

Enforcement Committee Minutes
Seattle, Washington
February 4, 2014

Committee: Roy Hyder (Chair), Acting Special Agent in Charge Matt Brown, CAPT Phil Thorne, LCDR Anthony Kenne, Martin Loefflad, Glenn Merrill, Nicole Kimball, and Jon McCracken (staff)

Others present included: Bruce Buckson, Jim Landon, Neil Moeller, Bill Giles, Jane DiCosimo, Ed Dersham, Rachel Baker, Duncan Fields, and Sam Cotten

I. C-4 Definition of Charter Fishing Guide

Council staff, Jane DiCosimo, provided an overview of the proposed action to amend the definition of “sport fishing guide services” in Federal regulations that govern the charter halibut fishery in Southeast (Area 2C) and Southcentral (Area 3A) Alaska. The intent of the action is to clarify the Council’s intended definition of charter halibut fishing activities. The proposed action would more closely align Federal and State of Alaska regulations by removing the Federal regulatory requirement for a guide to be on board the same vessel as an angler harvesting halibut for purposes of enforcing charter halibut management programs. The action is intended to address inconsistencies in current Federal and State of Alaska definitions pertaining to sport fishing guide services.

NMFS staff then presented a proposed definition under Alternative 2, option 1 that has been developed with the input of State and Federal enforcement staff. The first is option 1 to revise the Federal definition of sport fishing guide services and incorporate text from the State’s definition rather than adding a separate federal definition of assistance (option 3). NMFS also clarified that enforcement staff support option 2b, to add a definition of compensation similar to the State definition, with a replacement of “reasonable,” instead of “actual,” expenses. See the addendum for further details on the definitions.

The Committee agreed that the definitions presented by NMFS staff more closely align State and Federal regulations for sport fishing guide services and should be used if the Council selects Alternative 2 as its preferred action. It was also recognized by the Committee that each investigation of potential violations of charter halibut regulations will consider all evidence and activities in their totality related to individual enforcement cases. Earlier efforts by agency staffs to develop a comprehensive list of activities that could be considered “assistance” were abandoned in favor of the recommended text, as previously described.

II. Comments by the NOAA LE Director

Mr. Bruce Buckson, NOAA Law Enforcement Director, provided the Committee with an overview of the planned staffing and hiring for the Office of Law Enforcement (OLE) nationwide and in the Alaska Region. Jim Landon, Chief of the Enforcement Section of NOAA General Counsel, also provided the Committee with an overview of the planned staffing and hiring for that section.

III. Work Session update on VMS report

The Committee during its December 2013 meeting discussed the way forward in addressing the Council’s motion for development of a report on expanded VMS capabilities for vessels already required to have operational VMS units. The Committee has a target of the April 2014 Council meeting to bring back a draft of this document for review by the Committee. Council review could be some time after that meeting.

At this meeting, the Committee received an update on the VMS report. The Committee is still anticipating a review of that report at its April meeting.

Addendum

If the Council recommends Alternative 2 as its preferred alternative, the Council may wish to consider the following definitions that have been developed with the input of State and Federal staff. This definition incorporates issues and definitions addressed in the analysis:

1. Adopt option 1 to revise the Federal definition of sport fishing guide services AND incorporate text from the state's definition of "assistance," rather than adding a separate definition for assistance (option 3):

Sport fishing guide services, for purposes of §§ 300.65(d) and 300.67, means assistance, for compensation **or with the intent to receive compensation**, to a person who is sport fishing, to take or attempt to take fish **halibut** by ~~being on board a vessel with such person accompanying or physically directing the sport fisherman in sport fishing activities~~ during any part of a charter vessel fishing trip. Sport fishing guide services do not include services provided by a crew member.

2. Adopt option 2b to add a definition of compensation similar to the State definition, with a reference to "reasonable" instead of "actual" expenses:

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 *reasonable* daily expenses for fuel, food, or bait;

Section 2.7 of the RIR/IRFA describes that final action by the Council to recommend Alternative 2 will require NMFS to make a number of additional regulatory revisions to existing charter regulations for the limited access program and the guided angler fish program.