

## Interagency Staff Comments April 2010 NPFMC Motion to Limit Leasing of Charter Halibut Limited Entry Permits

**Motion:** Initiate discussion paper of the following elements and options regarding leasing of Halibut Charter Permits.

Problem Statement<sup>1</sup>: Leasing of Halibut Charter Permits could substantially change the character and current primary business practice of the halibut charter fleet and could enable increased acquisition of halibut charter permits by individuals that do not have an investment in the fishery. In addition, leasing provisions are likely to decrease the sale and transfer<sup>2</sup> of permits from existing permit holders and may inhibit entry level opportunities for new halibut charter operators as well as increase the price of entry.

Alternative 1: Status Quo

Alternative 2: Limit Leasing of Halibut Charter Permits

Option 1: Halibut charter permit holders that use their permit onboard a vessel that is identified on an ADF&G saltwater logbook must own at least 20 – 51% interest in the vessel.<sup>3</sup>

Sub option: 12 month rule applies<sup>4</sup>

Option 2: Halibut charter permit holders that use their permit onboard a vessel that is identified on an ADF&G saltwater logbook must log at least 1-5 halibut charter trips<sup>5</sup> in the logbook. For businesses owning halibut charter permits, an individual with a minimum ownership interest of 10-33% must log the minimum number of trips<sup>6</sup>.

Sub option: Log at least 3-10% of the trips in the logbook

Sub option: Apply only to logbooks that have at least 10-20 trips recorded.<sup>7</sup>

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<sup>1</sup> Limiting leasing of Halibut Charter Permits could substantially change the character and current primary business practice of the halibut charter fleet.

<sup>2</sup> Leasing would also allow an operator with a non-transferable permit to “use” it indefinitely.

<sup>3</sup> The CHP holder must own the vessel that fishes under the permit at this required percent, at the time of each trip. This will require extensive investigative efforts by enforcement personnel. Ownership interest information may not exist in any form for non-documented vessels, rendering this requirement pointless. Current ADFG practice is that a logbook is issued to a licensed business and a single ADFG number is written in by the logbook holder/CHP permit holder; but there are instances in which ADF&G instructed/instructs people to use the same logbook for multiple vessels.

<sup>4</sup> This option and suboption seems to limit alternate vessel use. If a boat breaks down, the operation would be stranded. The options include some exceptionally complex exemptions for using alternate boats, similar to those which continue to be problematic with IFQ Hired Master vessel ownership requirements.

<sup>5</sup> Does this mean that the person to whom the permit is issued would be required to sign the logbook? Often signatures are illegible. If the business owner/permit holder is not a licensed charter guide, this option would require the owner to be present (similar to Option 4).

<sup>6</sup> 1. What is the consequence of not achieving the minimum number of trips? 2. Will ADF&G report that performance from entered logbook data after the season, and report that to appropriate enforcement office? 3. What if there is NO individual owner with at least 10% ownership - are the CHP holder and sub-level owner entities required to restructure the businesses to meet this in order to use the CHP?

<sup>7</sup> Same questions as for Option 2. Logbooks are issued to persons first, vessels second, so it is not clear how someone else could use that logbook.

- Option 3: Halibut charter permit holders that use their permit onboard a vessel that is identified on an ADF&G saltwater logbook are limited to requesting 2-3 saltwater logbooks<sup>8</sup> for unique vessels in a 12 month period and no more than 2-3 unique vessels in a 60 month period.<sup>9</sup>
- Option 4: Halibut charter permit holders that use their permit onboard a vessel that is identified on an ADF&G saltwater logbook are required to be present either at the point of departure or at the point of return for the charter trip. For businesses owning halibut charter permits, an individual with a minimum ownership interest of 10%-33% must be present at either the point of departure or at the point of return for the charter trip<sup>10 11</sup>.
- Alternative 3: Halibut charter permit holders or an employee of a halibut charter permit holder that uses their permit onboard a vessel that is identified on an ADF&G saltwater logbook must be aboard the vessel when their permit is being used. For businesses owning halibut charter permits, an individual with a minimum ownership interest of 10-33% must be aboard the vessel.<sup>12 13</sup>

Upon the halibut charter permit holder's request for the issuance of or transfer of a halibut charter permit, or the charter permit holder's request for change of use of the permit to a unique vessel<sup>14</sup> when requesting an ADF&G saltwater logbook, the permit owner is required to sign a sworn affidavit<sup>15</sup> that the permit will not be leased and that the individual or entity does not expect to receive economic compensation from "leased" use of the permit.

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<sup>8</sup> NMFS can not write a regulation restricting access to ADF&G logbooks if they are required for state-managed fisheries.

<sup>9</sup> Businesses could not use more than a specific number of vessels or replace existing vessels very often. This would severely limit vessel use, which seems a contradictory (to the problem statement) way in which to limit CHP leasing. How would this work for large businesses that already have (or use) more than 3 vessels, for the ability of businesses to expand by buying more vessels or buying/absorbing other businesses? How would it work, for lodges that use numerous contract vessels? A business might be prevented from using all of its CHPs. This may limit vessel leasing more than CHP leasing; a business should be able to use at least as many vessels as it holds CHPs, and some routinely use more.

<sup>10</sup> If there is no owner that is an individual at the 10% or greater level, would that require a business to restructure its ownership? If there is no individual with minimum ownership at the "first level of ownership," could any owner in the ownership chain meet this requirement?

<sup>11</sup> The first sentence needs to be distinguished from the second, as they appear to address two completely different ideas. In fact, all permits are held (not owned) by businesses.

<sup>12</sup> It may be straight forward to establish (whether true or not) that an individual on the boat is an employee of an individual CHP holder; however, this may require more "proof" than is available for enforcement. And again, what if there is no individual that has at least 10% ownership?

<sup>13</sup> Same comment as above. What is the distinction between a charter permit holder and a business holding a charter permit. They're all businesses. So there is a conflict between allowing an employee to be on board versus requiring someone with at least 10-33% ownership being on board.

<sup>14</sup> Permits are NOT linked to unique vessels, therefore why would someone have to request the change of use of the permit?

<sup>15</sup> If the intent is to prohibit leasing, this affidavit might be sufficient if combined with a requirement that the permit holder's name be the same as the name of the business owner (which must be carried at all times when chartering, and must match the business license number in the charter logbook).

Charter halibut permits are not linked to vessels. A business can operate any vessel it wants, as long as the vessel is registered with ADF&G and has a logbook. In fact, multiple permits may be used on a single vessel trip in order to ensure that the total angler endorsements cover the number of anglers that retain halibut [e.g., see 300.66(s)]. The 2011 logbook pages may contain a space to record the charter halibut permit number(s).