



REGULATORY DEFINITIONS of CHARTER HALIBUT FISHING

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Executive Summary: In April 2012, the Council received a report from the Office of Law Enforcement highlighting a fishing practice in Area 2C that allows anglers to circumvent guided (charter) daily bag and size limits and allows operators to provide sport fishing guide services without the required Charter Halibut Limited Access Permit (CHLAP) for the Pacific halibut charter sector. The regulations defining charter anglers and operators is important for tracking and managing halibut harvest in Area 2C because charter anglers are subject to more restrictive daily bag limits than unguided anglers. Specifically, halibut fishing activities are subject to charter fishery restrictions under Federal regulations only if a guide is “onboard the vessel” with the charter angler and is providing “sport fishing guide services.” Beginning in 2011, law enforcement staff observed and received anecdotal reports of businesses offering “unguided” halibut fishing to anglers, where guides provide assistance to anglers for compensation from adjacent vessels or shore, presumably to circumvent the Federal regulations that limit charter halibut anglers. In general, State regulations would require that charter logbooks be filed for harvests by anglers receiving guide services from adjacent vessels or shore, because the state definition of “sport fishing guide services” does not require the guide to be aboard the vessel with clients. Based on this information, the Council requested a discussion paper to review the different Federal and State definitions of a charter guide in order to determine if the current Federal regulatory definitions used to determine charter fishing are consistent with its intent for management of the charter halibut harvests.

Two businesses each year from 2010 through July 2012 that submitted ADF&G charter logbooks are believed to have routinely offered guide-assisted halibut fishing that did not meet the Federal definition of “sport fishing guide services.” It is possible that more businesses engaging in this fishing practice have not been detected, but staff are unable to estimate the number based on available information. If the Council wishes to pursue a regulatory amendment to curtail this type of guide-assisted halibut fishing by what appears to be a small number of businesses, staff suggests that the analysis and development of such a regulatory amendment should include a review of relevant Federal and State regulations governing the definition of charter fishing activities to ensure a clear and consistent approach among CHLAP, State logbook, and charter harvest requirements and restrictions. Alternatively, the Council may choose to take no action at this time and reevaluate the need for action in the future since the CHLAP Program has been in effect for only two years.

Background

In April 2012, the Council requested a staff discussion paper as a first step to determine if Council action is needed to address different State and Federal regulations defining when an angler is receiving guide (charter) services, in order to curtail business practices that may be inconsistent with Council intent. The Council requested further discussion of these regulatory differences based on a NOAA Office of Law Enforcement (OLE) report highlighting fishing practices in which guides have been observed providing assistance to anglers, likely for compensation, from adjacent vessels or shore. The persons providing assistance likely were not onboard a vessel with the anglers in order to circumvent Federal and International Pacific Halibut Commission regulations that limit charter anglers to a more restrictive daily bag limit than unguided anglers. Under Federal regulations, anglers are charter vessel anglers only if a person is “onboard the vessel” with the angler and that person is providing “sport fishing guide services.”

In response, agency staffs have taken the following actions.

- 1) An interagency staff group met in May 2012 to review the relevant State and Federal regulatory definitions and to develop Federal regulatory revisions for the Council to consider (Appendix 1).
- 2) NOAA and State of Alaska staffs met in July 2012 to develop revised regulations for the Council to consider under a regulatory amendment (Appendix 2). The staffs recommended that if the Council determines that Federal regulations do not meet its intent for managing charter fishing activities, it could consider actions to:
 - a. Revise the Federal regulatory definition of “Sport fishing guide services” to remove the words “by being onboard a vessel.”
 - b. Propose definitions for “compensation” and “assistance.”
- 3) Federal and State charter halibut regulations were compiled and reviewed (Appendix 3).
- 4) ADF&G staff prepared a summary report of 2010-2012 logbook data for Area 2C (below).

Design of the Charter Halibut Limited Entry Permit Program

The 2009 NMFS decision memorandum to the proposed rule for regulations to implement the CHLAP Program acknowledged that a shift to “unguided” angling could occur as a result of requiring the guide to be onboard the vessel. The memo specified that,

“A charter vessel is a vessel used for hire in sport fishing for halibut, but does not include a vessel without a hired operator. The proposed action would not apply to an unguided or independent angler. . . . In its review of this proposed rule, NOAA General Counsel expressed concern regarding our intent to have this action apply only to charter operations that have the charter vessel guide on board the vessel. This may result in charter operators shifting their business model to unguided fishing boat rentals. Although this may in fact occur, I believe that this policy issue needs to be addressed through the Council process and in consultation with the State of Alaska before we consider broadening the scope of the regulations to encompass any sectors other than charter operations with a guide on board. Although State of Alaska regulations regarding sport fishing can be interpreted to apply more broadly than our intent with the proposed rule, I do not expect this difference to lead to substantial confusion for the sport fishing community because the Federal rules would clearly apply only to charter operations with a guide on board. Additionally, NMFS has not analyzed the effects of broadening the proposed rule to apply to various types of indirectly assisted recreational fishing operations. Our preliminary research into this issue suggests that it may be complex and controversial to define which types of entities could be affected by a broader

regulation. This supports exploring the matter further through the Council process rather than introducing it to the public through the proposed rule."

The Council record for development of the CHLAP is silent on whether a guide must be onboard the vessel to be subject to charter halibut fishing regulations, but it was a likely presumption that the guide would be onboard and reasonable for NMFS to assume so in rulemaking under the CHLAP Program.

Federal regulations at § 300.61 include three definitions that are relevant for determining whether a CHP is required to be on board a vessel in Area 2C or Area 3A and also whether more restrictive charter daily bag limits apply to anglers on board the vessel. These definitions are "charter vessel angler," "charter vessel guide," and "sport fishing guide services." For purposes of regulations at §§ 300.65(d), 300.66, and 300.67:

1. "Charter vessel angler" means a person, paying or non-paying, using the services of the charter vessel guide.
2. "Charter vessel guide" means a person who holds an annual sport guide license issued by the Alaska Department of Fish and Game, or a person who provides sport fishing guide services.
3. "Sport fishing guide services" means assistance, for compensation, to a person who is sport fishing, to take or attempt to take fish by being on board a vessel with such person during any part of a charter vessel fishing trip.

NMFS interprets "services" in the definition of "charter vessel angler" to mean "sport fishing guide services" as defined at § 300.61.¹ Under this interpretation, a person who takes or attempts to take halibut would only be a charter vessel angler if that person is receiving sport fishing guide services from a charter vessel guide. Section 300.61 defines "sport fishing guide services" as assistance, for compensation, to a person who is sport fishing, to take or attempt to take fish by being on board a vessel with such person during any part of a charter vessel fishing trip. Therefore, a person would be a charter vessel angler only if that person is receiving assistance to catch and retain halibut from a charter vessel guide who is on board the same vessel and being compensated to assist the person to take or attempt to take halibut. A CHP is required to be on board a vessel in Area 2C or Area 3A if both of the following conditions are met: (1) One or more persons on board are catching and retaining halibut, and (2) a charter vessel guide on board the vessel is receiving compensation to assist a person to take, or attempt to take, halibut. A charter vessel guide is not required to have a CHP on board a vessel during a recreational halibut fishing trip on which he or she is not being compensated to provide assistance to persons catching and retaining halibut.

Compensation Compensation is generally defined as something given or received as payment or remuneration, as for a service. For purposes of the definition of "sport fishing guide services" at § 300.61, compensation is not strictly limited to a monetary exchange and can include a trade of goods or services in exchange for taking someone fishing. Therefore, assistance for compensation is not limited to situations where persons are directly compensating someone for sport fishing guide services. The definition of "sport fishing guide services" at § 300.61 does not require any person on board the vessel to be individually compensating the person providing assistance for this definition to be applicable. If the charter vessel guide is compensated in any way to provide assistance, then that charter vessel guide is providing sport fishing guide services under § 300.61.

NMFS recognizes that compensation for assistance can take many forms. For purposes of applying the regulations at §§ 300.61, 300.66, and 300.67, NMFS evaluates the specific circumstances of a fishing trip to determine if a charter vessel guide is receiving compensation for providing persons with assistance to take or attempt to take halibut. The lack of a Federal definition for "compensation" results in challenges for Federal enforcement staff and for the public.

¹ <http://www.alaskafisheries.noaa.gov/frules/76fr19708.pdf>

Federal staff considers Federal regulations to include third party compensation (i.e., the compensator does not have to be part of the fishing trip) as compensation to a charter vessel guide for purposes of determining whether halibut fishing activities are subject to charter fishery restrictions. While ADF&G and the Department of Public Safety consider third-party compensation to be “guided,” State regulations do not explicitly state this. ADF&G and the Department of Public Safety staffs jointly submitted a proposal to the Board of Fisheries for the 2012/2013 proposal cycle to clarify that the intent is to include all types of remuneration. The proposed language would define compensation for sport fishing to include third party compensation as well as non-monetary compensation (remuneration), but exclude reimbursement for fuel, supplies, etc. The proposed State of Alaska definition for compensation as it relates to sport fishing guide services is as follows:

(52) “compensation” means direct or indirect payment, remuneration, or other benefits received in return for services, regardless of the source; in this paragraph “benefits” includes wages or other employment benefits given directly or indirectly to an individual or organization, and any dues, payments, fees, or other remuneration given directly or indirectly to a fishing club, business, organization, or individual who provides sport fishing guide services; and does not include reimbursement for the actual daily expenses for fuel, food, or bait;

Federal enforcement staff, however, identified the State’s proposed definition of compensation as it relates to sport fishing guide services places the burden on enforcement staff to determine “actual” daily expenses. Deletion of “actual” in the text proposed above may resolve the difficulty or adding “reasonable” may provide a little more leeway to enforcement staff.

Assistance In the July 2012 discussion, Federal enforcement staffs also suggested that the regulations define “assistance,” but proposed language has not yet been developed for Council consideration. Or rather than defining the term, some examples of assistance that should be considered guiding may be more useful. An example of assistance would be “including a handheld GPS unit containing coordinates for fishing locations.”

Potentially Affected Entities

An unknown number of charter operations in Area 2C and Area 3A provide guide-assisted halibut fishing that meets the State definition of sport fishing guide services, but does not meet the Federal definition. The Federal definition is more specific than the State definition in that it requires the guide to be on the same vessel as the charter halibut angler (client). The ADF&G charter logbook program and guide and business licensing program do not track various business models. However, ADF&G requires that all fishing that meets the State’s definition of sport fishing guide services be recorded in logbooks.

For Area 2C, the difference between charter and noncharter halibut bag limits was used to get an idea of the prevalence of this type of operation in recent years. ADF&G charter logbook data were summarized for all instances of reported daily halibut harvests of two halibut per person 2010, 2011, and through July 31, 2012. During this period, the charter halibut daily bag limit in Area 2C was one halibut, while the noncharter daily bag limit was two halibut. The underlying assumption in this analysis is that a charter business would be unlikely to routinely allow harvest of two halibut per client unless that business was confident that their clients did not meet the Federal definition of a “charter vessel angler.” These data give a general indication of the number of businesses in Area 2C that provided guide-assisted halibut fishing that did not meet the Federal definition of sport fishing guide services (because the guide is not on board the same vessel as the angler), but did meet the more general State definition.

In 2010, 34 businesses in Area 2C reported at least one instance of an angler harvesting two halibut per angler (Table 1). All but two businesses reported eight or fewer instances of an angler harvesting two halibut per day, and 17 of these businesses reported exactly one instance. Seven businesses reported

instances of anglers harvesting two halibut per day that made up more than 5% of their total angler-days for the year. However, five of these seven businesses reported less than 40 angler-days in total for the year. It is assumed that occasional or rare reports of two halibut per angler represent reporting issues rather than guide-assisted halibut fishing. *Therefore, only two businesses that completed logbooks are believed to have routinely offered guide-assisted halibut fishing that did not meet the Federal definition of guide services in 2010.*

Table 1. Summary of sport charter businesses that reported harvests of two halibut per person from Area 2C waters in 2010, 2011, and through July 31, 2012.

Year	Total number of businesses reporting at least one angler-day with harvest of 2 halibut	Number of businesses with more than 5% of angler-days reporting harvest of 2 halibut	Number of businesses that likely met State, but not Federal, definition of guided
2010	34	7	2
2011	25	3	2
Jan – Jul 2012	20	3	2

The data were similar for 2011² and 2012. In 2011, 25 businesses in Area 2C reported at least one instance of an angler harvesting two halibut (Table 1). Twenty businesses reported the same through July of 2012. In both years, only three businesses reported instances of anglers harvesting two halibut that made up more than 5% of all angler-days.

Of the two businesses in 2012 that appear to have routinely offered guide-assisted halibut fishing not meeting the Federal definition of guide services, one does not hold CHPs. Anglers fish from an unknown number of skiffs. The business has two “chase boats” with guides on board that assist and direct the anglers for compensation, but the anglers are not on the same vessel as the guide. ADF&G requires that only the chase boats be registered as guide vessels. All logbook data for anglers in the skiffs are recorded in logbooks assigned to the chase boats. Therefore, from logbook data it appears this business has only two vessels, whereas the anglers are fishing on more than two skiffs.

The second business has two vessels and holds a single CHP that was issued in 2011. It appears from the data that, although this business holds an Area 2C CHP, it sometimes assists anglers in catching halibut in a manner that does not meet the Federal definition of guiding (but does meet the State definition) in order to allow anglers to harvest two halibut of any size per day (in excess of the charter halibut daily bag and size limits).

Across all years, logbook data indicate that three individual businesses may have routinely offered guide-assisted halibut fishing that did not meet the Federal definition. These businesses reported that a substantial percentage of anglers harvested two halibut (20-48% in 2010 and 2011), and two of these businesses had frequent communication with ADF&G staff regarding their business model and reporting requirements. For all other businesses, either the number of anglers that harvested two halibut was small (≤ 9) or the proportion of anglers that harvested two halibut was small (less than 6%). Some of these reports could be guide-assisted fishing, but is too rare to be called “routine.” Although some unknown portion of these instances could also be bag limit violations, many are probably data recording errors such as reporting other species in the halibut column, or incorrectly reporting the statistical area. One business with a CHP for Area 3A often reported statistical areas in Area 2C. This was not necessarily a regulatory violation or reporting error because ADF&G logbooks only require reporting the ADF&G statistical area where most of the bottomfish were caught or targeted. A charter vessel with an Area 3A

² CHPs were required beginning in 2011.

CHP could take anglers to Area 3A to harvest two halibut, but then fish in Area 2C for other bottomfish species for the majority of the trip. In that case, the vessel would correctly report an ADF&G statistical area that was in Area 2C, even though the halibut were harvested from Area 3A.

For Area 3A, businesses that may have exploited the “loophole” in the Federal definition were identified using logbook data where halibut were reported harvested but no CHP number was reported. The logic behind this was that harvest reporting was required under State regulations, *but no CHP would have been needed*. In 2011, 14 businesses made at least one trip with halibut harvested and no CHP number recorded. Of these 14 businesses, 12 made only one trip with halibut harvest and no CHP reported. All but one of those businesses had CHPs and recorded the CHP number on all other trips with halibut harvest. Of the 14 total businesses, two appeared to not have CHPs, but combined they comprised only six trips with halibut harvest. In summary, logbook data for Area 3A did not clearly identify any businesses that routinely reported trips in which halibut were harvested but no CHP number was recorded.

There also are businesses that provide both guided halibut fishing (with a CHP) and unguided halibut fishing. *If the unguided halibut fishing does not involve guides physically directing the anglers on where or how to fish for compensation, such fishing does not meet either the State or Federal definition of guiding, and there are no logbook or other data to indicate the magnitude of that practice.* These include the following.

- Motherships serve or carry one or more smaller unguided boats. They also recover the smaller craft but do not assist the anglers after releasing the craft. No compensation for guiding occurs.
- Land-based or floating lodges may provide boats without guides, with no compensation specifically for guiding. In some cases, the angler may fish on a charter boat the first day, and then fish from an unguided skiff on subsequent trips.
- Outfitters may provide boats, gear, remote lodging, and fishing advice, but not fishing assistance for compensation during the fishing trip.

Proposed Federal Definition

If the Council wishes to proceed with a regulatory amendment to better align Federal and State regulations for defining charter fishing, it could suggest removing the words “*by being onboard a vessel*” from the definition of “sport fishing guide services” from Federal regulations (50 CFR 300.61).

Sport fishing guide services, for purposes of §§300.65(d) and 300.67, means assistance, for compensation, to a person who is sport fishing, to take or attempt to take fish ~~by being onboard a vessel with such person~~ during any part of a charter vessel fishing trip. Sport fishing guide services do not include services provided by a crew member.

If text is revised (as noted above), then all Federal and State regulations governing charter fishing would need to be reviewed to ensure that they are clear and consistent among CHLAP, State logbook, and charter harvest requirements and restrictions. One example of additional regulatory text that likely would need to be changed is the requirement that “any operator of a vessel with one or more charter vessel anglers catching and retaining Pacific halibut *on board a vessel* must have *on board the vessel* an original valid charter halibut permit or permits.....and endorsed for at least the number of charter vessel anglers...” 50 CFR 300.67(a)(1). Other examples would need to be addressed in the development of proposed regulatory text for analysis.

Next Steps

If the Council requests an analysis of the proposed definition to revise Federal regulations, the analysis would include a *de facto* requirement for a business providing guided services for harvesting halibut to hold a CHP (i.e., businesses would have to change their fishing practices). The Council could request

Federal Enforcement staffs to provide proposed language to define compensation and assistance, unless such definitions would create new conflicts with State definitions.

Contributors

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Appendix 1. Interagency staff meeting to discuss charter halibut management issues

May 14, 2012

An interagency group convened on May 14, 2012 to review legal, enforcement, and policy issues related to charter halibut management issues that arose in early 2012. The staffs discussed four policy issues in order to assist in the Council in its consideration of possible regulatory changes to charter halibut management. Two charter halibut management issues were raised during the April 2012 Council meeting. Two other issues were discussed by the Charter Management Implementation Committee in April 2012, but were not addressed by the Council.

ISSUE 1. Regulations Defining a Charter Guide

The Council requested a discussion paper to address different Federal and state definitions of a charter guide. This request resulted from information provided to the Council during an Office of Law Enforcement report in April 2012 and in public testimony during previous Council meetings. The Council expressed interest in amending the Federal definition of charter fishing to curtail what is essentially guided fishing by entities that do not hold a CHP. There are two types of entities currently providing guided halibut services: 1) CHP holders; and 2) those that do not hold CHPs and provide *de facto* halibut guide services. Changing the Federal definition to prohibit the latter would require them to either: 1) obtain a CHP or 2) change their fishing operations so that they do not meet the new Federal definition of guiding.

ADF&G requires licensed guides that are *compensated for providing assistance to clients to catch halibut* to report that halibut catch in the logbook. These guides may or may not have a Federal CHP. The 2011 ADF&G logbook data could be examined to determine the number of charter businesses or vessels that reported harvests of 2 halibut per client in Area 2C; these are either enforcement violations or instances of businesses that are exploiting the Federal definition to circumvent the CHP requirement or bag or size limits. While logbook data may be used to identify some operators that have exploited the loophole, it would not identify the number of operators that are exploiting the loophole, but did not report those halibut harvests in the logbook.

The staffs discussed the specifics of the charter LEP program as it related to different charter guide definitions in Federal and state regulations. NOAA General Counsel staff reported that the February 25, 2009 decision memorandum for the CHP proposed rule clarifies their viewpoint that a regulatory change would *add new entities to the CHP Program*. The staffs concurred that the discussion paper should review the record for how/who got CHPs, as described in the decision memo.

State staff identified that the State regulatory definition addressed who would be providing services and that changes to the Federal definition would *not* add new entities to the CHP, but would close a loophole that allows fishing practices that are counter to Council intent. Council staff concurred.

Recommendations

The staffs concurred that common language for defining these responsibilities under State and Federal regulations is the goal. While it would be wise for Federal regulations to mirror state regulations it may be necessary to diverge in language, but not diverge functionally.

Next steps

1. Federal and state staffs will develop new regulatory language for consideration by the Council.
2. Council staff, in consultation with Federal and state staffs, will develop a discussion paper for review by the Council.

ISSUE 2. Reporting and marking requirement for Guided Angler Fish³

The Council adopted written language and then verbally corrected it, without changing the written language (below) (staff noted that the verbal correction [i.e., "skipper"] may not be accurate either). The analysis will address who would be responsible for a) marking the GAF and b) reporting the GAF lengths.

*"Include a requirement for **anglers** to mark GAF by removing the tips of the upper and lower lobes of the tail and report the length of retained GAF halibut to NMFS through the NMFS approved electronic reporting system."* **[emphasis added]**

The agency staffs identified two issues that are embedded in regulating who marks a GAF and who reports its harvest:

- a) Legal issues
- b) Policy issues

Legal issues relate to who owns the fish and who is responsible for marking and reporting a GAF under a GAF permit. NOAA staff identified that the primary responsibility for compliance lies with angler, and secondly with the CHP holder. Staff discussed "ownership" of the fish, and that while a charter operator would be selling an opportunity (or limiting one) to GAF, recording by a charter operator is where the responsibility lies in reality, as an angler is hiring a charter LEP holder to guide him/her through legal requirements to fish in Alaska. The staffs also discussed whether marking requirements would disfigure a trophy so that it could not be professionally mounted but it was noted that fiberglass can fill in the cut fin lobes.

Ultimately NOAA staff identified that it would be appropriate for the Council to require that the guides mark GAF, as the angler is hiring the guide to be the local expert on rules and requirements for halibut fishing.

ISSUE 3. Prohibition on Charter Halibut Permit Leasing of Non-Transferable Permits⁴

The staffs briefly discussed a NMFS discussion paper on commercial IFQ leasing issues, which is scheduled for a future review by the Council, and a related December 2010 charter leasing permit discussion paper, which identified myriad implementation issues with defining leasing in the charter halibut sector. Staff noted a possible solution to the potential leakage of CHPs that were intended to be non-transferable, but which function as transferred CHPs (i.e., CHPs that are used by entities to whom they were not initially issued) would be to sunset (i.e., revoke) "non-transferable" CHPs at a time in the future that those non-transferable CHP holders might be expected to no longer be operating their business (e.g., 10 years, 20 years) in order to extinguish non-transferable CHPs. A pending NMFS RAM report on CHP implementation statistics may be useful in any future discussions on this issue.

ISSUE 4. Allow an Entity Representing Charter Halibut Permit Holders To Hold (Purchase) Commercial Halibut QS for Use as GAF

The staffs felt that the Catch Accountability Through Compensated Halibut (**CATCH**) proposal would result in a simple amendment to Federal regulations to identify a new type of entity that may hold and use halibut quota shares in the charter sector in order to increase the sector's allocation. It would be a policy decision for the Council on whether to amend Federal regulation in anticipation that funding would be found to fund those QS purchases or whether the Council preferred to see a funding

³ This issue was addressed by the Council during adoption of its Preferred Alternative in October 2012.

⁴ In December 2012, the Advisory Panel adopted a motion that recommended that the Council request staff to prepare a discussion paper that would explore possible mechanisms for reducing or eliminating non-transferable charter permits; the Council did not adopt the AP recommendation.

mechanism in place before taking action. The Council has acted proactively in developing the commercial Community Quota Entity Program and issuing charter LEPs to communities.

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Appendix 2. Interagency staff meeting to discuss charter halibut management issues

July 24, 2012

Attending: Julie Scheurer, Rachel Baker, Special Agent Ron Antaya, Susan Auer, Gwen Herrewig, Scott Meyer, Nicole Kimball, Capt. Burke Waldron, Lt. Bernard Chastain

Purpose: In April 2012, the Council issued a memo to request a discussion paper about what would be needed to close the loophole in Federal regulations that results in fishing practices that are “inconsistent with Council intent.” Specifically, as written, the Federal regulations result in halibut fishing activities being subject to charter fishery restrictions only if a charter vessel guide is “onboard the vessel.” This onboard requirement allows guides to provide “sport fishing guide services” from adjacent vessels or shore, thereby circumventing the Charter Halibut Permit requirement and the reduced bag limit for charter vessel anglers in Area 2C.

JS asked a question about why crew members are excluded from the definition of sport fishing guide services. RA said that this was so that crew members are not required to have guide licenses. There must be a guide onboard for a second person to be considered crew. A crew member without a guide would be considered the guide.

SM pointed out that the 2008 Federal definition of “sport fishing guide services” was more like the state’s definition in that it did not specify that the guide must be onboard. SA believed that it was a mistake that the onboard language was included in the 2010 Federal definition based on a misunderstanding of how the state was enforcing the regulations. RA suggested that removing the words “by being onboard a vessel” from the definition of “sport fishing guide services” (50 CFR 300.61) would better align Federal and state regulations

Sport fishing guide services, for purposes of §§300.65(d) and 300.67, means assistance, for compensation, to a person who is sport fishing, to take or attempt to take fish ~~by being onboard a vessel with such person~~ during any part of a charter vessel fishing trip. Sport fishing guide services do not include services provided by a crew member.

This led into a discussion about what constitutes compensation to a charter vessel guide. Most agreed that a discussion of compensation should be included in the white paper being prepared by Council staff. RA noted that the lack of a definition for compensation results in challenges for enforcement staff and for the public. The state is proposing a definition of compensation for sport fishing to include 3rd party compensation (i.e., the compensator does not have to be part of the fishing trip) for the 2012/2013 Board of Fisheries cycle. Federal staff consider Federal regulations to include 3rd party compensation as compensation to a charter vessel guide for purposes of determining whether halibut fishing activities are subject to charter fishery restrictions.

The proposed state definition for compensation is adapted from the one in place for big game at 12 AAC 75.940 which states:

For the purposes of "compensation" as defined in AS 08.54.790 , "payment for services" includes receiving remuneration, directly or indirectly, for any provision of services, equipment, or facilities in the field to a person who, in fact,

(1) engages in big game hunting; and

(2) uses or benefits from the services, equipment, or facilities.

The proposed state definition does not discuss non-monetary compensation and would not include reimbursement for fuel, supplies, etc. as compensation. The proposed definition for compensation as it relates to sport fishing is as follows:

(52) "compensation" means direct or indirect payment, remuneration, or other benefits received in return for services, regardless of the source; in this paragraph "benefits" includes wages or other employment benefits given directly or indirectly to an individual or organization, and any dues, payments, fees, or other remuneration given directly or indirectly to a fishing club, business, organization, or individual who provides sport fishing guide services; and does not include reimbursement for the actual daily expenses for fuel, food, or bait;

SA noted that the 2011 "friends and family" interpretive rule resulted in additional enforcement challenges with current Federal regulatory definitions and these should be included in the discussion paper. RA reiterated for JS that you can't have a split trip with some guided and some unguided anglers. It's all or nothing.

Another problem that was brought to light is that of guides providing guide services for other purposes (e.g., whale watching, salmon fishing), but claiming to not be guiding for halibut. RA clarified that catch and release in these cases is OK, but retention of a halibut would trigger the need for a CHP.

Yet another issue that warrants further analysis in the discussion paper is defining the line between guiding and giving friendly fishing advice. State regulations use the term "physically directing" while Federal regulations use the broader term "assisting." Discussion ensued, with the state enforcement position that physically directing had to be more than just pointing anglers to a particular location, and needed to include activities like rigging lines, baiting hooks, netting fish, etc. Another interpretation brought things back around to the compensation issue; if someone is giving fishing advice for compensation, then that should be considered guiding. It would be useful to more clearly define what constitutes assisting or physically directing.

An example was given of an operation in Petersburg that takes clients by boat to a floating cabin and skiff. Clients are given a GPS with coordinates to the fishing location, but otherwise the clients are unassisted. The state would not consider this guiding because the guide is not physically directing the clients. The Division of Wildlife Troopers and ADF&G are in general agreement that providing GPS coordinates, fishing gear, and a skiff do not constitute "physically directing," and instead consider these activities to be "outfitting."

GH brought up the potential problem for self-guided business models that were in place before the CHP program was implemented, but did not apply for or receive CHPs. Tightening the Federal definition of guiding could force these businesses to need CHPs. Would we reopen the application period for them? Issue grandfather CHPs to these businesses? It is unclear how many businesses would be affected. SM suggested asking the charter fleet for input. RB was under the impression that this business model was not widely used in Area 2C before the CHP was in place. John Lepore indicated in a May 2012 interagency staff teleconference that any regulatory action that would affect these "self-guided" business models would need to be thoroughly analyzed using the best available information.

In summary, we identified 3 issues that should be addressed in the discussion paper staff are preparing for the December Council meeting:

1. Remove the words "by being onboard a vessel" from the Federal definition of "Sport fishing guide services."
2. Include a discussion and proposed definitions for "compensation."
3. Align and better define definitions of "assisting" or "physically directing."

APPENDIX 3a. CURRENT FEDERAL REGULATIONS

Current Federal regulations define a charter vessel guide as either a person who:

1. holds an annual sport guide license issued by the Alaska Department of Fish and Game, or
2. provides sport fishing guide services.

To provide sport fishing guide services, a person must (1) provide assistance, for compensation, to a person who is sport fishing, to take or attempt to take fish, **and (2) be onboard a vessel with such person during any part of a charter vessel fishing trip.**

Relevant charter halibut regulatory definitions

The following Federal regulatory definitions were originally implemented by the 2009 rule implementing a one-fish daily bag limit for charter vessel anglers in Area 2C (emphasis added). Track changes markup indicate revisions made to definitions by the 2010 final rule implementing the Area 2C and Area 3A charter halibut limited access program.

Charter vessel angler, for purposes of §§300.65(d), 300.66, and 300.67, means a person, paying or non-paying, using the services of a **charter vessel guide**.

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

Sport fishing guide services, for purposes of §§300.65(d) and 300.67, means assistance, for compensation, to a person who is sport fishing, to take or attempt to take fish **by being onboard a vessel with such person during any part of a charter vessel fishing trip**. Sport fishing guide services do not include services provided by a crew member.

Other relevant definitions

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

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

Crew member, for purposes of §§300.65(d), and 300.67, means an assistant, deckhand, or similar person who works directly under the supervision of, and on the same vessel as, a charter vessel guide or operator of a vessel with one or more charter vessel anglers on board.

APPENDIX 3b. Federal Definitions at 50 CFR Part 300: a reverse chronology

2010:

Current Federal Definitions (as amended from 2009 regs by the 2010 charter halibut limited access program ([75 FR 554; January 5, 2010](#)))

Charter halibut permit means a permit issued by the National Marine Fisheries Service pursuant to §300.67.

(“Charter vessel” definition removed)

Charter vessel angler, for purposes of §§300.65(d), 300.66, and 300.67, means a person, paying or non-paying, using the services of a charter vessel guide. *(This differs from 2009 language only in the addition of the 300.66 and 300.67 references.)*

Charter vessel fishing trip, for purposes of §§300.65(d), 300.66, and 300.67, means the time period between the first deployment of fishing gear into the water from a vessel after any charter vessel angler is onboard and the offloading of one or more charter vessel anglers or any halibut from that vessel. *(This differs from 2009 language only in the addition of the 300.66 and 300.67 references.)*

Charter vessel guide, for purposes of §§300.65(d), 300.66 and 300.67, means a person who holds an annual sport guide license issued by the Alaska Department of Fish and Game, or a person who provides sport fishing guide services. *(This differs from 2009 language only in the addition of the 300.66 and 300.67 references.)*

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

Crew member, for purposes of §§300.65(d), and 300.67, means an assistant, deckhand, or similar person who works directly under the supervision of, and on the same vessel as, a charter vessel guide or operator of a vessel with one or more charter vessel anglers on board. *(This differs from 2009 language by adding reference to 300.67 and adds the language “...or operator of a vessel with one or more charter vessel anglers on board.”)*

Sport fishing guide services, for purposes of §§300.65(d) and 300.67, means assistance, for compensation, to a person who is sport fishing, to take or attempt to take fish by being onboard a vessel with such person during any part of a charter vessel fishing trip. Sport fishing guide services do not include services provided by a crew member. *(This differs from 2009 language only by adding reference to 300.67.)*

Rationale for removing “Charter vessel” from § 300.61:

(p. 559) “The IPHC regulations at section 3 of the annual management measures include definitions of terms, some of which are related to this action, such as “charter vessel” and “sport fishing.” This action removes a different definition of “charter vessel” from 50 CFR 300.61 that could have raised a conflict question. The definition of the term “charter vessel” at 50 CFR 300.61 resulted from a final rule published September 24, 2008 (73 FR 54932), for purposes of a prohibition against using a charter vessel for subsistence fishing for halibut. This action integrates the definition into the prohibition language to which it directly applies at 50 CFR 300.66(i) to clarify that the definition does not apply universally. The universal definition of “charter vessel” will continue to be that used by the IPHC and appearing in the annual management measures. Hence, no conflict is found between this action and the IPHC regulations concerning this definition.”

2009:

Regulatory text from 2C one-fish final rule ([74 FR 21194; May 6, 2009](#))

2. In § 300.61, add definitions in alphabetical order for “Area 3A,” “Charter vessel angler,” “Charter vessel fishing trip,” “Charter vessel guide,” “Charter vessel operator,” “Crew member,” and “Sport fishing guide services,” and revise the definition for “Guideline harvest level (GHL)” to read as follows:

§ 300.61 Definitions.

* * * * *

Charter vessel angler, for purposes of § 300.65(d), means a person, paying or nonpaying, using the services of a charter vessel guide.

Charter vessel fishing trip, for purposes of § 300.65(d), means the time period between the first deployment of fishing gear into the water from a vessel after any charter vessel angler is onboard and the offloading of one or more charter vessel anglers or any halibut from that vessel. *(Differs from 2008 language which specified “charter vessel” instead of any vessel.)*

Charter vessel guide, for purposes of § 300.65(d), means a person who is required to have an annual sport guide license issued by the Alaska Department of Fish and Game, or a person who provides sport fishing guide services.

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

* * * * *

Crew member, for purposes of § 300.65(d), means an assistant, deckhand, or similar person who works directly under the supervision of and on the same vessel as a charter vessel guide.

* * * * *

Sport fishing guide services, for purposes of § 300.65(d), means assistance, for compensation, to a person who is sport fishing, to take or attempt to take fish by being onboard a vessel with such person during any part of a charter vessel fishing trip. Sport fishing guide services do not include services provided by a crew member. *(This differs from the 2008 language. It changes “...to take a fish by accompanying or directing such person who is sport fishing...” to “to take fish by being onboard a vessel with such person...”)*

* * * * *

Rationale from 2C one-fish proposed rule ([73 FR 78276; December 22, 2008](#))

(p. 78279) “A new definition is proposed in this action for charter vessel fishing trip which describes the period from the first deployment of fishing gear from a charter vessel until the offloading of any charter vessel angler or halibut. Also, an existing definition of charter vessel (at § 300.61) describes such a vessel as one used for hire in sport fishing for halibut, but not including a vessel without a hired operator. Hence, the effect of the proposed regulation would be the same as that intended by the Council, which is to prohibit retention of halibut caught by the guide, skipper, and crew on a charter vessel, but not to impose this restriction when no clients or charter vessel anglers are onboard. A vessel without clients or paying anglers onboard is, by definition, not a charter vessel. Therefore, guides, skippers, and crew would not be prevented from sport fishing for halibut for themselves when they are not on a charter vessel fishing trip.”

2008:

Definition of “charter vessel” revised through a rule modifying the subsistence halibut program ([73 FR 54939; September 24, 2008](#)).

§ 300.61 Definitions.

* * * * *

Charter vessel, for purposes of § 300.65, means a vessel that is registered, or that should be registered, as a sport fishing guide vessel with the Alaska Department of Fish and Game. *(Note that this definition was removed by the final rule for the limited access program in 2010)*

Final rule ([later rescinded](#)) ([73 FR 30504; May 28, 2008](#)) for 1-fish in 2C, would have added definitions as follows:

* * * * *

Charter vessel angler, for purposes of § 300.65(d), means a person, paying or nonpaying, using the services of a charter vessel guide.

Charter vessel fishing trip, for purposes of § 300.65(d), means the time period between the first deployment of fishing gear into the water from a charter vessel after any charter vessel angler is onboard and the offloading of one or more charter vessel anglers or any halibut from the charter vessel.

Charter vessel guide, for purposes of § 300.65(d), means a person who is required to have an annual sport guide license issued by the Alaska Department of Fish and Game, or a person who provides sport fishing guide services.

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

Charter vessel services, for purposes of § 300.65(d), means the use of a vessel by a charter vessel guide to provide assistance for compensation to a person who is sport fishing from that vessel.

* * * * *

Crew member, for purposes of § 300.65(d), means an assistant, deckhand, or similar person who works directly under the supervision of and on the same vessel as a charter vessel guide.

* * * * *

Sport fishing guide services, for purposes of § 300.65(d), means assistance, for compensation, to a person who is sport fishing, to take or attempt to take fish by accompanying or directing such person who is sport fishing during any part of a charter vessel fishing trip. Sport fishing guide services does not include services provided by a crew member.

* * * * *

(Note that the final rule added several definitions that were not in the proposed rule.)

Rationale given in final rule for revising and adding new definitions:

(p. 30521) “Three definitions are revised (charter vessel angler, charter vessel fishing trip, and charter vessel guide) *(although these weren’t in the regulatory text yet, they were just proposed in the PR for this action)* and four definitions are added (charter vessel operator, charter vessel services, crew member, and sport fishing guide services) to clarify limitations and recordkeeping and reporting requirements. These revised and added definitions are derived from State of Alaska definitions used to define guided sport fishing activities and are intended to clarify who may and may not catch and retain halibut and who is responsible for recordkeeping and reporting requirements in § 300.65(d). The definition of charter vessel is not revised by this rule. However, the definition of charter vessel is currently proposed for revision in the proposed rule to revise the subsistence halibut program (April 14, 2008; 73 FR 20008). Currently, the definition of charter vessel is: “Charter vessel means a vessel used for hire in sport fishing for halibut, but not including a vessel without a hired operator.” The new definition of charter vessel in the subsistence halibut program proposed rule is: ‘Charter vessel means a vessel registered as a sport fishing guide vessel with the Alaska Department of Fish and Game.’” *(This definition no longer exists in § 300.61)*

2007:

The following definitions were proposed to be added in the one-fish proposed rule ([72 FR 74257; December 31, 2007](#)). Option B (one fish) was selected and the final rule was published in May 2008 (and later rescinded) (see links to those actions above).

Charter vessel angler means a person, paying or nonpaying, using the services of a charter vessel guide.

Charter vessel fishing trip means the time period between the first deployment of fishing gear into the water from a charter vessel and offloading one or more charter vessel anglers or any halibut from the charter vessel.

Charter vessel guide means a person who has been issued an annual guide license by the Alaska Department of Fish and Game.

* * * * *

No definitions were changed or added with the 2007 rule restricting charter anglers to 2 fish, 1 under 32” head-on length ([72 FR 30714; June 4, 2007](#))

2003:

Rule implementing GHL ([68 FR 47265; August 8, 2003](#))

When the GHL was implemented, the charter sector was referred to as the “*guided recreational fishery*.” Following is text from the preamble of that rule discussing the use of this term.

(p. 47259) “This final rule also revises the regulatory language to better clarify the mechanism for reducing the GHLS if the stock abundance declines. This change does not modify the intent or effect of the language in the proposed rule but improves its readability and accuracy. The final rule also removes the definition of “guided recreational vessel” because existing regulations (at 50 CFR 300.61) define a “charter vessel” and an additional definition would be duplicative. This change does not modify the intent or effect of the language in the proposed rule. The term “guided recreational fishery” is used in the preamble to the proposed rule because that term has been used consistently throughout the analytical process. Retaining the term in this final rule assists the public by maintaining consistent terminology.”

APPENDIX 3c. IPHC Pacific Halibut Fishery Regulations

3. Definitions

* * *

(c) “charter vessel” means a vessel used for hire in sport fishing for halibut, but not including a vessel without a hired operator;

* * *

(g) “fishing” means the taking, harvesting, or catching of fish, or any activity that can reasonably be expected to result in the taking, harvesting, or catching of fish, including specifically the deployment of any amount or component part of setline gear anywhere in the maritime area;

* * *

(j) “license” means a halibut fishing license issued by the Commission pursuant to section 4;

* * *

(m) “operator,” with respect to any vessel, means the owner and/or the master or other individual on board and in charge of that vessel;

* * *

(r) “sport fishing” means all fishing other than (i) Commercial fishing, (ii) treaty Indian ceremonial and subsistence fishing as referred to in section 22, (iii) customary and traditional fishing as referred to in section 23 and defined in and regulated pursuant to NMFS regulations published in 50 CFR part 300, and (iv) Aboriginal groups fishing in British Columbia as referred to in section 24;

* * * * *

APPENDIX 3d. State of Alaska Regulations

Sec. 16.40.299. Definitions.

In [AS 16.40.260](#) - 16.40.299,

(1) "sport fishing guide" means a person who is licensed to provide sport fishing guide services to persons who are engaged in sport fishing;

(2) "sport fishing guide services" means assistance, for compensation or with the intent to receive compensation, to a sport fisherman to take or to attempt to take fish by accompanying or physically directing the sport fisherman in sport fishing activities during any part of a sport fishing trip; "sport fishing guide services" does not include

(A) sport fishing services; or

(B) services provided by an assistant, deckhand, or similar person who works directly under the supervision of and on the same vessel as a sport fishing guide;

(3) "sport fishing services" means the indirect provision of assistance, for compensation or with the intent to receive compensation, to a person engaged in sport fishing in taking or attempting to take fish or shellfish by a business that employs a sport fishing guide to provide sport fishing guide services to the person during any portion of a sport fishing trip; "sport fishing services" does not include

(A) an activity for which a sport fishing guide license is required; or

(B) booking and other ancillary services provided by a tour broker or agent to a sport fishing services operator.

Additional State Guide Requirements

Both sport fish guiding businesses and individual sport fishing guides must have separate licenses unless the owner of the business is also the guide.

In order to provide guided sport fishing trips to anglers for compensation in the State of Alaska you must have the following:

1. Sport Fishing Business Owner Operator's License issued by the Alaska Dept. of Fish and Game (ADF&G)
2. Business Insurance (applicable to the Business Owner)-liability or marine protection policy providing coverage of at least \$100,000 for each incident, and \$300,000 for incidents in a year covering all periods of time when the owner or owner's employees are providing sport fishing services to clients.
3. Sport Fishing Guide License issued by ADF&G
4. A valid State of Alaska Business License issued by the Dept. of Commerce and Economic Development
5. A current Alaska Sport Fish License (and a king salmon stamp if applicable).
6. A current U.S.C.G. Operator's license if operating a motorized vessel on navigable waters. Determination of navigable waters is made by the U.S. Coast Guard.
7. Be certified in first aid by the American Red Cross or a similar organization.
8. Be a resident of the United States, Canada, Mexico or a resident alien.
9. Vessel Registration (if guiding from vessel)