

Charter Halibut Permit Usage Discussion Paper

December 2016¹

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1 Introduction

In December 2015, the Council requested a short discussion paper of feasible measures to limit the use of Charter Halibut Permits (CHPs) by persons who are not the permit holder (“leasing”), including a potential requirement for annual CHP renewal. The Council specifically asked for the following data by nontransferable and transferable permits and by International Pacific Halibut Commission (IPHC)

Regulatory Area:

1. The number of unused CHPs since the CHPs were first issued, and the number of CHPs that were not used in each calendar year since implementation
2. The number of CHPs used annually by a person other than the owner of the CHP
3. The number of CHPs that have been used by more than one person during a calendar year

For purposes of this discussion paper, we treat each topic as a question, and present the data currently available to best address each question. To determine usage by a “person” as instructed by the Council, we evaluated usage by business because CHPs may be issued to businesses or individuals. After addressing these three questions, this discussion paper reviews previous Council consideration of CHP leasing, and potential options to mitigate leasing, depending on Council policy goals.

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2 Background

Charter Halibut Limited Access Program (CHLAP)

On January 5, 2010, NMFS published a final rule to create a limited access system for charter vessels in the guided sport fishery for Pacific halibut in waters of IPHC Regulatory Areas 2C (Southeast Alaska) and 3A (Central Gulf of Alaska).² The Charter Halibut Limited Access Program (CHLAP) limits the number of charter vessels that may participate in the guided sport fishery for halibut in these areas. The intended effect of the CHLAP was to curtail growth of fishing capacity in the guided sport fishery for halibut. Regulations implementing the CHLAP are at 50 CFR 300.67.

Since February 1, 2011, all vessel operators in Areas 2C and 3A with charter anglers onboard have been required to have an original, valid permit onboard during every charter vessel fishing trip on which Pacific halibut are caught and retained. NMFS issued charter halibut permits (CHPs) to licensed charter fishing business owners based on their past participation (number of eligible trips and number of vessels used during the qualifying period) in the charter halibut fishery. CHPs are transferable or non-transferable, depending on the fishery participation of the initial recipient. CHPs are endorsed for the appropriate regulatory area (2C or 3A) and, with limited exceptions, the number of charter vessel anglers that may catch and retain halibut on a charter vessel fishing trip. All CHP holders are subject to limits on the number of permits they may hold (typically 5 CHPs). Transfers of permits are also limited to prevent over-consolidation of CHP holders.

NMFS also provides a limited number of permits issuable on request to nonprofit corporations representing specified rural communities (community quota entities or “CQE”) and for the U.S. Military’s Morale, Welfare and Recreation (MWR) programs for service members. All CQE and MWR CHPs are non-transferable. This discussion paper does not consider CQE and MWR CHPs, because the analysts assumed that the Council was not interested in limiting these types of CHPs. Also, the Council requested this discussion paper to provide additional information for their consideration of whether to allow an RQE to purchase CHPs. An RQE would not be eligible to purchase CQE or MWR CHPs.

Transferable CHPs

Transferable CHPs were issued to established businesses with a minimum history of participation in the charter halibut fishery. Participation was based on the number of fishing trips reported in the ADF&G Saltwater Charter Sportfishing Logbook (logbook) during two periods: a historic qualification year (2004 or 2005) and a recent qualification year (2008). To obtain a transferable CHP, an applicant must have reported a minimum of 15 logbook fishing trips during one of the two historic qualification years and a minimum of 15 logbook fishing trips in the recent qualification year. Transferable permits allow new entrants in the fishery as the original CHP recipients leave the fishery. The Council and NMFS expected some consolidation in the fishery as CHP holders obtain additional permits by transfer. Only transferable

² NOAA. (National Oceanic and Atmospheric Administration). 2010. Final rule to create a limited access system for charter vessels in the guided sport fishery for Pacific halibut in waters of IPHC Regulatory Areas 2C (Southeast Alaska) and 3A (Central Gulf of Alaska). National Marine Fisheries Service, Alaska Region, January 5, 2010. *Federal Register* 75(2): 554-604. Available at: <https://alaskafisheries.noaa.gov/sites/default/files/finalrules/75fr554.pdf>

permits were intended to be transferred to another business when the permit holder decided to leave the fishery.

Non-transferable CHPs

Non-transferable permits were issued to businesses that met some, but not all, of the historic and recent participation requirements. To receive a non-transferable CHP, an applicant must have reported a minimum of 5 logbook fishing trips during one of the historic qualification years, and a minimum of 5 trips during the recent qualification year. NMFS issued non-transferable permits to avoid a sudden reduction in the potential harvest capacity of the charter fleet, while still reducing capacity over time. Issuance of non-transferable permits was intended to minimize the negative impacts of limiting access to participants with low levels of participation in the fishery. Reasons for low levels of participation in the fishery varied, but may have included businesses that were phasing out of the charter fishery; new entrants who weren't operating during the historic qualifying years; or individuals who offered charter fishing trips as more of a hobby than a livelihood. Some businesses that only received non-transferable permits have left the fishery and those permits have been revoked. Other businesses that received non-transferable permits may be continuing their charter halibut operations as they had prior to implementation of the CHLAP, while others may have increased their participation by increasing the number of charter fishing trips they offer relative to their participation during the CHLAP qualifying periods, acquiring additional transferable permits, or both.

The Council, in recommending the CHLAP, did not specify a time frame for phasing out non-transferable permits and reducing capacity. Non-transferable permits were intended to cease to exist when the individual or entity that was issued the permit no longer existed. The Council and NMFS expected the number of operators in the charter halibut fishery to decline as holders of non-transferable permits leave the fishery.

Issuance of CHPs

After the initial issuance of CHPs in 2010 and resolution of appeals of "interim permits" in 2012, no new permits (excluding CQE and MWR CHP) have been issued. A person may currently only obtain a CHP by transfer, and approximately 75% of CHPs are transferable. Table 1 summarizes the number of valid permits as of November 3, 2016. Eight non-transferable CHPs have been retired since the CHLAP began. An implementation review report detailing the initial issuance and appeals resolution process is available on the NMFS website.³

³ NOAA. 2012. Implementation review for the Charter Halibut Limited Access Program and Charter Halibut Permits (CHPs). Prepared by NMFS, RAM Program, October 29, 2012. Available at: https://alaskafisheries.noaa.gov/sites/default/files/chp_review1012.pdf

Table 1. Number of CHPs by regulatory area and transferability status as of November 3, 2016.

Regulatory Area	CHP type	Number of CHPs
2C	transferable	374
	nontransferable	160
	Total 2C	534
3A	transferable	341
	nontransferable	93
	Total 3A	434
Total (both areas)		968

Transfers of CHPs

CHP holders are generally limited to five permits; a person holding a transferable CHP may transfer the permit to another person (individual or non-individual entity), unless the transfer would cause the recipient to exceed the allowable limit. CHP limits are computed by examining CHP holdings of affiliated persons. An initial recipient of more than five permits cannot receive transfers of additional permits but may transfer all of the CHPs to one other person under special a “grandfather” provision described at 50 CFR 300.67(j)(6). 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), the initial recipient no longer qualifies for the grandfather privilege and the 5-permit limit applies to the new entity. NMFS considers a successor-in-interest or a changed corporate structure to be a different entity from the one that was the initial recipient of the permit, and this may invalidate “excess” transferable CHPs held, require divestiture to a new person(s), and revocation of nontransferable CHPs held by the initial permit holder.

RQE Analysis and CHP Latency

The Council requested consideration of an alternative (Alternative 3) as part of the Recreational Quota Entity Initial Review Draft analysis⁴ that would have retired a CHP that met a certain definition of “latency.” Specifically, latency was defined as either 1) a CHP that has been fished fewer than 50 angler days in the previous 5 years; or 2) a CHP that has not been used by the CHP holder in the previous 3 years. This alternative was intended to prevent increased capacity from new or increased charter operations, which in turn could have increased angler-days, and generated an increase in the estimated pounds of charter catch harvested in a given year. The Council changed Alternative 3 from an option to reduce latent capacity, to an option that would allow the RQE to purchase 10–30% of the CHPs in each area.⁵ The Council requested analysis of this option for a second initial review in April 2016.

⁴ NPFMC. 2015. RIR/IRFA/EA for a proposed regulatory amendment: Halibut Charter Recreational Quota Entity and Charter Halibut Permit Recency Action, Initial Review Draft, December 2015. Available under Agenda item C-6 at: http://legistar2.granicus.com/npfmc/meetings/2015/12/931_A_North_Pacific_Council_15-12-07_Meeting_Agenda.pdf

⁵ Council final motion on Agenda item C-6, December 2015. Available at: http://legistar2.granicus.com/npfmc/meetings/2015/12/931_A_North_Pacific_Council_15-12-07_Meeting_Agenda.pdf

In April 2016, the Council reviewed a second initial review draft of the RQE Analysis⁶ that included this revised Alternative 3. Alternative 3 stated that an RQE could purchase from 10% to 30% of the transferable CHPs in each area (thereby temporarily removing them from use) to reduce capacity in the charter sector during times of low halibut abundance. The purpose of this alternative was to reduce the capacity of the charter fleet, particularly latent capacity, to enable better predictions of annual harvests.

In April 2016, the Council removed Alternative 3 from the RQE analysis based on recommendations from the RQE committee, public testimony, and the Scientific and Statistical Committee. The Council determined that Alternative 3 was not responsive to the purpose and need identified for the RQE action. The Council determined that the specific issues related to the use of CHPs, including the quantity of information about CHP use and holders, the leasing of non-transferable permits, and latent capacity (unused CHPs) would be better addressed in a separate discussion paper. This discussion paper responds to that request.

3 Results

Question 1: How many CHPs have been used each year since they were issued, and how many have never been used?

To address question 1, we used logbook data to determine the number of logbook trips associated with landed halibut that were reported for each CHP during each year. Only logbook trips in which halibut were caught and kept were included in these counts, because these are the only trips that require a CHP. CHP data were pulled from NMFS database on August 4, 2016; therefore, only the 968 CHPs that were valid on this date were used in this analysis. This means CHPs that were designated “interim” or revoked for other reasons between 2011 and this date, are not included. By using only these 968 CHPs, the total number of permits remains constant for comparisons in this discussion paper.

Data on CHP use has been collected in logbooks for all years of the CHLAP (2011–2015), but only data from 2012–2015 are available for this analysis because ADFG completed a substantial amount of work to verify and revise submitted logbook data to improve the available information to respond to the Council’s questions. The data verification processes consisted of ADFG staff identifying CHP numbers that were recorded erroneously in the logbook, and making these corrections in their logbook trip database. Sometimes these recording errors were identified from a CHP number that was previously determined to be invalid, and sometimes these reporting errors were identified as a valid CHP number, but the operator used another CHP on that specific trip and incorrectly recorded the CHP number. The number of invalid CHPs reported was highest in 2011, during the first year of the CHLAP when guides were unfamiliar with the permits and the program (Table 2). The number of invalid CHPs reported has generally decreased since then. The number of invalid CHP reported improved further in 2014 when ADFG began contacting businesses in-season as logbook data were being entered and errors were detected. Data validation resulted in an overall reduction in the number of CHPs used and an increase in the number of

⁶ NPFMC. 2016. RIR/IRFA/EA for a proposed regulatory amendment to allow a recreational quota entity to hold commercial halibut quota share for use by halibut charter anglers, Initial Review Draft, April 2016. Available under Agenda item C-9 at: http://legistar2.granicus.com/npfmc/meetings/2016/4/936_A_North_Pacific_Council_16-04-04_Meeting_Agenda.pdf

CHPs unused in all years (Table 3). All years are shown, but the reader should keep in mind that 2011 data have not yet been validated and therefore the values reported are approximate.

Table 2. Number of invalid CHP numbers that could not be matched by ADFG to valid CHP in the NMFS database since 2011. *Note: 2011 data have not been validated according to the process described in the text.

Year	Invalid CHP
2011*	167
2012	37
2013	64
2014	10
2015	4

Table 3. Comparison of original (uncorrected) versus validated CHP usage data.

	2011	2012	2013	2014	2015	Overall
<i>Original Data</i>						
Number of CHPs Used	851	844	832	838	850	959
Number of CHPs Not Used	117	124	136	130	118	9
<i>Validated Data</i>						
Number of CHPs Used	n/a	822	784	797	821	940
Number of CHPs Not Used	n/a	146	184	171	147	28

Table 4 further qualifies CHP usage by combining ADFG logbook trip data with IPHC regulatory area and transferability status based on NMFS CHP data. To maintain confidentiality of individual CHP usage, only tallies of the total number of CHPs used and unused by regulatory area and transferability status each year are shown. The numbers in Table 4 reflect the number of CHPs that were used at least one time in a year, but do not indicate the extent of that usage.

In Area 2C, of the 534 valid CHPs, 160 (30%) were non-transferable and 374 (70%) were transferable. Usage rates of transferable permits were higher than non-transferable CHPs across all years examined in Area 2C. Usage rates were fairly constant within a transferability category of CHPs across years in Area 2C: 70–74% of the non-transferable CHPs were used each year, while 86–90% of transferable CHPs were used each year. Overall, 81–85% of all Area 2C CHPs were used each year.

In Area 3A, of the 434 valid CHPs, 93 (21%) were non-transferable and 341 (79%) were transferable. As in Area 2C, usage rates of transferable CHPs were higher than non-transferable CHPs across all years examined in Area 3A. Usage rates were more variable among years for non-transferable CHPs in Area 3A, with rates ranging from 61–84%. A similar percentage of transferable permits CHPs were used in Area 3A than in Area 2C (84–94%). Overall, 80–91% of all Area 3A CHPs were used each year.

Of the 968 total CHPs, approximately 28 have never been used since the CHLAP was implemented in 2017 (

Table 3). An additional 5 CHPs were used only once each in 2011 only. Fourteen non-transferable CHPs and 6 transferable CHPs have never been used in Area 2C. Four non-transferable CHPs and 4 transferable CHPs have never been used in Area 3A.

Table 4. Number and percentage of CHPs used by year from 2012-2015 by IPHC Regulatory Area and transferability status and for all CHPs combined (both regulatory areas and transferability statuses combined).

Regulatory Area	Transferable	Number and Percentage of CHPs Used									
		2011*		2012		2013		2014		2015	
Area 2C (n=534)	No (n=160)	118	74%	119	74%	112	70%	113	71%	114	71%
	Yes (n=374)	336	90%	330	88%	323	86%	332	89%	338	90%
	Total Used	454	85%	449	84%	435	81%	445	83%	452	85%
	Total Unused	80	15%	85	16%	99	19%	89	17%	82	15%
Area 3A (n=434)	No (n=93)	78	84%	71	76%	61	66%	57	61%	61	66%
	Yes (n=341)	319	94%	302	89%	288	84%	295	87%	308	90%
	Total Used	397	91%	373	86%	349	80%	352	81%	369	85%
	Total Unused	37	9%	61	14%	85	20%	82	19%	65	15%
All CHP Combined (n=968 valid CHPs)	Total Used	851	88%	822	85%	784	81%	797	82%	821	85%
	Total Unused	117	12%	146	15%	184	19%	171	18%	147	15%

*data not validated

To examine how extensively CHPs are being used, Figure 1 and Figure 2 depict the number of logbook trips reported by the number of CHPs in 2015 for Area 2C and Area 3A, respectively. The number of trips were binned to reflect four levels of participation: None (0 trips), Low (1-20 trips), Moderate (21-50 trips), and High (more than 50 trips)⁸.

In the 2015 fishery in Area 2C (Figure 1), 82 (15%) of transferable and non-transferable CHPs had no reported logbook trips. Likewise, 126 (24%) transferable and non-transferable CHPs reported low participation in the 2015 fishery, logging fewer than 20 trips. A larger number of transferable CHPs reported moderate to high levels of participation in the fishery than non-transferable permits (32% and 29%, respectively). Non-transferable CHPs in Area 2C averaged 19 logbook trips in 2015, with a maximum of 118 logbook trips on one CHP. Transferable CHPs in Area 2C averaged 42 logbook trips in 2015, with a maximum of 107 logbook trips on one CHP.

The same percentage of CHPs had no reported logbook trips (65 CHP or 15%) in Area 3A as in Area 2C in 2015 (Figure 2). Likewise, 102 CHPs (23%) reported low participation in the 2015 fishery, logging fewer than 20 trips. As in Area 2C, a larger proportion of transferable CHPs reported moderate to high levels of participation in the fishery than non-transferable permits (28% and 34%, respectively). Non-transferable CHPs in Area 3A averaged 16 logbook trips in 2015, with a maximum of 102 logbook trips

⁷ 2011 CHP data have not yet been validated by ADFG; therefore, any 2011 CHP usage numbers reported are estimates.

⁸ Ranges of bin sizes were determined by analysts for the purpose of data visualization only. These bins do not reflect usage categories determined by the Council.

on one CHP. Transferable CHP in Area 3A averaged 41 logbook trips in 2015, with a maximum of 125 logbook trips on one CHP.

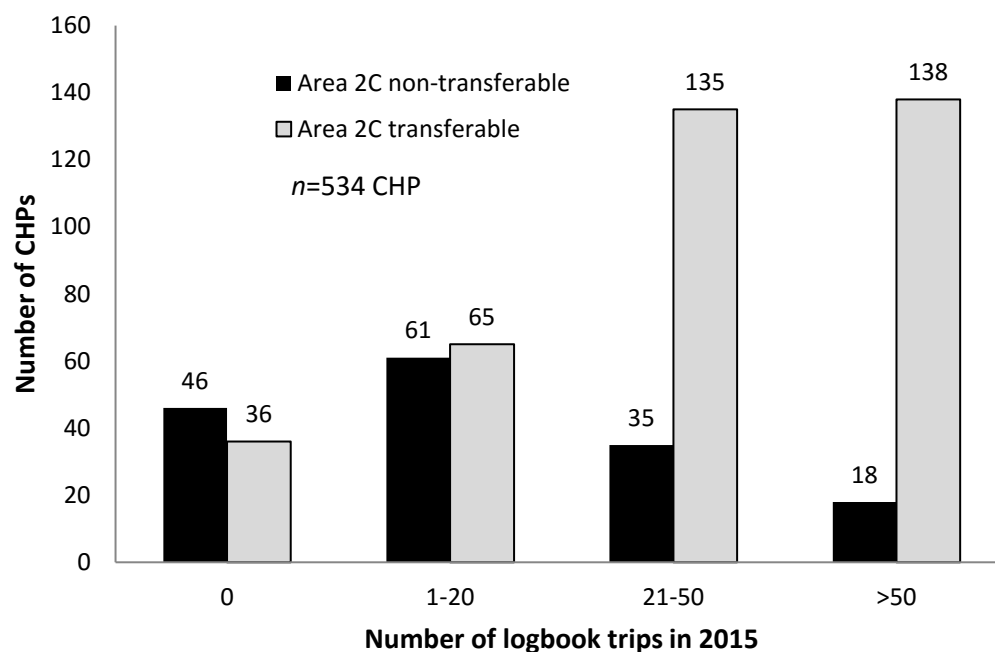


Figure 1. Number of logbook fishing trips by the number of CHPs in Area 2C in 2015.

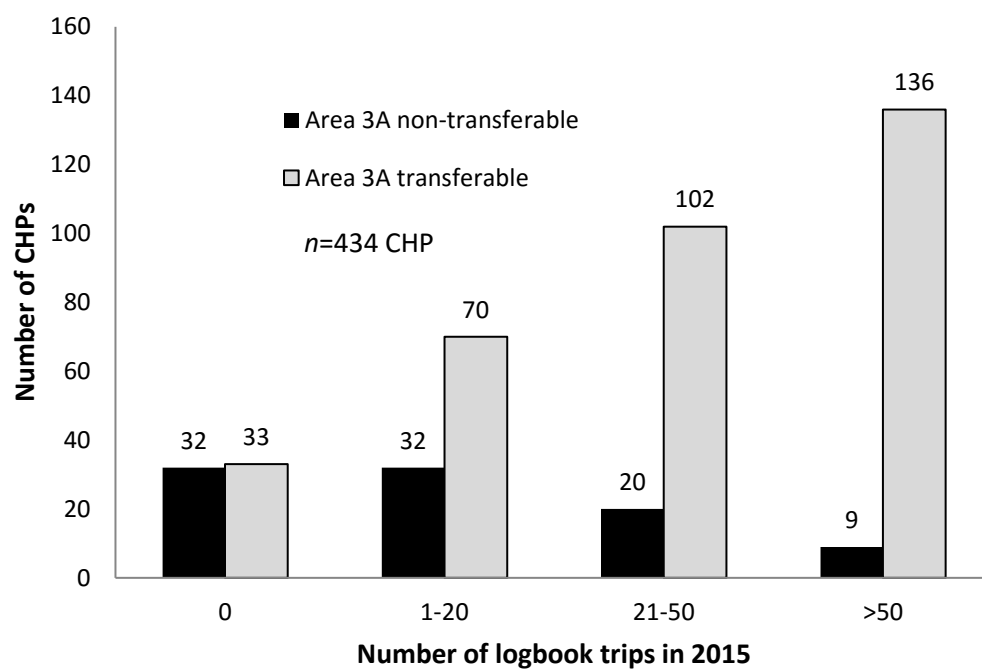


Figure 2. Number of logbook fishing trips by the number of CHPs in Area 3A in 2015.

Question 2: How many CHPs were used annually by a business other than the owner of the CHP?

To answer this question (and Question 3), ADFG counted the number of logbook trips reported on each CHP by business and year, for all 968 valid CHPs (as of August 4, 2016). Only logbook trips in which halibut were caught and kept were included in these counts, because these are the only trips that require a CHP. The ADFG Owner and ADFG Business Name refer to the owner and business licensed or registered as a sport fishing charter business through ADFG and to whom the logbook was issued. Using the CHP number, ADFG staff merged the logbook trip summary data, which is associated with an ADFG-licensed or registered sport fishing charter business and business owner, with NMFS' CHP holder database. The NMFS database identifies the CHP Holder Name (*i.e.*, an individual, group of individuals, or entity name) and if reported, a CHP Holder Business Name. The NMFS database also lists the type of CHP: regular, MWR, or CQE. Only regular CHPs were evaluated for this discussion paper, not MWR or CQE CHPs.

The next step involved matching CHP owners with CHP users. ADFG first determined whether the individual named as the ADFG Owner (who was issued the logbook) matched exactly the (*i.e.*, an individual, group of individuals, or entity name) CHP Holder Name reported in the NMFS database. Exact matches are rare. When names did not match exactly, ADFG manually compared logbook entries for each CHP by year to determine if the user of the CHP was part of the same business as the owner of the CHP by comparing the names listed as ADFG Owner and ADFG Business Name to the names listed as CHP Business Holder Name and CHP Holder Name. For each entry for which a match was not obvious, staff further investigated and used their knowledge of fishery participants, phone calls, and the internet to determine matches.

The matching of names across datasets is often resource intensive, and a certain degree of subjectivity is inherent in determining the matches. In particular, the challenges here occur because CHP holders are not all registered as a single individual (in fact, many are not), and because the ADFG logbook and NMFS CHP databases contain information from separate application processes (which could lead to a different representation of one's business or name). In some cases, businesses operated under multiple names and had multiple owners since implementation of the CHLAP, making matches ambiguous or difficult to determine. Therefore, these reported business and holder names often differ between the ADFG Logbook and NMFS CHP databases. Approximately 150 hours of ADFG staff time were spent validating two years of data for this analysis.

To determine if a CHP was used by the owner of the CHP, ADFG staff assigned each logbook entry a status: "Yes" if the logbook trip summary record indicated the CHP was used by the owner of the CHP; "No" if the record indicated the CHP was used by someone other than the owner of the CHP; or "Undetermined" if it could not be confidently ascertained whether the CHP user was the same business as the CHP owner. In some cases, a CHP was used by both the owner of the CHP and a non-owner in a year. Likewise, some CHPs were used by more than one non-owner or more than one owner of a business operated under multiple names or with multiple owners in a year.

The analysis to determine if a CHP was used by the owner of the CHP is restricted to data from 2014 and 2015. Although all manual comparisons and matching were completed for all years between 2011 and

2015, data validation was completed only for 2014 and 2015 in time to prepare this analysis, and the validation resulted in changes to some of the CHPs used and the numbers of trips per CHP. Table 5 summarizes the results of this matching exercise.

Table 5 shows that in both years, the majority of the CHPs used were used only by the owner of the CHP (68% in 2014 and 71% in 2015). Entities other than the owner (non-owners) used 18% of the CHPs in 2014 and 20% in 2015. An even smaller percentage of CHPs were used by both the owner and a non-owner in a given year (14% in 2014, and 9% in 2015). CHPs used by non-owners typically were used only by a single non-owner business in a year. Only 6% and 4% of CHPs were used by more than one non-owner in 2014 and 2015, respectively. The maximum number of businesses using a CHP in both years was four. Matches with owners or non-owners could not be determined for one CHP in 2014 and one in 2015.

Because it was not always possible to recognize if the entities listed in the databases were part of the same or different businesses, more “No” statuses may have been assigned than actually exist. Therefore, the number of CHPs used by non-owners reported in Table 5 should be considered the maximum number of CHPs used by non-owners. Further investigation would likely reveal that some of these non-owners were actually part of the same business and would reduce the number of CHPs reportedly used by non-owners. For example, it was not always clear whether businesses that were owned by different family members should be considered the same or different businesses for this evaluation. Likewise, a parent company may own several businesses (*e.g.*, a lodge and a charter fishing business) that would all fall under the ownership umbrella of the larger company, but may not have been recognized as being the same business when the data were matched.

Table 5: Numbers and percentages^a of CHPs used by owners and non-owners in 2014 and 2015 for both regulatory areas and transferability statuses combined.

Year	CHPs with logbook trips reported	CHPs used only by CHP owner(s)	CHPs used only by non-owner(s)	CHPs used by both the owner and a non-owner	CHPs used by more than one non-owner	Maximum number of businesses using a CHP ^b
2014	797	540 (68%)	142 (18%)	114 (14%)	47 (6%)	4
2015	821	583 (71%)	163 (20%)	74 (9%)	32	4

^aPercentages refer to the percentage of the number of CHPs used that year, not the percentage of the total number of CHPs.

^bIncludes usage by owners and non-owners.

NMFS staff extended the ADFG analysis to compare CHP use between owners of transferable and non-transferable CHPs (Table 6). The use of non-transferable permits by non-owners was 3% higher than the use of transferable permits by non-owners in both years. The majority of transferable and non-transferable permits were used by the owner of those permits in both years.

Table 6: Number and percentages^a of CHPs used by transferability status and by owners and non-owners in 2014 and 2015.

Year	Transferable CHP?	CHPs with logbook trips reported	CHPs used only by CHP owner(s)	CHPs used only by non-owner(s)	CHPs used by both the owner and a non-owner of a CHP
2014	No	170	107 (63%)	34 (20%)	29 (17%)
	Yes	627	434 (69%)	108 (17%)	84 (13%)
2015	No	175	121 (69%)	38 (22%)	16 (9%)
	Yes	645	461 (71%)	125 (19%)	58 (9%)

^aPercentages refer to the percentage of the number of CHPs used that year, not the percentage of the total number of CHPs.

Question 3: How many CHPs have been used by more than one business during a calendar year?

Data to answer this question were validated and compiled as described in the previous section. We were only able to determine how many CHPs were used by more than one person by regulatory area and transferability status for 2014 and 2015 because of the time constraints. To answer question 3, we tallied the number of times a CHP was used in a year by more than one non-owner of a CHP or by the owner and one or more non-owners of a CHP. Table 7 summarizes these data. Overall, fewer than 20% of CHPs were used by more than one business in a year. Usage of CHPs by more than one business was more common in Area 2C (17% of CHPs) than Area 3A (11% of CHPs), but low in both areas. Within a regulatory area, the percentages of CHPs used by multiple businesses were similar between transferable and non-transferable CHPs.

Table 7. Number of CHPs used by more than one business during 2014 and 2015 by IPHC Regulatory Area and transferability status.

Regulatory Area	Transferable	Number and Percentage of Permits Used by Multiple Businesses	
		2014	2015
Area 2C (n=534)	No (n=160)	22 (14%)	18 (11%)
	Yes (n=374)	68 (18%)	46 (12%)
	Total	90 (17%)	64 (12%)
Area 3A (n=434)	No (n=93)	8 (9%)	5 (5%)
	Yes (n=341)	39 (11%)	26 (8%)
	Total	47 (11%)	31 (7%)

4 Leasing of CHPs

In the Council's December 2015 motion requesting this discussion paper, it indicated its intent to consider potential ways to limit the leasing activity of CHPs. This is not the first time the Council has raised concerns around leasing behavior related to CHPs.

In March 2007, the Council recommended the CHLAP, a charter halibut moratorium on entry into the charter halibut fishery in Area 2C and 3A, which issued CHPs to qualified ADF&G licensed fishing guide business owners.⁹ Permits could be held by U.S. citizens or U.S. businesses (with 75 percent U.S. ownership of the business, unless grandfathered in). This decision means that CHPs are not necessarily linked to a skipper, or a particular vessel. CHP holders consist of individuals, groups of individuals, and businesses.

In addition to the creation of CHPs, the Council's March 2007 motion stated, "*Issue 6. Leasing of permits would not be allowed.*" However, in the development of the rule, NMFS did not implement a prohibition on leasing, but considered a limitation on leasing that was later dropped from consideration.¹⁰ The Council analysis for the charter halibut moratorium had highlighted the fact that there were no identified tools to implement such a broad prohibition. For instance, the Council had not defined what constituted leasing.

The Council continued to voice concern about the leasing behavior around CHPs for a number of reasons. In April 2010, in response to NMFS' interpretation of "Issue 6" from the charter halibut moratorium motion, the Council made a motion to initiate a discussion paper which laid out several alternatives and options to limit the leasing of CHPs.¹¹ The Council's problem statement noted concerns that leasing could change the character of the halibut charter fleet (*i.e.*, creating absentee ownership), leasing would likely decrease the sale and transfer of CHPs, and may inhibit new entry level opportunities for new charter halibut operators as well as increase the price of entry.

In December 2010, a discussion paper was produced by interagency staff in response to the Council's April 2010 motion (attached as an Appendix).¹² Rather than speaking directly to the Council's alternatives and options, the discussion paper highlighted some of the substantial challenges that would need to be addressed in order for regulations to produce the intended effect. Unintended effects could include substantial negative consequences on certain types of existing operations (*e.g.*, a charter business owner that holds multiple CHPs, and assigns one to each of the company's skippers for the season) and/ or an incentive for CHP holders to restructure their relationship with an entity they wish to lease to (*e.g.*, if the CHP is transferable, a CHP holder could transfer equity in a CHP in order to continue leasing to a "partner").

⁹ The March 2007 Council motion recommending the charter halibut moratorium: <http://www.npfmc.org/wp-content/PDFdocuments/halibut/CharterHalibutMotion307.pdf>

¹⁰ The language limiting leasing was later dropped see 76 FR 34890: <https://www.gpo.gov/fdsys/pkg/FR-2011-06-15/pdf/2011-14854.pdf>

¹¹ The April 2010 Council motion initiating a discussion paper on limiting leasing of CHPs: <http://www.npfmc.org/wp-content/PDFdocuments/halibut/MoratoriumLeasing410motion.pdf>

¹² Note this discussion paper was presented during staff tasking during the December 2010 Council meeting.

The discussion paper highlighted what NMFS might be able to do, could do (with impediments), and could not do to address leasing. Given the diverse types of charter operations and different types of entities that hold CHPs, this type of regulation would need to be carefully crafted in order to produce the intended effect. Operations by some businesses may be difficult to distinguish from leasing. In addition to the discussion paper, representatives from multiple agencies responded to the April 2010 Council motion with substantial questions of clarification.¹³ Based on the implementation challenges described in the discussion paper, the Council did not schedule further action at that time.

The subjectivity associated with name matching in the present analysis exemplifies one of the difficulties with establishing limits on leasing. Even with a well-defined idea of the types of business relationship that constitute leasing, operations types in the charter sector are diverse (as demonstrated in the Appendix) and NMFS would need something more than business names if it was to issue citations based on presumed leasing activity.

5 Alternatives to Address CHP Leasing

Annual CHP renewal

The Council may wish to consider implementing an annual registration and renewal process for CHPs. If a permit owner did not register to renew his or her CHP with NMFS, the permit would not be issued for that year. The Council could determine whether CHP that were not renewed after a certain number of years would be restricted or revoked. Revoked non-transferable CHPs would be retired, thus reducing the number of unused CHPs (latent capacity) in the fleet that could potentially be used to increase capacity in the future. Revoked transferable CHPs could be re-issued to new entrants or existing participants in the fishery through a lottery or other mechanism determined by the Council. Alternately, revoked transferable CHPs could be retired if the Council wished to reduce latent capacity.

After CHPs were initially issued in 2011, they are not re-issued unless a CHP holder requests a replacement from NMFS. When a replacement is requested, the replacement is issued using the same original CHP number (*e.g.*, 4168) with a new version number (*e.g.*, 4168-B). When validating the data for this analysis, ADFG has encountered invalid versions of permits being recorded in the logbook. NMFS has received reports of multiple versions of a CHP (*e.g.*, 4168-A and 4168-B) being used as unique CHP. NMFS has also received reports of non-transferable CHP being used even after the permit holder has deceased. NMFS Office for Law Enforcement (OLE) receives logbook data from ADFG on a regular basis and these instances of apparently invalid permits being used were forwarded to NMFS OLE for further investigation.

Additional potential benefits of an annual renewal process might include the following:

1. The NMFS database of CHP ownership would be kept up-to-date with the most recent CHP holder name, address, and business information.
2. Permits that are not renewed could be revoked.

¹³ Interagency staff comments on the April 2010 motion: <http://www.npfmc.org/wp-content/PDFdocuments/halibut/PermitLeaseAttach410.pdf>

3. NMFS could issue new a new version of the CHP each year, with the year clearly indicated, to reduce confusion as to which version is valid.
4. There would likely be a reduction in the number of invalid permit numbers reported in the logbook that the ADFG must verify.

Future Action

In determining whether to further examine potential methods for to limit the use of CHPs by persons who are not the permit holder (“leasing”) with available information, the Council should consider the uncertainties in identifying and monitoring CHP use, the labor intensive nature of reconciling ADFG logbook data with NMFS CHP holding information, and the subjectivity of these determinations, in addition to other concerns discussed in this paper and the attached Appendix.

If the Council wishes to pursue additional action to limit the use of CHPs, the Council could clarify the problem (*e.g.*, identify specific types of CHP use by non-owners) that they wish to address to focus further analysis and develop additional alternatives. In the meantime, implementation of an annual CHP renewal process could improve available information to monitor and evaluate CHP use and may begin to address some concerns about unused permits and potential latent capacity in the charter halibut fishery.

6 Appendix- 2010 Discussion Paper on CHP Leasing

Discussion Paper on Implementation of Permit Leasing Prohibition in March 2007 Council Motion on Charter Halibut Moratorium in Areas 2C and 3A

NPFMC/NMFS (SF/RAM/OLE/GC)/ADF&G Staffs¹
December 8, 2010

Summary

In March 2010 the Council requested a discussion paper on a range of proposed alternatives to limit leasing of charter halibut limited entry permits (CHPs). In a discussion after the charter halibut Limited Entry Program (LEP) was implemented, Council members commented that the program did not appear to be implemented according to

Council intent. The relevant portion of the Council's March 2007 preferred alternative motion is provided (see box). A *limit* on leasing was implemented in the final rule, as identified in the Council's preferred alternative motion (footnote 6). NMFS however did not implement a *prohibition* on leasing because the staff notified the Council (through the analysis and staff presentation) that the Council had not identified the tools to implement such a broad prohibition on leasing CHPs.

The staffs of the Council (and contractors), NMFS, and ADF&G note that, as described in the Council's analysis, the nature of charter businesses makes it extremely difficult to determine the types of leasing agreements that would be prohibited and those that would be allowed. The staffs have identified the following possible business arrangements:

1. Single resident or nonresident permit holder, one permit, operator (permit holder is the only licensed guide)
2. Single resident or nonresident permit holder, multiple permits, operator + hired guides
3. Single resident or nonresident permit holder, one permit, non-operator (permit holder not a licensed guide)
4. Single resident or nonresident permit holder, multiple permits, non-operator (all vessels run by hired guides)
5. Single resident or nonresident permit holder, one or multiple permits, non-operator not present on site (business and vessel run by employees)
6. Multiple owner (partnership, corporation) holding single or multiple permits; any combination of operators and non-operators; none, some, or all may be on site.
7. Others?

“Issue 6. Leasing of permits would not be allowed.”⁶

⁶Halibut charter permit holders may only use their permit onboard a vessel that is identified on an ADF&G saltwater logbook assigned to the person holding the permit. If the permit holder wishes to use the permit on a different vessel, they must obtain an ADF&G logbook for the new vessel before the permit may be used on that vessel. The permit number must be recorded on the logbook for each trip.

¹ Participants: Jane DiCosimo (NPFMC), Sue Salvesson, Rachel Baker, Peggy Murphy (NMFS SF), Jessie Gharrett, Tracy Buck (NMFS RAM), Ron Antaya (OLE), John Lepore and Susan Auer (NOAA GC), LCDR Lisa Ragone and LT Ray Reichl (USCG), Stefanie Moreland and Scott Meyer (ADF&G).

Given the structure of business arrangements within the charter halibut industry, enforcing a prohibition on leasing would be extremely difficult, at best, and impossible in many situations. NMFS implemented the provisions that the Council adopted to *deter* leasing (see footnote), knowing the Council did not develop the necessary management measures to *prohibit* leasing (see main text) per its stated objective.

Staff review of proposed alternatives

In May 2010 the staffs reviewed the Council's March 2010 motion for proposed alternatives to limit leasing and were unable to identify any that would not "substantially change the character and current primary business practice of the halibut charter fleet," which is the language that the Council adopted in the problem statement in its March 2010 motion. Instead, the Council's proposed management solution may, in fact, compound the identified problem of restructuring the charter fleet; data are not available to determine whether substantial numbers would be affected. The staffs identified additional issues and requests for clarifications as noted in the Attachment, in the event the Council wished to proceed with this range of alternatives.

Charter Small Entity Compliance Guide

NMFS is preparing a Charter Small Entity Compliance Guide that will address frequently asked Questions (FAQs), such as transferring permits. The guide will identify that an operator of a vessel in Area 2C or Area 3A with one or more charter vessel anglers on board that are catching and retaining halibut is required have on board the vessel a State of Alaska Department of Fish and Game (ADF&G) Saltwater Charter Logbook issued in the name of the charter halibut permit holder, along with numerous other elements of the program.

Potential Action

In place of the Council's current range of proposed alternatives, the staff has identified a potential action that the Council may wish to consider to further meet its intent to *limit* leasing (see discussion below); however, *it is not known if the benefits of the potential action would outweigh the costs of implementation.* It may be of limited effectiveness and the Council may wish to confer with enforcement staff before requesting a regulatory amendment be initiated.

Staff Tasking

The Council should consider that any new regulatory amendment should be prioritized for development AFTER the final rule for the catch sharing plan (CSP) is published in the *Federal Register*. Any new tasking WILL jeopardize the 2012 target date for implementation of the CSP, as has already occurred under the Council's higher prioritization of the regulatory amendment to revise issuance of angler endorsements on CHPs (75 FR 56903, September 17, 2010). Note that due to the nature of a potential amendment to address leasing of CHPs, it is likely that NMFS staff would prepare all aspects of analysis and rulemaking.

Status Quo

Relevant regulation: 50 CFR 300.66(v)(1), which will be effective February 1, 2011, is in the form of a prohibition (as follows).

§ 300.66 Prohibitions. In addition to the general prohibitions specified in 50 CFR 300.4, it is unlawful for any person to do any of the following:

- (v) Be an operator of a vessel in Area 2C or Area 3A with one or more charter vessel anglers on board that are catching and retaining halibut without having on board the vessel a State of Alaska Department of Fish and Game Saltwater Charter Logbook that specifies the following:

- (1) The person named on the charter halibut permit or permits being used on board the vessel;
- (2) The charter halibut permit or permits number(s) being used on board the vessel; and
- (3) The name and State issued boat registration (AK number) or U.S. Coast Guard documentation number of the vessel.

Section 300.66(v)(1) prohibits an operator who wishes to use a charter halibut permit held by another person from (1) being issued a logbook by ADF&G in their own name and (2) recording the permit holder's name and permit number in the logbook issued to the permit user. The prohibition at §300.66(v)(1) is expected to provide a disincentive to using a charter halibut permit issued to another person because the permit user would be required to record his or her charter activity in a logbook issued to the permit holder rather than a logbook issued to the permit user. Some charter operators may perceive this as undesirable because the permit holder would receive any potential future harvest privilege if logbook records are used to determine eligibility for the privilege.

Additionally, to be issued a logbook, ADF&G requires a business name and ADF&G Business License number. In order to obtain a business license, the operator has to provide (1) a current State of Alaska Occupational Business License Number available from the Dept. of Commerce and Economic Development, Division of Occupational Licensing, and (2) a liability or marine protection insurance 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. These requirements may deter permit holders from making arrangements for another operator to use their charter halibut permit if they do not wish to actively participate in charter operations.

March 2010 Motion

The Council may have had State-issued limited entry permits in mind when it adopted its range of alternatives to prohibit leasing. Commercial Fishing Entry Commission (CFEC) permits are issued to individuals who meet specified qualifications, which typically meant that they could prove harvest of a fish species with a particular gear type as holders of gear licenses or interim-use permits. State of Alaska statutes require that the permit holder be on board and operating the gear. Permits are issued for a particular gear type and a particular fishery (<http://w3.legis.state.ak.us/pubs/pubs.php>). Unlike the charter halibut fishery, it seems there would be little incentive to owning multiple vessels that all fish the same gear type, since the CFEC permit holder can't be on board multiple vessels simultaneously. This is NOT the case with the variety of charter halibut business models.

Note that AS 16.43.150(g) prohibits leasing of CFEC permits. The requirement that the permit holder be on board and involved in operation of the gear would appear to be an effective deterrent to leasing. CFEC staff noted that the term "leasing" is sometimes used but fishermen are usually incorrectly referring to emergency medical transfers.

The charter permit application clearly shows that permits are issued to "the person who held the ADF&G Business Owner License." Note that a person can be an individual, corporation, partnership, or other type of legal entity. When logbooks were checked out, they were associated with a particular business by registering the name of the business and the business license number. The person to whom charter halibut permits are issued was not required to be a licensed guide, and was not required to have been present on the vessel or vessels that were associated with that business in the logbook. So the fundamental difference is that CFEC permits are issued to individuals that participate directly in the fishery and can prove that participation, presumably with signed fish tickets. If the charter halibut program were structured similarly, perhaps permits would have been issued to sport fishing guides that

operated the vessels. The number of hired skippers is unknown. The Stakeholder Committee and Council felt that the people who owned the business should get the permits.

If it is Council intent that a permit holder should either be present on the vessel using the permit or present where the vessel using the permit either leaves or returns (lodges or remote pickup and back to lodge), there are permit holders that own multiple permits that do not operate from a lodge. For example some permit holders may be out on another vessel when their hired skipper returns to port.

Background

The most common charter business model is an owner/operator. Another typical charter business model is for a charter business to hire a captain to take clients fishing. Some businesses hire a captain for the businesses' vessel while other businesses hire a captain and a vessel. Contracts with captains are business arrangements that can extend within a year, or over a number of years, and may be terminated at any time. These business arrangements make it difficult to determine with certainty whether permits would be leased to a captain or if the captain is working as an employee of the owner.

To proceed further to limit leasing of charter halibut permits, the Council first must define the activity for both leasing of vessels *and* leasing of permits. The definition of a boat lease in commercial IFQ regulations was developed by the Office of Administrative Appeals (OAA) over time and through case law. It is not definitive, however; it is based on "a preponderance of evidence" (see pages 5-6 of this OAA Decision: <http://www.fakr.noaa.gov/appeals/98-0001.pdf>).

The Council discussed that hiring a skipper means that someone else is running your boat, but a business owns the vessel and the LEP; however this interpretation does not include businesses that hire a skipper and a boat. The Council identified that leasing a permit means transferring the permit, with monetary compensation to an entirely different business owner with their own vessel(s). But transferring a permit with compensation also could occur to a different business owner without its own vessel(s) or to a skipper with or without his own boat. Many different combinations occur in the fleet. Another scenario that the Council could consider to be leasing would involve an operator that allows a family member, close friend, etc. to fish under an unused permit at no charge.

Council Concerns

- Current rule does not *prevent* leasing
- Lack of incentive to transfer a permit
- Constraints on new entrants (no incentive to (permanently) transfer permits)
- More desirable to have turnover rather than long term leasing
- If harvest privilege is associated with permit, then it could have additional value in the future

Staff Comments:

- Unique permit identifier(s) for 2011 may be recorded in the logbook.
- Inherent nature of limited entry is less exit/entry
- A lease is paying for the privilege of using a permit
- Council adopted a program where the permit is not tied to a vessel (or skipper)
- State requires skipper to have a copy of the owner's business permit
- Achieving new social goals will incur a high cost on charter fleet

- More economical for new entrants to lease, rather than buy (transfer), permits
- Concerns about new entry contrast with number of current participants who do not qualify
- Potential for hundreds of new community permit holders provides entry level opportunities

What NMFS Might be Able to Do

(to limit leasing, but not prevent it and whose effectiveness has not been determined)

- Amend the regulations to require that the name of the permit holder match the business owner as listed on the ADF&G business license. The ADF&G business license number and name of business, vessel name, and AK number is recorded when the logbook is checked out. Enforcement staff can match the permit owner name on the logbook with business license. They may transfer that logbook to another vessel if the first breaks down.

What NMFS Can Do

(but with potentially burdensome impediments)

- Require business owners to name a specific vessel and consider it a transfer to change the vessel affiliation, and then require the name of the owner of a vessel (but this is contrary to original intent of the program and could be an administrative and public burden- i.e., changing vessels due to breakdowns, document ownership in vessels – see history of commercial halibut IFQ hired skipper amendments)
- Owner on board requirement (but is contrary to original intent of the program)
- Grandfather current participants and require all future permit holders (transferees) to be owner on board (i.e., remove current grandfather provision that allows e.g., lodges to transfer)
- Add Use it or Lose it element to the program to transfer unused permits to (new) entrants

What NMFS Cannot Do

- Define a permit that is being leased or prohibit permit leasing without further definition of a lease by the Council (e.g., would the Council consider a business that owns 5 boats and hires 5 (or more) skippers for the boats to be leasing permits?)
- Define a vessel that is being leased
- Distinguish between legitimate and illegitimate business arrangements
- Require (corporate) business owners to be on board (e.g., commercial IFQ A shares)
- Verify contract during a boarding
- Continue current fleet behavior and prohibit leasing – requiring that all skippers be an employee of the business but this could be circumvented (similar to commercial hired skipper “paper” transactions - could employ on a daily basis or not pay with cash)

Written Record for the Status Quo

PROPOSED RULE

The proposed rule does not include a prohibition against leasing charter Limited Entry Permits (LEPs) although the Council recommended such a prohibition because such a prohibition would not lead to a permit holder being on board the vessel or having any direct connection with the charter operation. Under the proposed rule, a permit holder would not have to own a vessel or operate a vessel. A permit holder could legitimately allow a vessel operator to use the permit holder's permit as authority for the vessel operator to take anglers out charter halibut fishing, even though the permit holder does not own or operate the vessel and has nothing directly to do with the charter vessel fishing operation. The vessel operator may pay the permit holder for the right to use the permit or the permit holder may pay the vessel operator to take out anglers organized by the permit holder. *The charter industry has a variety of business models and the way some of these business models function is substantially similar to a lease between the permit holder and the vessel operator.* Therefore, prohibiting leasing may result in a restructuring of many charter businesses.

Further, it would be difficult to enforce a prohibition on leasing. NMFS would have to collect additional information attendant to a transfer. Simply prohibiting a transfer called "a lease" would result in the prohibition being enforced only against legally unsophisticated persons who did not draft their document to avoid such a term. For NMFS to examine the substance of any transaction would be difficult, time-consuming and undermine the principle that the permits are relatively freely transferable.

In light of this difficulty, the Council recommended three specific measures to *discourage* leasing:

1. Prohibit the charter halibut permit from being used on board a vessel unless that vessel is identified in an ADF&G Saltwater Charter Logbook;
2. Require that a charter vessel operator have on board the vessel an ADF&G Saltwater Charter Logbook issued in the name of the charter halibut permit holder; and
3. Require the authorizing charter halibut permit number to be recorded in the ADF&G Saltwater Charter Logbook for each trip.

This action proposes all of these Council recommendations as part of the requirement to have the Saltwater Charter Logbook on board. The requirement to identify the vessel in the logbook is intended to be consistent with an existing State of Alaska requirement that a charter vessel operator have on board the vessel an ADF&G Saltwater Charter Logbook. This logbook must be specific to the vessel on which it is used.

FINAL RULE

The final rule does not have an explicit prohibition against leasing, although the Council recommended one, for the reasons discussed in the proposed rule (74 FR 18178, April 21, 2009) at page 18191 and summarized above. The charter industry has a variety of business models, and the way some of these business models function is substantially similar to a lease between the permit holder and the vessel operator. For example, the owner of a charter business or of a business such as a wilderness lodge, that also provides charter services, employs hired skippers and guides to operate one or more vessels. The charter business may or may not own the vessels.

The rules governing the identification of qualified businesses and the number of permits they would receive did not require vessel ownership by the qualified business. Operations by these businesses may be difficult to distinguish from leasing. There is no bright line between how these types of businesses operate and what would be considered leasing arrangements. For this reason, enforcement of a prohibition on leasing would be difficult, time consuming, and costly. NMFS determined that the benefits derived from a leasing prohibition did not justify the costs of enforcement and the disruption to existing business operations. This position was described in the Council analysis, yet the Council identified a prohibition on leasing in its preferred alternative.

§ 300.66 Prohibitions.

* * * * *

(v) Be an operator of a vessel in Area 2C or Area 3A with one or more charter vessel anglers on board that are catching and retaining halibut without having on board the vessel a State of Alaska Department of Fish and Game Saltwater Charter Logbook that specifies the following:

- (1) The person named on the charter halibut permit or permits being used on board the vessel;
- (2) The charter halibut permit or permits number(s) being used on board the vessel; and
- (3) The name and State issued boat registration (AK number) or U.S. Coast Guard documentation number of the vessel

Council EA/RIR/IRFA (excerpts)

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“Issue 6 [see Motion above] **was selected as part of the Council’s preferred alternative.** Leasing of permits (and IFQs) is generally discouraged in fisheries under Council authority. Prohibitions on leasing stem from a desire to keep persons from holding permits for the sole purpose of generating income from the active participants. The Groundfish LLP program discourages leases by only allowing the permit to be transferred once per year. The NMFS transfer application also asks if there is an agreement to return the license to the seller or to transfer it to any other person, or if there is any condition requiring the resale or conveyance of the license.

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The IFQ program for halibut and sablefish has an owner-on-board requirement for most vessel classes, to encourage only persons intending to actively fish to buy into the fleet. Persons subject to owner-on-board must carry government issued photo identification while onboard the vessel.

Tracking whether halibut charter moratorium permits are being leased may be difficult without a provision such as owner-on-board. However, that type of requirement is not practical, because of the structure of the halibut charter fishery. In some cases, a charter business may hire a captain(s) to take clients fishing. Contracts with captains are business arrangements that can be extended within a year, or over a number of years, and may be terminated at any time with proper notice. The hired captain may or may not own the vessel used to take clients fishing. If the captain owns the vessel and the permit holder hires him to take their clients fishing, distinguishing this operation from a lease arrangement may not be possible.

These business arrangements may make it difficult to determine with certainty whether permits are being leased to a captain for a year, or if the captain is working as an employee of the owner. Given the structure of business arrangements within the halibut charter industry, enforcing a prohibition on permit leases may be problematic.

Given the above complexity with enforcing a prohibition on leasing, the Council added a footnote to this provision, clarifying the implementation approach intended under the moratorium. In brief, halibut charter permit holders may only use their permit onboard a vessel that is identified on an ADF&G saltwater logbook assigned to the person holding the permit. If the permit holder wishes to use the permit on a different vessel, they must obtain an ADF&G logbook for the new vessel before the permit may be used on that vessel. The permit number must also be recorded on the logbook for each trip. While these provisions are not expected to completely prevent leasing, they are intended to discourage some private leasing arrangements. A discussion of this approach is provided in Section 2.6.4.3 of the implementation section.”

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“2.6.3 Leasing

The Council’s preferred alternative includes a provision under Issue 6 to prohibit leasing in the moratorium program. Leasing is a nebulous term that describes a multitude of arrangements between two or more persons, but generally infers a temporary transfer of a right to possess or use specific property or a property-like privilege (e.g., fishing permit). Leasing arrangements are often designed to generate rent on the property or property-like privilege while allowing the lessee to use the property without the outlay of capital required if the property privilege was transferred. These lease arrangements are often short-term in nature. One type of leasing arrangement that is common in the commercial halibut fishery is the leasing of halibut individual fishing quota (IFQ). Leasing, in terms of the IFQ Program, occurs when there is a transfer of annual IFQ from the quota share holder to another party. In this situation, the quota share holder retains the quota share and the annual right of receiving IFQ resulting from that quota share, but

transfers the annual right to harvest the IFQ to another person. In this way, the person(s) involved in the transfer (conducted through NMFS) would be expected to have an arrangement that allows for mutual gain.

An important difference between the IFQ program and the moratorium program is that there is not a short-term harvest privilege (i.e., IFQ) associated with the moratorium permit that could be transferred through NMFS. In the case of the proposed charter moratorium, any change of the person(s) holding the moratorium permit would involve a transfer conducted by NMFS. For example, a permit holder who wants to “lease” a permit could conduct short-term transfers through NMFS, or completely circumvent NMFS by making private business arrangements without changing the permit holder’s name. Thus, in the latter example, NMFS and NOAA OLE would not have any documentation that a private business exchange took place. Moreover, there may be a greater incentive for permit holders to use private transactions because transaction costs associated with the application process can be avoided.

Private business arrangements are extremely difficult for NOAA OLE to enforce, because documentation about the arrangement is often not available, and a large amount of enforcement resources would be required to interpret documents, investigate, and prosecute leasing situations. This problem has been encountered by NMFS, with current leasing provisions in the groundfish LLP and IFQ. Regulations governing current programs, such as the groundfish LLP, prohibit leasing and allow NMFS to review transfer agreements to check if leasing has occurred. Despite having access to the transfer agreements, it is very difficult for NMFS to determine if the ostensive transfer is, in fact, a lease. Moreover, defining the term “lease” is problematic, because business contracts can be carefully worded to obfuscate a lease, so that NMFS will not deny an application.

The nature of charter businesses also makes it extremely difficult to determine the types of leasing agreements that would be prohibited and those that would be allowed. Many charter businesses hire a captain to take clients fishing, as this represents a typical charter business model. Contracts with captains are business arrangements that can extend within a year, or over a number of years, and may be terminated at any time. These business arrangements make it difficult to determine with certainty whether permits are being leased to a captain or if the captain is working as an employee of the owner. Given the structure of business arrangements within the halibut charter industry, enforcing a prohibition on leasing would be extremely difficult, at best, and impossible in many situations. Section 2.3.3 provides more information about enforcement issues associated with a prohibition on leasing.

2.6.3.1 Purpose of prohibiting leasing

Fisheries generally have leasing prohibitions for permits, because of concerns by fishermen about the “absentee landlord” syndrome (Wilen and Brown 2000). In fisheries, this syndrome broadly refers to situations where a permit holder does not personally fish the permit, or have any direct involvement with the fishery. Business arrangements involving owners who are not operating the charter vessel are common for the halibut charter industry. Many charter business owners hire captains or deckhands to operate the charter vessel, whether the vessel is owned by the business or captain. For example, a charter business owner in Atlanta may own a lodge in Southeast Alaska that relies on staff to manage the lodge, market trips, and provide guide services. Thus, while maintaining and managing capital in the sport fishery, this type of charter business owner is not on-site, fishing or working in fishery operations. The moratorium program (Alternative 2) would not eliminate or reduce this type of absentee ownership. Alternative 2 was intended to allow charter businesses to operate the way they do currently, which includes owning a business and hiring skipper and crew to operate the vessel, and/or operate several vessels under a single business.

The extent of the absentee ownership issue in the charter fishery is difficult to predict prior to program implementation. Looking at similar situations and economic theory for guidance, most mature markets that involve productive assets ultimately allow leasing and short-term contracting. In fact, it is difficult to find many property-like privilege systems in the world that prohibit short-term leasing and only allow

“permanent” transfers in order to eliminate absentee landlords. The widespread tolerance of leasing suggest two possibilities: (1) the benefits associated with short term production flexibility are seen by most participants as outweighing the social costs associated with absenteeism; and/or, (2) the basic incentives in many systems work against absenteeism (Wilén and Brown 2000). The latter seems particularly likely when the productive use of the asset requires specialized skills. For example, in the charter fishery, the skills and knowledge associated with catching halibut may discourage absenteeism. However, absenteeism in the charter fishery may be encouraged by specialized skills such as superior marketing, packaging, and bundling skills that better serve the market niche associated with a primary business. Given that many business owners currently operating in the charter fishery do not personally guide clients or are offsite managing the charter fishing business, incentives that currently exist for absenteeism would likely continue under Alternative 2.

2.6.3.2 Options to discourage leasing

Given the problems associated with enforcing the prohibition on leasing, other types of regulatory controls that do not directly prohibit leasing were considered by the Council. The types of controls that may be considered have the potential to influence behavior by increasing the transaction and opportunity costs associated with business arrangements.

The IFQ Program has several controls in place that increase transaction costs between IFQ users by limiting the use of a vessel. These types of controls include a requirement for a certain level of vessel ownership before IFQ may be fished from that vessel, and a proposed regulation that prevents short-term transfers of vessel ownership (i.e., vessel ownership for at least 12 months). The vessel ownership regulation requires a corporation, partnership, or entity who did not receive an initial issuance of QS to demonstrate 20-percent ownership of a vessel before the IFQ may be fished (50 CFR 679.42). This capital investment imposes an opportunity cost for individuals wanting to use QS/IFQ and thus reduces the incentive for some individuals to enter contractual agreements. To further reduce the number of short-term leasing transactions, a 12-month vessel ownership requirement was recently published as a proposed rule in the *Federal Register*. A vessel ownership requirement is an effective method for limiting some types of short-term transactions; however, a vessel use restriction that requires a unique vessel be registered through RAM is not an option for the charter moratorium program described in Alternative 2. This type of vessel use restriction would require registration of the vessel with NMFS which would substantially reduce the charter fleet’s ability to quickly change vessels in case of breakdowns. In December 2006, the Council considered adding a vessel registration requirement, but decided not to do so, primarily due to the additional burden created.

The Council’s preferred alternative under Issue 6 includes an explicit provision intended to help both enforce the use cap and discourage certain lease arrangements. This provision allows halibut charter permit holders to only use their permit onboard a vessel that is identified on an ADF&G saltwater logbook assigned to the person holding the permit. If the permit holder wants to use the permit on a different vessel, he or she must obtain an ADF&G logbook for the new vessel before the permit may be used on that vessel. The logbook could provide linkage between the business holding the moratorium permit and the vessel from which guided fishing occurs, although there is no requirement that the charter business owner also own the vessel from which guided fishing occurs. Implementation of this provision would require modifying the ADF&G logbook to allow the recording of moratorium permit numbers for each trip.

The State has indicated its ability and willingness to make the required change to the logbook. This change would allow moratorium permits to be linked to a business operating a charter vessel on a specific trip (assuming the business holding the permit also operated the charter vessel). Note that a permit holder could only use their permit onboard a vessel that is identified on an ADF&G logbook assigned to the person holding the permit. The advantage to this enforcement method is that additional reporting requirements imposed on the charter fleet are minimal and enforcement authorities could determine if a

business exceeded its use cap. This measure would not increase NOAA OLE's ability to determine if private leasing arrangements occurred between the permit holder and the person using the permit to guide charter clients. However, the logbook information would allow enforcement to "flag" businesses that exceeded the use cap or were used on a vessel not corresponding to the business holding the moratorium permit.

Current ADF&G regulations require that every charter vessel from which guided trips are being conducted must have a logbook onboard and be an ADF&G licensed sport fish business. The logbook effectively links a vessel with the ADF&G business operating a charter vessel and is typically unique to each vessel. A business can obtain a logbook for any vessel it may use to conduct guided trips during any point in the season. Thus, at the beginning of a fishing season, a business could obtain a logbook for each vessel it intends to use. For example, a business that generally uses a single vessel, but has a second spare vessel used only occasionally, could obtain a logbook for the spare vessel at the start of the season. In this example, the logbook for the spare vessel would also be registered to the ADF&G business that was holding the moratorium permit. In some situations, a single vessel is used by two businesses. In these situations, each business would need to have a unique logbook linked to the vessel to allow identification of the business holding a moratorium permit. The 2006 logbook provides this linkage for each trip fished.

In summary, the "no leasing" provision is very difficult to enforce on the charter fishery, and its purpose in the context of the traditional industry structure that characterizes halibut charters in Alaska. The Council's preferred alternative continues to include a prohibition on leasing, and includes provisions that are intended to discourage leasing."

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"Leasing of permits (annual) would not be allowed.161

Leasing of permits is generally discouraged in fisheries under Council authority. Prohibitions on leasing stem from a desire to keep persons from holding permits for the sole purpose of generating income from the active participants. Because of the nature of charter fishing businesses (e.g., an operator may run multiple boats, perhaps out of different ports, targeting different species) the traditional reasons for the Council's objections to "leasing", per se, may not readily apply. For example, the "owner-on-board" rationale for restricting leasing in traditional commercial fisheries is inconsistent with the charter business model of many operations active in Alaska.

Furthermore, tracking whether halibut charter limited access permits are being leased may be exceedingly difficult and costly. In many cases, a charter business must hire a captain(s) to take anglers fishing. Contracts with captains are private business arrangements that can be extended within a year, or over a number of years, and may be terminated at any time. The hired captain may or may not own the vessel used to take anglers fishing. If the captain owns the vessel, and the permit holder hires him to take anglers fishing, distinguishing this operation from a lease arrangement may not be possible.

These business arrangements may make it difficult to determine with certainty whether permits are being leased to a captain for a year or if the captain is working as an employee of the owner. Given the structure of business arrangements within the halibut charter industry, enforcing a prohibition on permit leases may be difficult, without additional intrusive and potentially burdensome requirements.

The proposed rule does not have a prohibition against leasing, although the Council recommended one. The proposed rule does not contain a comprehensive prohibition on leasing, because such a prohibition would not lead to a permit holder being on board the vessel or having any direct physical interaction with the clients, while they are actively participating in any given charter cruise. Under the proposed rule, a permit holder would not have to own a vessel or operate a vessel. A permit holder could legitimately allow a vessel operator to use the permit holder's permit as authority for the vessel operator to take anglers out charter halibut fishing, even though the permit holder does not own or operate the vessel and has nothing directly to do with the charter vessel fishing operation. The vessel operator may pay the

permit holder for the right to use the permit or the permit holder may pay the vessel operator to take out anglers organized by the permit holder. As noted, the charter industry has a variety of business models and the way some of these business models function is substantially similar to a lease between the permit holder and the vessel operator.

Further, as noted, it would be difficult to enforce a prohibition on leasing. NMFS would have to collect additional information attendant to a transfer. Simply prohibiting a transfer called “a lease” would result in the prohibition being enforced only against legally unsophisticated persons who did not draft their document to avoid such a term. For NMFS to examine the substance of any transaction would be difficult, time-consuming, and could undermine the principle that the permits are relatively freely transferable.

In light of this difficulty, the Council recommended three specific measures to discourage leasing:

- Prohibit the charter halibut permit from being used on board a vessel, unless that vessel is identified in an ADF&G Saltwater Charter Logbook;
- Require that a charter vessel operator have on board the vessel an ADF&G Saltwater Charter Logbook issued in the name of the charter halibut permit holder; and
- Require the authorizing charter halibut permit number to be recorded in the ADF&G Saltwater Charter Logbook for each trip.

This action proposes all of these Council recommendations as part of the requirement to have the Saltwater Charter Logbook on board. The requirement to identify the vessel in the logbook is intended to be consistent with an existing State of Alaska requirement that a charter vessel operator have on board the vessel an ADF&G Saltwater Charter Logbook. This logbook must be specific to the vessel on which it is used.”

“2.6.4.3 Leasing

As stated previously, enforcement of a prohibition on leasing is very difficult for NOAA OLE and GC to investigate and prosecute. There are two primary issues that complicate enforcement: (1) often it is not possible for enforcement to obtain private business contracts that are not submitted to NMFS; and (2) even when business contracts are submitted to NMFS, it is not always possible for NMFS and enforcement to determine that the business arrangement described in the contract is a lease. The first issue cannot be avoided under Alternative 2, because of the myriad small business arrangements that may be arranged by a permit holder. NOAA OLE does not have the capability to enforce private business arrangements outside of agency processes, such as requiring transfers and associated contractual documentation through NMFS. Even if NMFS receives contractual documentation during a transfer, the term “lease” is very difficult to define and contracts can be constructed in such a way that they obfuscate lease arrangements by avoiding key terms that may trigger suspicion by enforcement authorities. Thus, attempting to enforce a prohibition on leasing requires substantial staff resources to investigate and prosecute cases. Additionally, many situations would likely not contain the level of documentation necessary to prosecute a case. Given the inherent historic structure of the charter sector and the enforcement complexities referenced above, a prohibition on leasing permits in the Alaska halibut charter industry may not be justified on efficiency and/or cost-benefit grounds.”