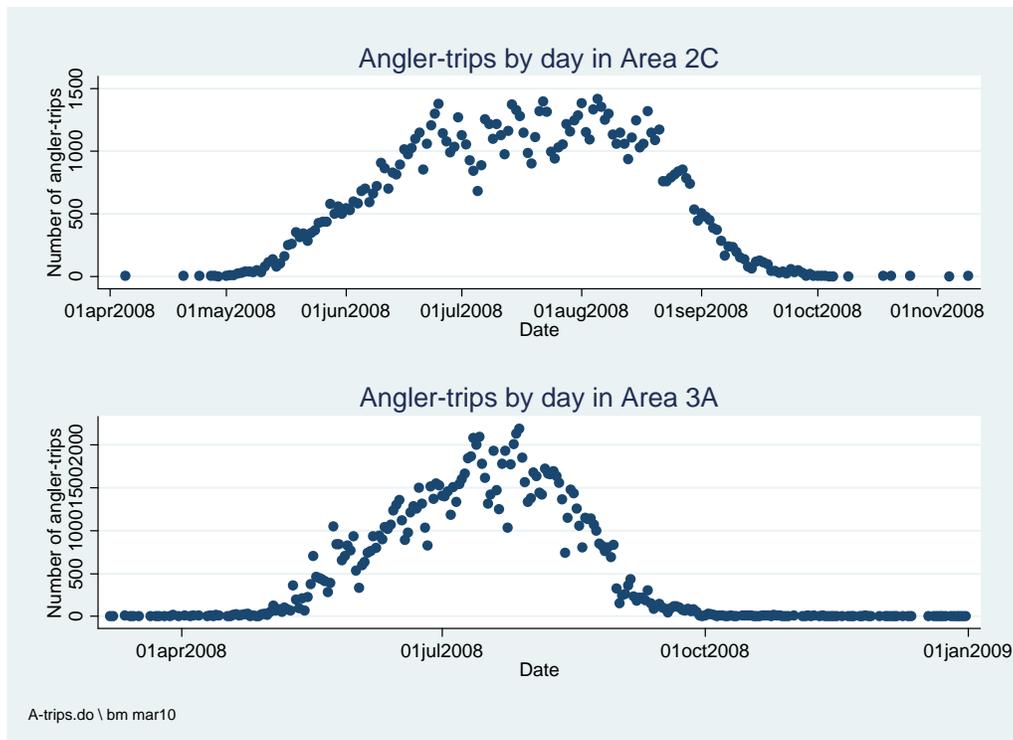
for guided charters. Fuel prices rose to high levels during the summer of 2008. This may have affected guided charter 2008 halibut production on the supply side. Fuel prices have since declined.

Members of the charter industry have indicated in public testimony that the charter season lasts for about 100 days. Even accounting for days off, bad weather, and mechanical problems, it is likely that individual vessels could be used the indicated number of days within a season. Moreover, the table shows the number of trips required, not the number of vessels. Many vessels take trips that are shorter than a day, and may be able to make two trips in a day. A permit may be used on more than one vessel, even during the same day. All of these considerations suggest that the number of angler-trips indicated in Table 9 is within the capacity of the guided harvest fleet under limited access, all else equal. While the three action alternative options increase the number of required trips, the increase does not appear large enough to affect this conclusion.

The preceding tables do not take account of potential community charter halibut permits. In Area 2C, there may potentially be an additional 72 community permits; in Area 3A, there may be an additional 98. The average number of vessel-trips that must be supported by a permit drops, if these permits are issued. The potential availability of these community permits makes it more likely that the fleet will be able to accommodate potential increases in demand for trips, with sufficient time and investment. As treated elsewhere, many of the communities that may be eligible to receive community permits are not current, or even recent, participants in the halibut charter fishery. Many do not have the basic infrastructure, at present, to support a tourist-based charter sector (e.g., efficient, reliable, cost-effective transportation from tourist travel hubs; hotel, restaurant capacity; passenger loading docks). Even if capital can be found, it may require time for such a community to construct, acquire, or adapt its asset based to support an active commercial charter fishing sector.

The preceding analysis is an aggregate seasonal analysis. However, the guided charter industry doesn't service its customers in equal numbers on each day of the season. Trip activity begins to increase in May; numbers of customers increase rapidly through May and June, peaking in July, and then decreasing in August and September. The industry may have the capacity to meet aggregate seasonal demand, but the question may be raised whether the reduction in the number of endorsements in a move from the status quo to one of the action alternative options would affect the industry's ability to meet this peak demand. A review of angler-trip data for 2008 indicates that the answer is "no."

Figure 3 shows the number of angler-trips provided by day over the course of the 2008 season for Areas 2C and 3A.



**Figure 3 Angler-trips per day in Areas 2C and 3A during 2008**

In Area 2C, an estimated 501 permits will be issued. Average trip size in 2008 was an estimated 4.02 anglers. Thus, assuming one trip per day per permit, the fleet would have the ability to provide 2,014 angler-trips in a day. As shown in Figure 4, there are fewer than 1,500 angler-trips a day on the peak days, during the peak period. The lowest endorsement level of any of the action alternative options is about 2,500 (Options 1 and 2). During many peak season days, there are considerably fewer angler-trips. Thus, the fleet appears to have the capacity to meet existing peak demand in the short-run all else equal.

In the long-run, there would be an estimated 341 2C permits and the fleet would have a daily capacity of about 1,371 anglers (at the 2008 party sizes). The number of anglers only exceeded this total on five days in 2008 (there were 1,419 anglers on the busiest day, 48 more than this). The lowest number of transferable endorsements of any of the action alternative options is about 1,740. This exceeds the numbers of persons serviced on the peak days. However, note that this comparison does not take account of the potential for permits to be used to support more than one vessel-trip per day, for the industry to shift customers between days within the peak season (many days during the peak season have significantly lower than peak demand), to increase angler party sizes, or of the possible issuance of 72 additional community halibut charter permits to CQEs. Thus, the fleet is likely to have the capacity to meet existing demand in the long-run, as well.

The situation is similar in Area 3A, where an estimated 410 permits, with party sizes equal to the estimated 5.89 angler 2008 average, could accommodate 2,415 persons a day in the short-run. The lowest endorsement level of any of the action alternative options is about 2,900 (Option 2). This is substantially more persons than participated in the peak of the 2008 season.

In the long-run, the 316 transferable 3A permits could accommodate 1,861 anglers (at the average 2008 party sizes). This number was only exceeded on nine days in 2008 (there were 2,186 anglers on the busiest day, 325 more than this). The lowest number of transferable endorsements of any of the action

alternative options is about 2,400. This exceeds the numbers of persons serviced on the peak days. The considerations mentioned above also apply in this instance. Thus, this fleet also appears to have the capacity to meet existing demand, although to a lesser extent than in Area 2C.

If one assumes that 2008 represents the ‘typical’ demand for halibut charter trips, it seems likely that the fleets could accommodate growth in peak demand, as well. In each area, many of the days during the peak period (July) fall below peak levels. Thus, in July, in Area 2C, there were nine days with fewer than 1,000 angler-trips in 2008. In Area 3A, there were 11 days with fewer than 1,500 angler-trips. These considerations, and the others discussed above, suggest that the limited access fleet could accommodate at least some increases in demand, all other things equal.

From the foregoing, it appears that the fleet will have the physical capacity to meet the existing demand for angler trips and the ability, at least to some extent, to expand to meet increased demand. However, it will not be able to meet existing demand or increased future demand exactly as it has in the past. Under limited access, demand can be met by increasing the number of active vessels (as under the status quo); however, the requirement that a vessel carry a permit will limit this ability. This constraint on fleet practices raises the possibility that increases in demand can only be met by supplying additional angler-trips at higher incremental costs and, thus, higher prices than in the absence of limited access.

The information that would be necessary to estimate the cost of supplying additional angler-trips in the absence of limited access, or of estimating how it would change with the introduction of limited access, is not available. However, there are reasons for believing that incremental costs of adding angler-trips, at the margin, will not differ much between the status quo and limited access.

Individual permits can be used more or less intensively, by changing the average number of anglers on a vessel-trip, or by changing the average number of vessel-trips associated with a given permit. Changes in the average number of anglers on a given trip are likely to produce relatively modest changes in the operator’s costs for a vessel-trip. On the one hand, the business may invest more resources in marketing and scheduling trips, to increase the average angler load. Each additional angler also creates additional costs for food and materials, but these would be incurred under non-limited access conditions, as well, if the angler was carried on another vessel. The main costs of a vessel-trip are probably largely fixed (not dependent on the number of anglers on a specific trip) and include the labor time of the skipper, guide, and crew, and fuel. These would be divided among more anglers, as the number of anglers on a boat increases. Thus, increases in the number of anglers would tend to be associated with smaller fixed costs per angler for a given vessel-trip. On balance changes in the number of anglers may not have a large impact on the businesses incremental expenditures for an angler-trip, over the allowed range.

Increases in the average party size may be associated with a reduced willingness of anglers to pay for an angler-trip. This may be especially true if operators combine separate fishing parties of anglers to increase the number of persons on a vessel-trip. All things equal, it is likely that smaller trips, without mixed parties, are likely to be more attractive to many customers. The reduction in the price that operators may be able to charge for an angler-trip is a cost to the vessel operator of including additional anglers on a vessel-trip. These will be dictated by prevailing market conditions and cannot be estimated *a priori*.

Changes in the numbers of boats supported by a given permit are likely to have little impact on incremental angler-trip costs. The program limits the numbers of permits that may be issued, not the number of boats that may be used for fishing. A vessel engaged in guided charter operations must have one of the permits on board, but, as noted, the permit is not endorsed to a specific vessel. The permit can be used on more than one vessel, even during a single day, so long as it is only used on one vessel at a time. Thus, a single permit could be used to support trips by two separate vessels during the course of a

single day. There are also large numbers of persons and vessels in Alaska that can enter or leave the business at relatively low cost. Boat ownership is widespread in coastal communities. Many coastal residents fish for halibut recreationally or commercially, so local knowledge about halibut fishing conditions is widespread in the different towns. The State places few obstacles in the way of entry into this business, although U.S. Coast Guard and Jones Act requirements must be met, prior to “hiring-out” as a legitimate charter vessel operation. Skippers of charter vessels must also meet specific competency requirements, before obtaining a license to carry paying passengers.

### *Implementation*

The Council intended that this amendment be implemented in regulation prior to issuance of charter halibut permits to businesses that would be issued multiple permits.

NMFS published a final rule implementing the charter halibut permit program on January 5, 2010 (75 FR 554). The final rule requires vessel operators to have a valid charter halibut permit onboard beginning on February 1, 2011, if one or more charter vessel anglers are catching and retaining halibut. Under the status quo, NMFS intends to initially issue charter halibut permits in October or November 2010. The schedule to issue permits in advance of the anticipated start of the 2011 sport fishing season on February 1 is intended to provide charter operators with as much time as possible to facilitate business planning and operations for the first year of fishing under the permit program. In practice, most charter operations begin in May, which would allow many operators additional time for business planning under the status quo permit issuance schedule. The intended schedule also would allow charter businesses to commence permit transfers, if necessary, well in advance of the 2011 season. All charter halibut permit transfers must be approved by NMFS, and permit transfers could be completed only after permits have been issued.

Two potential scenarios for implementing this action are discussed below. In the first scenario, NMFS would initially issue charter halibut permits to all qualifying business owners after the regulatory amendment for this action, if approved, was implemented. This scenario would be feasible if the final rule for this regulatory amendment is effective by mid-December 2010. The second scenario would occur if the approved regulatory amendment was implemented any time after mid-December 2010.

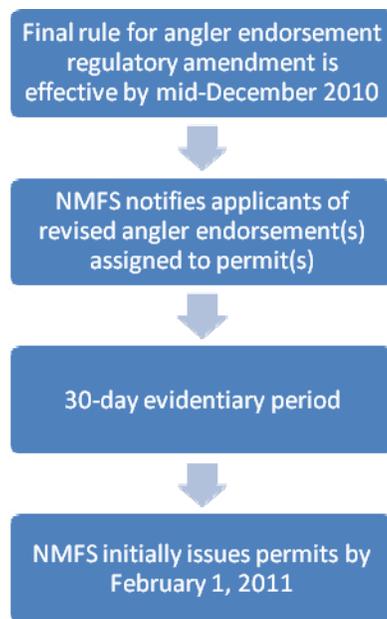
Under both scenarios, NMFS would create an official record of charter business participation in Areas 2C and 3A during the qualifying and recent participation years. The official record will be based on data from ADF&G and will link each logbook fishing trip to an ADF&G Business Owner License and to the person—individual, corporation, partnership, or other entity—that obtained the license. Thus, the official record will include information from ADF&G on the persons that obtained ADF&G Business Owner Licenses in the qualifying period and the recent participation period; the logbook fishing trips in those years that met the State of Alaska’s legal requirements; the Business Owner License that authorized each logbook fishing trip; and the vessel that made each logbook fishing trip. The official record also would include the angler endorsement assigned to each charter halibut permit using the method implemented by the angler endorsement regulatory amendment.

When the approved final rule to implement this action is effective, NMFS would notify all affected business owners of the revised angler endorsement(s) assigned to the permit(s) they would be issued. Affected business owners would have 30 days to challenge NMFS’s determination. Business owners could submit documentation or further evidence in support of their claim during this 30-day evidentiary period. If NMFS accepts the business owner’s documentation as sufficient to change the agency determination, NMFS would change the official record and issue charter halibut permit(s) with revised angler endorsements accordingly. If NMFS does not agree that the further evidence supports the participant’s claim, NMFS would issue an initial administrative determination (IAD) denying the participant’s claim, and issue the participant’s charter halibut permit(s) consistent with the official record.

The IAD would describe why NMFS is initially denying some or all of an applicant's claim and would provide instructions on how to appeal the IAD.

Charter business owners would be able to appeal an IAD through the NOAA Office of Administrative Appeals (OAA). The OAA is a separate unit within the office of the Regional Administrator for the Alaska Region of NMFS. The OAA is charged with developing a record and preparing a formal decision on all appeals. Unless the Regional Administrator intervenes, the OAA decision becomes the Final Agency Action thirty days after the decision is issued. An applicant who is aggrieved by the Final Agency Action may then appeal to the U.S. District Court. Regulations at 50 CFR 679.43 provide a regulatory description of the existing appeals process. NMFS would issue interim permits to applicants that filed timely applications and whose appeal is accepted by NOAA.

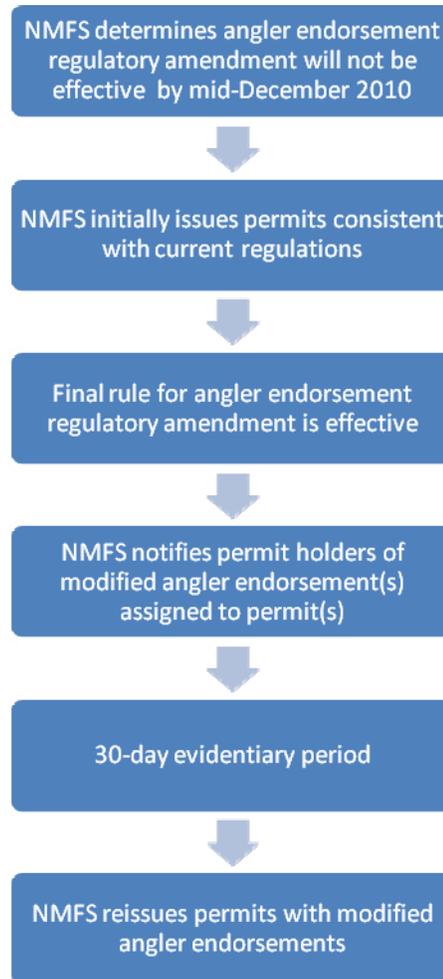
*Scenario 1: The angler endorsement regulatory amendment is effective by mid-December 2010.*



If the effective date of the approved final rule implementing the angler endorsement regulatory amendment occurred by mid-December 2010, NMFS would initially issue permits by February 1, 2011, using the methodology recommended in this action to assign an angler endorsement to a charter halibut permit. Ideally, the final rule would be effective as soon as possible in 2010 for NMFS to issue permits as initially scheduled in October or November 2010. The closer permit issuance is to February 1, 2011, the less time charter operators would have to arrange or adjust operations for the 2011 fishing season. However, as discussed above, although February 1 is the anticipated opening of the 2011 sport fishing season, many business owners may have additional time for planning before operations begin in May.

Under Scenario 1, when the approved final rule implementing the regulatory amendment for this action is effective, NMFS would notify all affected permit applicants of the modified angler endorsement(s) assigned to permit(s) they would be initially issued. This notification would begin the 30-day evidentiary period for applicants to challenge NMFS's determination. Following the evidentiary period, NMFS would issue permits and IADs to applicants as described above and provide applicants with an opportunity to appeal an IAD denying their claim.

*Scenario 2: The angler endorsement regulatory amendment is effective after mid-December 2010.*



Under Scenario 2, the final rule for this action would not be effective by mid-December 2010. In this case, NMFS would initially issue permits with angler endorsements assigned by the status quo methodology, i.e., all permits issued to a business would be assigned the same angler endorsement. The current charter halibut permit regulations also would require NMFS to issue transferable permits to those businesses that met the qualifying criteria. However, prior to initial permit issuance, NMFS would determine which permits would be affected by the angler endorsement regulatory amendment and provide notification that the angler endorsement on that permit may be subject to change if the angler endorsement regulatory amendment is approved. This notification would be included on the permit and additional documentation would be included with the originally issued permit.

In the event that affected charter halibut permits were transferred prior to reissuance with modified angler endorsements, NMFS would notify persons applying to receive permits by transfer of the potential angler endorsement change to the transferred permit. This notification would occur before the transfer was completed to provide the transferee with an opportunity to consider the potential effects of the modified angler endorsement on their business and determine whether to complete the transfer.

When the approved final rule for the angler endorsement regulatory amendment is effective, NMFS would notify affected permit holders of the modified angler endorsements assigned to their permits. As discussed above, affected permit holders would have a 30-day evidentiary period to challenge the change to an angler endorsement and an opportunity to appeal an IAD denying their claim. Following the 30-day evidentiary period, NMFS would reissue permits with modified angler endorsements as specified in the regulatory amendment.

#### *Net benefits*

This action is likely to have relatively minor impacts from the point of view of a cost and benefit analysis. The net effect will be to reduce the number of endorsements on certain permits. This will restrict the potential for the use of these permits and will tend to increase the aggregate cost of providing any given amount of angler-trips. As noted earlier in the discussion of capacity, the cost impact is likely to be relatively small.

It is not clear if this action will affect the volume of halibut harvested by the guided charter industry. As noted, there are enough endorsements under both alternatives to satisfy existing demand for charter fishing and at least some expansion of this demand. Moreover, other administrative mechanisms are available that would allow an expansion or contraction of harvest if this action did have some impact. Thus, it seems unlikely that this action will create costs or benefits through an impact on sectoral harvests or reallocation of sectoral harvests.

This action will also create certain administrative expenses for the NMFS, and, possibly, for qualified applicants. If the final rule is effective prior to the anticipated initial issuance of permits in mid-December, 2010, NMFS will only incur costs involved in calculating the relevant endorsements. If permits are issued just prior to the beginning of the 2011 fishing season, applicants may face some uncertainty with respect to planning for the 2011 season or to the transfer of transferable permits, or to confusion caused by the regulatory change.

The administrative costs faced by NMFS will be somewhat higher if the rule is not effective prior to mid-December 2010. In this case, NMFS would have to prepare notification for permit recipients that endorsement levels may be subject to change, would have to notify permit purchasers of the potential for change, and would have to notify permit holders of the change once it became effective. Applicants would face proportionately more uncertainty.

There does not appear to be evidence that this action will affect safety. A reduction in the number of endorsements, in and of itself, should not reduce safety on guided charter vessels, especially in this instance where there the restrictions appear unlikely to constrain industry capacity. Compliance with regulatory safety standards will remain a primary factor for which to determine the level of safety for each operation. While in the past some have raised concerns that shifting anglers from guided to unguided fishing operations may raise safety concerns, it has not been demonstrated that such a shift will have that effect (74 FR 21223); in any case, as noted above, this action is unlikely to lead to such a shift because of the continuing guided capacity.

#### *Distribution*

This action will have, and is meant to have, a distributional impact. In general, the numbers of permits at lower endorsement levels will increase, while the numbers at higher endorsement levels will decrease. In Area 2C, the number of permits will increase at endorsement levels four and five, and tend to decrease at

levels six and above. In Area 3A, the number of endorsements will increase at levels four to six, and will tend to decrease at levels seven and above (although in some instances there are small increases in some higher levels as permits from even higher levels move down a few endorsement levels). These impacts are shown in Tables 11 and 12.

Table 11. Estimated changes in the distributions of total endorsements across permits in Area 2C

Endorsement level	Number of permits by alternative and option			
	SQ	1	2	3
4	78	193	203	160
5	91	126	134	129
6	229	168	153	188
7	38	4	3	8
8	31	5	4	8
9	9	2	1	4
10	19	1	1	1
12	4	0	0	1
13	1	1	1	1
14	1	1	1	1

Table 12. Estimated changes in the distributions of total endorsements across permits in Area 3A

Endorsement level	Number of permits by alternative and option			
	SQ	1	2	3
4	21	48	62	37
5	44	44	45	43
6	207	211	216	215
7	33	26	17	28
8	18	15	12	17
9	2	4	4	5
10	5	5	5	5
11	5	5	4	5
12	6	6	6	7
13	4	4	1	4
14	5	5	5	3
15	1	2	2	4
16	9	10	9	10
17	5	4	4	5
18	10	5	4	5
19	5	1	2	2
20	5	3	3	2
21	4	2	2	2
22	1	1	1	2
23	6	2	1	2
25	7	4	3	3
28	0	0	0	1
30	1	1	0	1
33	2	1	1	1
38	4	1	1	1

This action will reduce the endorsement holdings attached to some permits, while leaving other endorsement holdings unaffected. A permit with fewer endorsements will authorize fewer charter vessel anglers on a fishing trip. In general, this will reduce the potential for profit from that permit. This will reduce its value if it is a transferable permit.

A firm receiving one of these permits in the initial allocation will be adversely impacted. Conversely, future holders of this permit will not be affected: while they will be able to generate less revenue from

using the permit than they otherwise would have, they will also have to pay less for it. Absent unexpected events, reduced value likely will be balanced by the reduced purchase costs of affected permits.

A firm holding permits whose endorsement levels are not changed should not incur any costs from this action. A firm like this may benefit to the extent that competition from other permits is reduced. However, given the large number of endorsements that will remain in the fishery, and given the fact that a given permit is not tied to any one place within its region (2C or 3A) this should be a minor benefit at best. There may, however, be some segments of the permit market where this is not the case. Several permits in Area 3A will be issued to boat operations that will have large numbers of endorsements. There are relatively few of these permits and the remaining permits may experience a distinctive price increase for this reason. This impact, if it occurs, may be moderated because charter operations could increase endorsements by stacking permits on a single vessel (subject to USCG licensing and other safety rules and regulations).

#### **1.6.4 Summary and comparison of alternatives**

In summary:

- The variant of this action that treats firms receiving one permit under the status quo differently from firms receiving more than one permit (Option 1), may raise fairness and equity concerns.
- This action will reduce the numbers of endorsements. The reduction in total endorsements ranges from 13 percent to 17 percent in Area 2C, depending on the option, and from 11 percent to 17 percent in Area 3A, depending on the option. This action is not expected to have a significant impact on current industry capacity, or on its ability to expand that capacity.
- There may be some efficiency impacts through impacts on permit flexibility and implementation expenses. It seems unlikely that this action will impact efficiency by way of harvest impacts in the charter sector.
- This program will have distributional impacts by reducing the allocation of endorsements to some individuals.

## **2 Initial Regulatory Flexibility Analysis**

### **2.1 Introduction**

The proposed action would reduce the number of endorsements received by certain halibut charter permit applicants in IPHC Areas 2C and 3A.

This IRFA reviews the impact of the action on directly regulated small entities such as small businesses, nonprofits and governments, and meets the statutory requirements of the Regulatory Flexibility Act (RFA) of 1980, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (5 U.S.C. 601-612).

### **2.2 The purpose of an IRFA**

The Regulatory Flexibility Act (RFA), first enacted in 1980, was designed to place the burden on the government to review all regulations to ensure that, while accomplishing their intended purposes, they do

not unduly inhibit the ability of small entities to compete. The RFA recognizes that the size of a business, unit of government, or nonprofit organization frequently has a bearing on its ability to comply with a Federal regulation. Major goals of the RFA are: (1) to increase agency awareness and understanding of the impact of their regulations on small business, (2) to require that agencies communicate and explain their findings to the public, and (3) to encourage agencies to use flexibility and to provide regulatory relief to small entities. The RFA emphasizes predicting impacts on small entities as a group distinct from other entities and on the consideration of alternatives that may minimize the impacts while still achieving the stated objective of the action.

On March 29, 1996, President Clinton signed the Small Business Regulatory Enforcement Fairness Act. Among other things, the new law amended the RFA to allow judicial review of an agency's compliance with the RFA. The 1996 amendments also updated the requirements for a final regulatory flexibility analysis, including a description of the steps an agency must take to minimize the significant economic impact on small entities. Finally, the 1996 amendments expanded the authority of the Chief Counsel for Advocacy of the Small Business Administration (SBA) to file amicus briefs in court proceedings involving an agency's violation of the RFA.

In determining the scope, or 'universe', of the entities to be considered in an IRFA, NMFS generally includes only those entities that can reasonably be expected to be directly regulated by the proposed action. If the effects of the rule fall primarily on a distinct segment, or portion thereof, of the industry (e.g., user group, gear type, geographic area), that segment would be considered the universe for the purpose of this analysis. NMFS interprets the intent of the RFA to address negative economic impacts, not beneficial impacts, and thus such a focus exists in analyses that are designed to address RFA compliance.

Data on cost structure, affiliation, and operational procedures and strategies in the fishing sectors subject to the proposed regulatory action are insufficient, at present, to permit preparation of a "factual basis" upon which to certify that the preferred alternative does not have the potential to result in "significant adverse impacts on a substantial number of small entities" (as those terms are defined under RFA).

Because, based on all available information, it is not possible to 'certify' this outcome, should the proposed action be adopted, a formal IRFA has been prepared and is included in this package for Secretarial review.

### **2.3 What is required in an IRFA**

Under 5 U.S.C., Section 603(b) of the RFA, each IRFA is required to contain:

- (b) Each initial regulatory flexibility analysis required under this section shall contain--
  - (1) a description of the reasons why action by the agency is being considered;
  - (2) a succinct statement of the objectives of, and legal basis for, the proposed rule;
  - (3) a description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply;
  - (4) a description of the projected reporting, recordkeeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record;
  - (5) an identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap or conflict with the proposed rule.

(c) Each initial regulatory flexibility analysis shall also contain a description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities. Consistent with the stated objectives of applicable statutes, the analysis shall discuss significant alternatives such as--

- (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;
- (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities;
- (3) the use of performance rather than design standards; and
- (4) an exemption from coverage of the rule, or any part thereof, for such small entities.

## 2.4 What is a small entity

The RFA recognizes and defines three kinds of small entities: (1) small businesses, (2) small nonprofit organizations, and (3) small government jurisdictions.

Small businesses. Section 601(3) of the RFA defines a ‘small business’ as having the same meaning as ‘small business concern,’ which is defined under Section 3 of the Small Business Act. ‘Small business’ or ‘small business concern’ includes any firm that is independently owned and operated and which is not dominant in its field of operation. The SBA has further defined a “small business concern” as one “organized for profit, with a place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials or labor.... A (small) business concern may be in the legal form of an individual proprietorship, partnership, limited liability company, corporation, joint venture, association, trust or cooperative, except that where the firm is a joint venture there can be no more than 49 percent participation by foreign business entities in the joint venture.”

The SBA has established size criteria for all major industry sectors in the United States, including fish harvesting and fish processing businesses. A business involved in fish harvesting is a small business if it is independently owned and operated and not dominant in its field of operation (including its affiliates) and if it has combined annual receipts not in excess of \$4.0 million, for all its affiliated operations worldwide. A seafood processor is a small business if it is independently owned and operated, not dominant in its field of operation, and employs 500 or fewer persons on a full-time, part-time, temporary, or other basis, at all its affiliated operations worldwide. A business involved in both the harvesting and processing of seafood products is a small business if it meets the \$4.0 million criterion for fish harvesting operations. Finally, a wholesale business servicing the fishing industry is a small business if it employs 100 or fewer persons on a full-time, part-time, temporary, or other basis, at all its affiliated operations worldwide. A business involved in providing fishing charter services is a small business if it is independently owned and operated and not dominant in its field of operation and if it has combined annual receipts not in excess of \$7.0 million.<sup>10</sup>

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<sup>10</sup> This industry may fall into one of three NAICS industry sectors and all three have a \$7 million threshold. The sectors include NAICS 721110 ("This industry comprises establishments primarily engaged in providing short-term lodging in facilities known as hotels, motor hotels, resort hotels, and motels. The establishments in this industry may offer food and beverage services, recreational services, conference rooms and convention services, laundry services, parking, and other services."), NAICS 713990 ("This industry comprises establishments (except amusement parks and arcades; gambling industries; golf courses and country clubs; skiing facilities; marinas; fitness and recreational sports centers; and bowling centers) primarily engaged in providing recreational and amusement services."), and NAICS 713930 ("This industry comprises establishments, commonly known as marinas, engaged in operating docking and/or storage facilities for pleasure craft owners, with or without one or more related activities, such as retailing fuel and marine supplies; and repairing, maintaining, or renting pleasure boats. ").

The SBA has established “principles of affiliation” to determine whether a business concern is “independently owned and operated.” In general, business concerns are affiliates of each other when one concern controls or has the power to control the other, or a third party controls or has the power to control both. The SBA considers factors such as ownership, management, previous relationships with or ties to another concern, and contractual relationships, in determining whether affiliation exists. Individuals or firms that have identical or substantially identical business or economic interests, such as family members, persons with common investments, or firms that are economically dependent through contractual or other relationships, are treated as one party with such interests aggregated when measuring the size of the concern in question. The SBA counts the receipts or employees of the concern whose size is at issue and those of all its domestic and foreign affiliates, regardless of whether the affiliates are organized for profit, in determining the concern’s size. However, business concerns owned and controlled by Indian Tribes, Alaska Regional or Village Corporations organized pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601), Native Hawaiian Organizations, or Community Development Corporations authorized by 42 U.S.C. 9805 are not considered affiliates of such entities, or with other concerns owned by these entities solely because of their common ownership.

Affiliation may be based on stock ownership when (1) A person is an affiliate of a concern if the person owns or controls, or has the power to control 50 percent or more of its voting stock, or a block of stock which affords control because it is large compared to other outstanding blocks of stock, or (2) If two or more persons each owns, controls or has the power to control less than 50 percent of the voting stock of a concern, with minority holdings that are equal or approximately equal in size, but the aggregate of these minority holdings is large as compared with any other stock holding, each such person is presumed to be an affiliate of the concern.

Affiliation may be based on common management or joint venture arrangements. Affiliation arises where one or more officers, directors, or general partners controls the board of directors and/or the management of another concern. Parties to a joint venture also may be affiliates. A contractor and subcontractor are treated as joint venturers if the ostensible subcontractor will perform primary and vital requirements of a contract or if the prime contractor is unusually reliant upon the ostensible subcontractor. All requirements of the contract are considered in reviewing such relationship, including contract management, technical responsibilities, and the percentage of subcontracted work.

Small organizations. The RFA defines “small organizations” as any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

Small governmental jurisdictions. The RFA defines small governmental jurisdictions as governments of cities, counties, towns, townships, villages, school districts, or special districts with populations of fewer than 50,000.

## **2.5 Need for, and objectives of, the rule**

The history of this action and a problem statement may be found in Sections 1.3 and 1.4 of the RIR. In summary, in February 2010, the Council indicated to NMFS that the moratorium (limited entry) program that NMFS began to implement in 2009, and which was described in a final rule dated January 5, 2010, diverged from Council intent in the way it proposed to make endorsement assignments to permits. In essence, NMFS proposed to assign each qualifying firm an endorsement status based on the largest number of anglers taken by the firm on a trip during the qualifying period. This endorsement status would pertain to all permits issued to that firm. In February, the Council indicated that it had, in fact, intended that NMFS assign vessel specific endorsements to each permit, and that NMFS’s proposed approach would lead to more endorsements in the fishery than the Council intended.

This action is **needed** to clarify the regulatory text, following clarification of Council intent regarding the methodology used by NMFS to determine the maximum number of permit endorsements, which occurred in February 2010. The **objectives** of this action are to revise the regulatory text to modify the regulations to match Council intent to reduce excessive fishing capacity in the charter halibut fishery from the status quo, without changing other elements of the program, and without delaying the effective date of the program in the 2011 charter halibut fishing season.

## **2.6 Entities directly regulated by this action**

The entities directly regulated by this action are guided charter businesses that would qualify for halibut charter moratorium permits in IPHC Areas 2C and 3A. There are 229 qualifying firms in Area 2C and 292 in Area 3A. As discussed in earlier analyses of this industry, while quantitative information on individual firm revenues is lacking, almost all of these firms are believed to be small entities under the terms of the RFA. The only exceptions may be some lodge-based operations in Southeast Alaska. (NMFS, 2009).

Options 1 and 3 will only directly regulate qualifying businesses receiving more than one permit. NMFS estimates that under the status quo, 89 firms will receive more than one permit in Area 2C and that 69 firms will receive more than one in Area 3A. Option 2 will change the rules affecting endorsements for all firms, so the counts of directly regulated entities are those in the preceding paragraph.

### **2.6.1 Recordkeeping requirements**

An IRFA should include “a description of the projected reporting, recordkeeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record...”

The procedure for implementing this action was described in Section 1.6 of the RIR.

NMFS will notify qualified applicants of the status of their permit endorsements, and of changes in that status. The implementation process does not impose additional reporting, recordkeeping, or other compliance requirements on directly regulated entities.

### **2.6.2 Federal rules that may duplicate, overlap, or conflict with the action**

An IRFA should include “An identification, to the extent practicable, of all relevant Federal rules that may duplicate, overlap or conflict with the proposed rule...”

This analysis did not reveal any Federal rules that duplicate, overlap, or conflict with the action.

### **2.6.3 Agency steps to minimize significant economic impacts on small entities**

One of the requirements for an IRFA is that “Each initial regulatory flexibility analysis shall also contain a description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities. Consistent with the stated objectives of applicable statutes, the analysis shall discuss significant alternatives...”

It is impossible to address this requirement pending Council action to choose an alternative and provide a rationale for its decision.

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