

SCOMM

147:31

Alaska State Legislature

Session: (Jan-May)
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John Harris **Speaker of the House** **SPONSOR STATEMENT**

HOUSE BILL 186

"An Act relating to sharing with certain federal agencies records required of sport fishing guides."

House Bill 186 makes minor amendments to Alaska statutes to address a gap in current law.

The Alaska Department of Fish and Game cannot share logbook information from charter fishermen with the National Marine Fisheries Service (NMFS) or the National Oceanic and Atmospheric Administration (NOAA). This is resulting in management inefficiencies and increased costs and enforcement difficulties. To correct this, HB 186 would allow ADF&G to share confidential charter logbook information with these federal agencies. Shared information would remain confidential. The data released to these federal agencies would still not be able to be released to the general public.

The bill would make two minor amendments to AS 16.05.815, which provides confidentiality to certain reports and records required by ADF&G concerning landings of fish, shellfish or fishery products of fishermen, buyers and processors. Among the records that are confidential under this statute are records required of sport fishing under AS 16.40.280 and 5 AAC 75.076. These are logbooks kept by charter fishing guides recording daily fishing activities, including effort and catch information. The current statute provides for a number of exceptions allowing these reports and records to be released to specified entities for limited purposes; the amendments proposed by HB 186 add exceptions allowing records of sport fishing guides to the National Marine Fisheries Service (NMFS) and NOAA.

In addition to existing exceptions, this bill will authorize the limited release of records required of sport fishing guides for two other purposes. Records from guides, including logbooks, could be shared with the International Pacific Halibut Commission, and for enforcement purposes, with law enforcement personnel of NMFS and NOAA. These records can already be shared with NMFS and the North Pacific Fishery Management Council (NPFMC) for the purpose of fishery management planning, so the proposed bill expands the list of uses for the data.

Having the logbook data on halibut catches will allow the NPFMC more effectively to manage the federal halibut fisheries in the waters off Alaska's coasts. In recent years, the Council has wrestled with difficult and controversial decisions about the management of these fish, which are highly prized both by commercial and sport fishermen in Alaska. The availability of logbook records will give federal fisheries managers the information they need to better meet harvest goals and balance the requirements of all user groups. It will also eliminate the need to adopt a federal reporting program, easing reporting requirements on Alaskan guides.

Sec. 16.05.815. Confidential nature of certain reports and records.

(a) Except as provided in (b) and (c) of this section, records required by regulations of the department concerning the landings of fish, shellfish, or fishery products, and annual statistical reports of fishermen, buyers, and processors required by regulation of the department are confidential and may not be released by the department or by the Alaska Commercial Fisheries Entry Commission except as set out in this subsection. The department may release the records and reports set out in this subsection to the Alaska Commercial Fisheries Entry Commission. The department and the Alaska Commercial Fisheries Entry Commission may release the records and reports set out in this subsection to the recipients identified in this subsection if the recipient, other than a recipient under (5) - (9) of this subsection, agrees to maintain the confidentiality of the records and reports. The department and the Alaska Commercial Fisheries Entry Commission may release

(1) any of the records and reports to the National Marine Fisheries Service and the professional staff of the North Pacific Fishery Management Council as required for preparation and implementation of the fishery management plans of the North Pacific Fishery Management Council within the exclusive economic zone;

(2) any of the records and reports to the professional staff of the Pacific States Marine Fisheries Commission who are employed in the Alaska Fisheries Information Network project for the purpose of exchanging information with users authorized by the department;

(3) any of the records and reports to the Department of Revenue to assist the department in carrying out its statutory responsibilities;

(4) records or reports of the total value purchased by each buyer to a municipality that levies and collects a tax on fish, shellfish, or fishery products if the municipality requires records of the landings of fish, shellfish, or fishery products to be submitted to it for purposes of verification of taxes payable;

(5) such records and reports as necessary to be in conformity with a court order;

(6) on request, the report of a person to the person whose fishing activity is the subject of the report, or to a designee of the person whose fishing activity is the subject of the report;

(7) on request, annual statistical reports of a fisherman, buyer, or processor to the fisherman, buyer, or processor whose activity is the subject of the report, or to a designee of the fisherman, buyer, or processor whose activity is the subject of the report;

(8) any of the records and reports to the Department of Public Safety for law enforcement purposes;

(9) fish tickets, fish ticket information, and annual statistical reports of fishermen, buyers, and processors and information in those reports to the law enforcement personnel of the National Marine Fisheries Service and the National Oceanic and Atmospheric Administration for the purpose of enforcing fishery laws in waters of this state and in waters of the exclusive economic zone adjacent to this state;

(10) fish tickets and fish ticket information regarding halibut to the International Pacific Halibut Commission;

(11) any of the records and reports to the child support services agency created in AS 25.27.010, or the child support enforcement agency of another state, for child support purposes authorized under law; and

(12) any of the records and reports to the Department of Natural Resources to assist the department in carrying out its statutory responsibilities in regard to sport fishing operations and sport fishing guides within the Kenai River Special Management Area under AS 41.21.500 - 41.21.514.

(b) Except as provided in (c) of this section, records or reports received by the department which do not identify individual fishermen, buyers, or processors or the specific locations where fish have been taken are public information.

(c) Crab stock abundance survey information that reveals crab catch by sampling location is confidential and is not subject to inspection or copying under AS 40.25.110 - 40.25.120 until the close of the fishing season for which the survey was conducted.

(d) Except as otherwise provided in this section, the department shall keep confidential (1) personal information contained in fish and wildlife harvest and usage data; and (2) the records of the department that concern (A) telemetry radio frequencies of monitored species; (B) denning sites; (C) nest locations of raptors that require special attention; (D) the specific location of animal capture sites used for wildlife research or management; and (E) the specific location of fish and wildlife species. The department may release records and information that are kept confidential under this subsection if the release is necessary to comply with a court order, if the requestor is a state or federal agency, if the requestor is under contract with the state or federal agency to conduct research on a fish or wildlife population, or if the requestor has been authorized by the department to perform specific activities and agrees to use the records and information only for purposes as provided under a contract or agreement with the department. After 25 years, the records and information that are kept confidential under this subsection become public records subject to inspection and copying under AS 40.25.110 - 40.25.140 unless the department determines that the release of the records or information may be detrimental to the fish or wildlife population. In this subsection, "personal information" has the meaning given in AS 40.25.350

HOUSE BILL NO. 186

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIFTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE HARRIS BY REQUEST

Introduced: 3/12/07

Referred:

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to sharing with certain federal agencies records required of sport
2 fishing guides." *immediate eff date #1*

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 * **Section 1.** AS 16.05.815(a) is amended to read:

5 (a) Except as provided in (b) and (c) of this section, records required by
6 regulations of the department concerning the landings of fish, shellfish, or fishery
7 products, and annual statistical reports of fishermen, buyers, and processors required
8 by regulation of the department are confidential and may not be released by the
9 department or by the Alaska Commercial Fisheries Entry Commission except as set
10 out in this subsection. The department may release the records and reports set out in
11 this subsection to the Alaska Commercial Fisheries Entry Commission. The
12 department and the Alaska Commercial Fisheries Entry Commission may release the
13 records and reports set out in this subsection to the recipients identified in this
14 subsection if the recipient, other than a recipient under (5) - (9) of this subsection,

1 agrees to maintain the confidentiality of the records and reports. The department and
2 the Alaska Commercial Fisheries Entry Commission may release

3 (1) any of the records and reports to the National Marine Fisheries
4 Service and the professional staff of the North Pacific Fishery Management Council as
5 required for preparation and implementation of the fishery management plans of the
6 North Pacific Fishery Management Council within the exclusive economic zone;

7 (2) any of the records and reports to the professional staff of the
8 Pacific States Marine Fisheries Commission who are employed in the Alaska Fisheries
9 Information Network project for the purpose of exchanging information with users
10 authorized by the department;

11 (3) any of the records and reports to the Department of Revenue to
12 assist the department in carrying out its statutory responsibilities;

13 (4) records or reports of the total value purchased by each buyer to a
14 municipality that levies and collects a tax on fish, shellfish, or fishery products if the
15 municipality requires records of the landings of fish, shellfish, or fishery products to
16 be submitted to it for purposes of verification of taxes payable;

17 (5) such records and reports as necessary to be in conformity with a
18 court order;

19 (6) on request, the report of a person to the person whose fishing
20 activity is the subject of the report, or to a designee of the person whose fishing
21 activity is the subject of the report;

22 (7) on request, annual statistical reports of a fisherman, buyer, or
23 processor to the fisherman, buyer, or processor whose activity is the subject of the
24 report, or to a designee of the fisherman, buyer, or processor whose activity is the
25 subject of the report;

26 (8) any of the records and reports to the Department of Public Safety
27 for law enforcement purposes;

28 (9) fish tickets, fish ticket information, records required of sport
29 fishing guides, and annual statistical reports of fishermen, buyers, and processors and
30 information in those reports to the law enforcement personnel of the National Marine
31 Fisheries Service and the National Oceanic and Atmospheric Administration for the

1 purpose of enforcing fishery laws in waters of this state and in waters of the exclusive
2 economic zone adjacent to this state;

3 (10) fish tickets, ~~[AND] fish ticket information, and records required~~
4 of sport fishing guides regarding halibut to the International Pacific Halibut
5 Commission;

6 (11) any of the records and reports to the child support services agency
7 created in AS 25.27.010, or the child support enforcement agency of another state, for
8 child support purposes authorized under law; and

9 (12) any of the records and reports to the Department of Natural
10 Resources to assist the department in carrying out its statutory responsibilities in
11 regard to sport fishing operations and sport fishing guides within the Kenai River
12 Special Management Area under AS 41.21.500 - 41.21.514.

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number: HB186-DFG-SF-03-16-07
Bill Version: HB186
() Publish Date: _____

Revision Date/Time (Note if correction): _____

Dept. Affected: ADFG

Title: Sport Fishing Guide Records

RDU: Sport Fisheries

Component: Sport Fisheries

Sponsor: Representative(s) Harris and Thomas

Requester: House Resources Committee

Component No. 464

Expenditures/Revenues

(Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0
Other (Specify Type--Do not abbreviate)	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2007) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal: ☐

POSITIONS

Full-time	0	0	0	0	0	0
Part-time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

This bill allows the Department to share guide records with the NMFS and IPHC. These records are already entered into a database. Sharing the records will not result in increased costs.

Prepared by: Kelly Hepler, Director

Division: Sport Fisheries

Approved by: Tom Lawson, Director, Administrative Services

Agency: Fish & Game

Phone 267-2195

Date/Time 3/16/07 10:00 AM

Date 3/16/2007



UNITED FISHERMEN OF ALASKA

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March 20, 2007

Representative Paul Seaton, Chair
House Special Committee on Fisheries
Alaska State Legislature
State Capitol, Room 102
Juneau, AK 99801

Dear Representative Seaton, and Committee Members,

RE: Support for HB 186

United Fishermen of Alaska (UFA) supports HB 186 relating to sharing with certain federal agencies records required of sport fishing guides. This legislation fulfills commitments made by State of Alaska representatives at the North Pacific Fisheries Management Council (NPFMC) meeting. HB 186 simply allows the same data sharing of sport fishing guide records as currently occurs with commercial fishing data such as fish tickets, and licensing data etc., between ADFG and National Marine Fisheries Service, NOAA Enforcement and International Pacific Halibut Commission.

The timely passage of this legislation will allow the NPFMC the option of effective management measures for the 2008 guided halibut fishery that are less harmful to the charter industry but are as effective, such as annual limits. The NPFMC is scheduled to take final action on 2008 management measures for Southeast Alaska (2C) in June of 2007.

Sincerely,

Mark Vinsel
Executive Director

MEMBER ORGANIZATIONS

Alaska Crab Coalition • Alaska Dragger's Association • Alaska Independent Tendermen's Association • Alaska Longline Fishermen's Association
Alaska Shellfish Association • Alaska Trollers Association • Armstrong Keta • At-sea Processors Association • Bristol Bay Reserve
Concerned Area "M" Fishermen • Cook Inlet Aquaculture Association • Cordova District Fishermen United • Crab Group of Independent Harvesters
Douglas Island Pink and Chum • Fishing Vessel Owners Association • Groundfish Forum • Kenai Peninsula Fishermen's Association
Kodiak Regional Aquaculture Association • North Pacific Fisheries Association • Northern Southeast Regional Aquaculture Association
Old Harbor Fishermen's Association • Petersburg Vessel Owners Association • Prince William Sound Aquaculture Corporation
Purse Seine Vessel Owner Association • Seafood Producers Cooperative • Sitka Herring Association • Southeast Alaska Fisherman's Alliance
Southeast Alaska Regional Dive Fisheries Association • Southeast Alaska Seiners Association • Southern Southeast Regional Aquaculture Association
United Catcher Boats • United Cook Inlet Drift Association • United Salmon Association • United Southeast Alaska Gillnetters
Valdez Fisheries Development Association • Western Gulf of Alaska Fishermen

Southeast Alaska Fishermen's Alliance

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March 19, 2007

House Fisheries Committee
Representative Paul Seaton
Alaska State Legislature
State Capitol, Room 102
Juneau, AK 99801

RE: HB 186 - Support - Additional Information

Southeast Alaska Fishermen's Alliance supports HB 186 as per our public testimony on March 19th and through written testimony sent in. We would like to provide this additional information for your consideration.

After attending the first hearing on HB 186 we thought the following information from the NPFMC draft Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis for a Regulatory Amendment to Implement Guideline Harvest Level Measure in the Halibut Charter Fisheries in IPHC Regulatory Area 2C would prove educational.

As we stated at the hearing the NPFMC will be reviewing the above analysis at their March 28th meeting with final action tentatively scheduled at this time for June 2007 and for the management measures to be in place for the 2008 season.

This data sharing will also make the implementation of the moratorium simpler for all agencies involved and the individual charter operators.

SEAFa very much appreciates the amendment made to HB 186 that provides for an immediate effective date.

Thank you for your time and consideration of this simple but important legislation and for its timely passage.

Sincerely,

Kathy Hansen
Executive Director

compliance. The State could further support this by requiring those businesses selling sportfishing licenses to do the same.

b. The recreational charter fishery is highly competitive. While there are some operations in isolated locations, many boats tie up and operate in close proximity to other charter. It is reasonable to expect that those operators who are following the rules would be quick to notice another operator who wasn't following the rules.¹³

c. Charter operators are required to have a current Coast Guard license to operate. One of the conditions of the license requires the operator to comply with all Federal regulations. Charter operators potentially risk losing their Coast Guard license if they violate Federal fisheries regulations. It is reasonable to conclude that because of the nature of the Coast Guard license, inferring a trust and responsibility to the licensee, as well as the double jeopardy implications, charter operators would likely have a higher rate of compliance with GHL options than might otherwise be expected.

Additionally, note that ADF&G currently regulates the recreational harvest of king salmon, rainbow trout, salmon sharks, and other species in certain areas by requiring anglers to record harvests of these species on the back of their fishing licenses immediately upon harvest. This system or a system involving charter stamps could be used to regulate annual harvest limits in Area 2C.

These factors, along with the current system of opportunistic enforcement, may provide a level of compliance sufficient to ensure the GHL options have the desired effect in controlling the fishery.

In addition to the discussion above, NOAA Fisheries provided the following discussion of enforcement issues.

2.7.12 NOAA Fisheries Discussion of Enforcement and Reporting Requirements

Enforcement and reporting requirements

Use of state recordkeeping and reporting tools

State recordkeeping and reporting requirements meet federal information requirements for option 1 and 3. Current state statute and administration policy prevents NOAA OLE from accessing SCVL or angler license information. Federal access to these sources of information would require the following regulatory and administrative changes:

- (1) The State of Alaska legislature would need to amend the State confidentiality statute to allow NOAA OLE and NMFS access to confidential angler and operator information. Without this information, NOAA OLE cannot seize angler license information and logbooks for inspection and evidence, enter logbook and license data in Federal court, or perform post season audits of data to pursue violators (Table 69). NMFS would also need access to angler and charter operator registration and logbook information to provide the necessary program support (e.g., database management). A memorandum of understanding between the State, NOAA OLE, and NMFS would also likely be needed to allow data sharing.

¹³ Charter operators cannot offer a "trip with higher bag or rod limits," as suggested in this excerpt. Those limits are set in regulation and operators would not advertise illegal activity.

- (2) NOAA OLE would need to be deputized by the State of Alaska Commission of Public Safety. NOAA OLE needs the authority to inspect logbooks, angler licenses, or catch cards (Table 69). Without this authority, anglers and charter operators are not obligated to show their license information to a Federal enforcement officer.

Table 69. Summary of NOAA OLE enforcement actions and their applicable State laws.

Enforcement Method	Enforcement Action	Current Federal Authority	State law prohibiting Enforcement Action
At-sea and dockside inspection	Inspect State sport fishing license, or Permanent Identification Card	None	State confidentiality/ NOAA OLE not deputized by State
	Inspect State charter logbooks	None	State confidentiality/ NOAA OLE not deputized by State
	Seize license or logbook as evidence	None	State confidentiality
	Enter licenses or logbooks into Federal court	None	State confidentiality
End of season audit of logbooks	Review logbooks (electronic databases) maintained by the State	None	State confidentiality

Note that implementation of the halibut charter moratorium program will require NMFS RAM Division, NOAA Enforcement, and the Appeals Division to have access to state logbook and business information. The preferred approach to obtaining access to these data is explicit authorization in state statute to allow logbook and business data to be transferred from the State of Alaska to NOAA. ADF&G staff have conveyed that language accomplishing this need has been submitted to the Governor's office and is intended to be reviewed by the legislature during the 2007 session. If these changes do not meet Federal recordkeeping and reporting requirements, or state recordkeeping and reporting tools do not meet Federal enforcement needs, then Federal recordkeeping and reporting tools would be required.

Trip limit (Option 1)

The trip limit described in Alternative 2, Option 1 would require NOAA OLE to determine the number of trips taken by a charter vessel for a given day. The regulation for a trip limit would indicate that a charter halibut trip begins on a charter fishing vessel when a halibut is harvested and ends (1) when any halibut is offloaded from that vessel; (2) when any person that was present on that vessel when a halibut was harvested disembarks; or (3) at 23:59 hours, whichever comes first. This language indicated that a trip is focused on the harvesting of halibut and does not include trips where halibut harvest did not occur or clients were being transported between sites. This definition would require NOAA OLE to have onboard documentation of angler-specific trip and harvest information that is linked to the day a trip started and ended. The language used in the final rule would likely be different from the proposed language, but would contain all the important elements in the proposed language, including a trip linked to each day fished and client/halibut offloading being a termination point for a trip.

The ADF&G logbook currently collects this information and is specific to the both the trip and day fished. To provide onsite enforcement of the regulation, NOAA OLE would need the date when the trip started, the date when the trip ended, and information that would identify clients who harvested halibut. The State 2007 logbook will indicate the day a fishing trip occurred. This would provide NOAA OLE with information about the date the trip started, including the number of trips that occurred on a given day, and the date the trip ended. An operator could cheat on the logbook by recording two trips under a single trip; however, the client limit in area 2C would require the total number of clients on any single trip to not exceed six. If six people were recorded in the logbook and not onboard the vessel when checked by

NOAA OLE, the operator would be in violation. Recording multiple trips under the auspices of a single trip would also be detrimental to the logbook information collected by ADF&G.

If the State logbook meets Federal recordkeeping and reporting requirements, additional reporting requirements associated with this regulation would be minimal. Section 2.1 discusses the legal requirements for NOAA OLE to use the State logbook. If the State logbook cannot be used by NOAA OLE or does not meet enforcement needs, a Federal logbook program would be required. A Federal logbook program would require operators/business owners to register with NMFS, obtain a logbook, and meet the reporting requirements. The type of information required annually under a Federal logbook program includes operator contact information, guide contact information, client harvest information, port of offloading, start/stop date for a trip, and vessel identification. A Federal logbook would substantially increase the reporting burden on charter operators because they would be required to meet State and Federal recordkeeping and reporting requirements. Moreover, the types of information recorded in each logbook would largely be duplicative.

Prohibition of retention by skipper or crew (Option 2)

An option to prohibit the retention of halibut by skipper and crew was promulgated by ADF&G in area 2C for 2006 (Emergency Order, EO, # 1-R-01-0631) and areas 3A and 2C for 2007 (EO # 2-R-03-02-07 and 1-R-02-07, respectively). These EO regulations apply to the charter fishery (including species other than halibut) and are enforced by the State of Alaska Department of Public Safety. A Federal regulation prohibiting the retention of halibut by skipper and crew would require NOAA OLE to enforce the regulation.

Enforcement of a regulation prohibiting skipper and crew retention would require enforcement to observation skipper or crew harvest at sea or a vessel returning to the dock with the number of harvested halibut exceeding the collective bag limit for clients. The logbook records skipper and crew harvest; however, obviously skipper and crew would generally not record an illegally harvested halibut. Thus, the logbook would facilitate NOAA OLE's ability to issue a citation only if the number of harvested halibut exceeded the number of anglers that are not skipper or crew. This would not eliminate the ability of anglers to avoid this regulation by designating a person that would otherwise be a skipper or crew as an angler. NOAA OLE could identify guides using their ADF&G guide license (assuming the conditions in Section 2.0 are met); however, crew are not required to be licensed by the State or Federal government and thus do not have any identification information indicating they are crew. Enforcement of this regulation would improve commensurate with increased enforcement staffing levels.

According to ADF&G logbook data from 1999 through 2001, harvests by crew members accounted for between 3.3 percent and 4.5 percent of the annual halibut harvest in Area 2C. ADF&G estimates from November 2006 concluded that the May 24, 2006 Emergency Order that banned skipper and crew harvest of halibut while paying clients were on the vessel saved approximately 86,000 pounds. This estimate results in an approximate harvest reduction of 4 percent using the 2006 SWHS information. Thus, a reduction in catch within that range of the ADF&G estimate for 1999-2000 was realized. This suggests compliance with the skipper and crew reduction is currently occurring in the fishery.

Annual Limit (Option 3)

The annual limit would substantially increase Federal enforcement and administrative costs in Area 2C. In 2006, approximately 87,700 charter clients, distributed over 681 charter vessels, fished from a charter vessel in Area 2C (ADF&G 2006). ADF&G estimates that approximately 7 percent of these clients harvested six or more halibut and approximately 10 percent of the clients harvested five or more halibut.

Given the 2-fish daily bag limit described in status quo, anglers harvesting more than four fish would have fished for at least three days.

Regulations for the proposed annual limit would be directed at anglers fishing for halibut and charter operators offering guided halibut services in Area 2C. The annual limit would apply to anglers paying for charter services to fish for halibut. However, under this interpretation of the annual limit, crew and skipper could continue to harvest halibut and give those halibut to the anglers. The regulation could be promulgated to enforce the annual limit on charter anglers fishing from a vessel in which at least one angler on-board the vessel hired a guide to offer halibut fishing services. Without the inclusion or ban on skipper and crew harvest, this option would allow skipper and crew to retain their bag limit of halibut and give those halibut to clients as a gift.

Enforcement of lodges and multi-day fishing charters presents a unique set of logistical issues for NOAA OLE. Lodges may have a single charter vessel or a group of charter vessels operating in remote areas that are only accessible by airplane or boat. These remote fishing operations increase the enforcement costs for several reasons: (1) travel time to and from the enforcement area is increased; (2) enforcement activities may require several days to adequately cover an area; and (3) angler patterns such as fishing locations, the timing for the departure and arrival of new clients, and daily fishing schedule are poorly understood. It is important that NOAA OLE has adequate staff and enforcement tools to overcome these issues to ensure the annual limit is perceived as credible (i.e., they may get caught if in violation) by anglers.

The credibility of an enforcement effort depends on several factors, including the likelihood of detecting a violation, the swiftness of the enforcement response, and the perception that enforcement actions are real (Iannuzzi 2002). Moreover, deterrence-based enforcement is most successful when a well developed compliance program is designed to identify and correct violations, establish an enforcement presence, collect evidence needed to support enforcement actions, and help target enforcement activities (Rechtschaffen and Markell 2003). In the case of the charter fishery, detection of a violation for the annual limit would be heavily reliant on reporting requirements for charter anglers and operators, and the ability of enforcement to enforce regulations in remote areas. Without sufficient documentation of a violation, cases will not be prosecuted, which may reduce the credibility and effectiveness of the regulation.

These issues were addressed in a June 2006 NOAA OLE memo and during a meeting between NOAA Fisheries, Council Staff, NOAA OLE, ADF&G, and NOAA General Counsel. In the memo and at the meeting, NOAA OLE indicated the following criteria must be met for the annual limit to be enforceable:

- NOAA OLE would need the ability to check for compliance at sea, dockside, and through a post-season audit of angler catch. To meet these needs, a harvest record indicating the number of halibut harvested would be needed for each angler, as well as a vessel-specific record of each angler's catch (serially matched to an angler's catch card) that would be submitted to NOAA OLE on a regular basis throughout the fishing season. A vessel-specific record would be needed to track the charter operators involved with violations. The angler harvest record would be used during dock-side or at-sea enforcement and to provide a record of angler-specific halibut harvest for the charter guide.
- Use of State recordkeeping and reporting tools would require NOAA OLE to obtain the necessary authority to inspect State recordkeeping tools (i.e., charter logbook and sport fishing license). Because of State statutory law, the Federal government cannot obtain charter logbook or angler license information at the resolution necessary for enforcement. Moreover, NOAA OLE is not

authorized by the State to enforce State regulations, and thus cannot require an angler to show his or her license to an enforcement agent.

- NOAA OLE would need the ability to audit charter logbooks at the end of a charter fishing season. This audit would reveal anglers that exceeded the 5-fish annual limit, including anglers who fished on multiple charter vessels.

A detailed discussion paper about the annual limit was presented to the Council at its October 2006 meeting (NMFS 2006). The paper provides a detailed discussion on the types of recordkeeping and reporting tools that could be used and their associated costs.

Type of information required by NOAA OLE

To enforce the annual limit, NOAA OLE would need harvest information for each charter angler, angler contact information, charter guide contact information, and vessel identification information. NOAA OLE would need to know the number of halibut harvested for each charter angler and each charter trip taken by an angler. This would require NOAA OLE to determine the halibut harvested for each angler, the charter operator (guide and business), the number of halibut harvested by each angler, angler contact information, port of landing, and vessel identification number (USCG or Department of Motor Vehicle Registration). The ADF&G sportfish license currently requires an angler's up-to-date information on catches of species that are managed under annual limits. As stated in the GHF proposed rule (2002 FR 3867), adequate monitoring of the annual limit would require that halibut harvested aboard guided recreational vessels be added to this list. The proposed rule also explains that adequate recordkeeping and reporting requirements are imperative to the rule enforceability and, hence, the success of the harvest option.

There are several approaches that could be used to implement an annual limit and satisfy NOAA OLE enforcement requirements. In summary, the recordkeeping and reporting alternatives in the discussion paper are as follows:

- Federal use of the State reporting tools: NMFS and NOAA OLE would work with the State and use the State charter logbook and angler licensing system to meet enforcement requirements.
- Federal recordkeeping and reporting tools: NMFS and NOAA OLE would develop and implement a Federal logbook and angler catch record to meet enforcement requirements. Two methods could be used to implement a Federal logbook:
 - Written logbook: A written logbook similar to the current ADF&G charter logbook would be submitted to NMFS by charter operators. Anglers would use a written catch record.
 - Electronic logbook. Logbook information would be electronically reported to NMFS and NOAA OLE. Anglers would use a written angler catch record.

The discussion paper concludes the most cost-effective and least burdensome method for the public and the least expensive method for NMFS would be to utilize the State logbook and angler license or catch cards. This conclusion was presented to the Council at its December 2006 meeting. For this reason, only the costs associated with using State reporting tools are discussed in the following sections.

Cost estimate for using State reporting tools

Federal use of the State logbook and angler licenses would require additional staff time. Federal staff would be required to coordinate with ADF&G and respond to agency needs. A part time NMFS or NOAA OLE staff person would be required to process and query operator, business, and angler information. This person would also provide assistance to NOAA OLE with the collection of evidence, administrative correspondence, preparation of cases, and maintenance of the database by working closely with NMFS programmers and ADF&G staff as needed. The expected annual cost for a GS-9 part time NMFS staff person is approximately \$50,000.

Programmer time would also be required to build and maintain a secure Federal database. Periodic data transfers would be the simplest database format, with programmer time required to construct and maintain the Federal database and workstation structure. Construction and maintenance of this database would likely be minimal, requiring one to two weeks of programmer time annually. The estimated cost for NMFS programmer time is \$2,500 to \$5,000, annually.

Federal use of State charter and angler recordkeeping and reporting tools would require ADF&G administrative support. To meet Federal data needs, ADF&G would need to provide adequate staff time to query charter operator and angler information, package this information, and send it to NMFS annually. ADF&G staff time would also be required to coordinate with the NMFS and NOAA OLE to develop a transfer methodology (including security concerns) and provide ongoing support to NMFS staff. Moreover, additional ADF&G staff time may be required to respond to NOAA OLE request for scanned logbook pages and angler license information before the information is transferred to a NMFS database. ADF&G would need to respond to requests for scanned logbook pages on a case by case basis.

A secure Internet portal may reduce NMFS programmer time. An Internet portal would allow designated NMFS and NOAA OLE employees to log on to an ADF&G site or sites to access charter logbook and angler data. This option would result in ADF&G incurring programmer costs associated with implementing the portal and necessary query structure. The extent of these costs is largely unknown because the data query and programming structure have yet to be determined. The Internet portal would also likely require a high level of coordination between the agencies and would be more programmer intensive than a periodic data transfer.

If the previously discussed legal and administrative issues are resolved, NMFS and NOAA OLE could use the information from the SCVL, guide and business registration, and angler license database to identify and pursue cases. Once a violation was identified, NOAA OLE would use the serialized angler license number to obtain information (including PID and DVL information) about the individual angler from the ADF&G license database, and the logbook to identify the charter operator and vessel (including the registered business). Anglers and charter operators would be contacted about their violation, and enforcement would take appropriate action.

Federal regulations implementing the annual limit would describe the type of information a charter operator and client are required to record. The State logbook and angler sport fishing license would be used to fulfill these information needs as outlined in Federal regulation. However, Federal regulations cannot only refer to the completion of the State logbook and angler license as fulfilling Federal reporting requirements. Regulations must describe the type of information to be recorded in the State logbook and indicate the State logbook could be used to meet these information needs. For example, in the commercial fishery, regulations at 50 CFR 697.5 describe information that is to be reported for the commercial fishery.

The State may change its logbook and angler license requirements at any point in time, including a change to the information requirements for charter operators and anglers. These changes may result in

State reporting tools not meeting the information requirements for enforcing the annual limit. Moreover, changes to State law may also prevent NOAA OLE from accessing information essential to enforcement or change the authority granted to NOAA OLE to enforce the annual limit. In either situation, NOAA OLE would not be able to enforce the annual limit using State reporting tools and a Federal logbook program would be necessary.

Minimum size (Options 5 and 8)

Alternative 2, Option 5, would require one halibut to be at least 45, 50, 55, or 60 inches in length as option from the head to tail or under Option 8, both halibut would need to be 32 inches or greater as option from head to tail. Enforcement of this type of regulation would require on-the-water or dockside option of harvested halibut. This management option would not require any additional reporting requirements for charter operators or charter anglers. However, Option 5 would require operators to position fish greater than 43 lb, 60 lb, 82 lb, or under 109 lb in such a way that they could be option. This means that operators would be required to bring their halibut to the side of the vessel or onboard the vessel for measurement. The capture, measuring, and release of large species is not unprecedented in federally and state managed recreational fisheries. For example, certain shark and marlin species on the Atlantic Coast have minimum size requirements that are comparable to the release sizes considered under Option 5. The 2006 Atlantic shark regulations require a 54 inch minimum length limit applied to the allowable harvest of one shark per vessel per day (including mako and porbeagle) and a 99 inch limit minimum size limit on blue marlin. Moreover, in southeast Alaska, charter anglers are required to option Chinook salmon and Lingcod.

Closure dates and one-fish bag limit (Option 4, 6, 7)

The enforcement of closure dates and a one-fish bag limit both require on-the-water or dockside enforcement and both require an enforcement officer to observe a person with an illegal halibut. This would require regular visits by enforcement officers to areas where halibut are landed. These areas include remote areas such as lodges and urbanized areas such as Auke Bay or Sitka. In the case of a closure, enforcement officers would need to check offloading sites throughout the closure period and board vessels to determine the presence of illegally harvested halibut. A one-fish bag limit would require enforcement officer to spot check charter anglers at the dock and inspect vessels to insure all fish are counted. These regulator options would not require additional recordkeeping and reporting than already occurs under the status quo.

Enforcement costs

With the exception of the annual limit (Option 3), NOAA OLE does not have a cost estimate for enforcement of the options described under Alternative 2. It is difficult to derive a cost estimate for these options because of the large number of vessels and anglers distributed over a large, remote geographical area. Enforcement costs would vary with the desired level of enforcement. Under the status quo, enforcement does not have the resources required to provide a credible level of enforcement for the options under Alternative 2. For example, in 2006 NOAA OLE reported boarding only 14 charter trips (out of 20,000 trips); whereas in the IFQ fisher for halibut and sablefish, NOAA OLE inspected 146 trips (out of 7,500 trips). Greater compliance with the proposed action would be obtained if enforcement resources were increased to a level similar to the annual limit. This magnitude of increase would require an additional \$600,000 in enforcement funds which would fund four enforcement officers. This funding increase would allow enforcement officers to inspect a greater proportion of the trips taken annually by charter operators in area 2C.

In addition to an increase in enforcement presence, certain attributes associated with the charter industry may increase compliance with regulations. In a summary of a discussion between representatives from NOAA Fisheries, ADF&G, Alaska Department of Public Safety, and the United States Coast Guard (USCG), several attributes were identified that could increase compliance in the charter fishery (Council 2006):

...there are characteristics of the recreational fishery that suggest a different and lesser level of enforcement may be needed to ensure an adequate level of compliance with the program. Several characteristics of the fishery differentiate it from other fisheries and work to the advantage of regulators.

- a) The recreational charter fishery operates in the public eye. Requiring operators to prominently post GHJ control options... onboard charter vessels would help promote compliance. The State could further support by requiring those businesses selling sport fishing licenses to do the same.*
- b) The recreational charter fishery is highly competitive. While there are some operations in isolated locations, many boats tie up and operate in close proximity to other charters. It is reasonable to expect that those operators who are following the rules would be quick to notice another operator who wasn't following the rules.*
- c) ...because of the nature of Coast Guard license requirements, inferring a trust and responsibility to the licensee, as well as the double jeopardy implications, charter operators would likely have a higher rate of compliance with GHJ options than might otherwise be expected.*

These points are useful for augmenting enforcement efforts, but all may in part rely on the enforcement effort being perceived as credible by charter operators and the angling public. It is unlikely that point (a) could be mandated due to the additional enforcement required to insure posting occurred on all charter boats, and the logistical and enforcement complexity of insuring vendors post the regulation. However, anglers could be made aware of the regulation by posting the information at port of landing, news releases, websites, and on catch/harvest cards. Point (b) would likely be most effective in areas with multiple charter vessel operators from different lodges in close proximity, or clients with knowledge of the regulation to pressure a guide to comply. Some clients would be operating from remote lodges where few, if any, neighboring lodges exist. Thus, multi-day charters and isolated lodges violating a regulation would likely be unaffected by peer pressure unless clients were aware of the regulation and NOAA OLE was able to detect violations. Finally, point (c) would rely on a charter operator's evaluation of the risk and cost of being caught in violation against potential rewards (e.g., happy client) and a desire to follow regulations. Given the potential sanction associated with being caught and the desire by some guides to inherently follow regulations, many guides/operators would likely not risk the penalty from an infraction or want to break the law.

Charter operator responsibilities

Charter operators (guides) may be held responsible by NOAA OLE if charter anglers exceed their annual halibut limit. Enforcement action may be taken on a charter guide and charter angler if the annual limit is exceeded. The nature of the violation and the final regulations would determine how the enforcement action is carried out. The Halibut Act provides for enforcement action on a charter guide at 773(i)(c) who has charter anglers in violation of the halibut regulations:

If any officer authorized to enforce this subchapter (as provided for in this section) finds that a fishing vessel is operating or has been operated in the commission of an act prohibited by section 773g of this title, such officer may, in accordance with regulations issued jointly by the Secretary and the Secretary of the department in which the Coast Guard is operating, issue a citation to the owner or operator of such vessel...

The International Halibut Commission (IPHC) regulations specify the regulation at Section 25(18):

The operator of a charter vessel shall be liable for any violations of these regulations committed by a passenger aboard said vessel.

The definition of an operator is specific at Section 3(1)(m):

"Operator", with respect to any vessel, means the owner and/or master or other individual on board and in charge of that vessel.

In addition to the IPHC regulations, the USCG also has the authority to revoke operating licenses if a charter operator fails to comply with all Federal regulations. Thus, violation of the GHL regulation would constitute a violation of Federal regulation, which may result in enforcement action by the USCG.

NOAA OLE would have the authority to take enforcement action on the charter angler or operator depending on the infraction. Charter operators would be solely responsible for charter logbook recordkeeping and reporting requirements, as well as requirements associated with the distribution of angler catch cards. The situation associated with the violation would determine the action taken by NOAA OLE. A detailed discussion about recordkeeping and reporting tools is found in Section 2.0.

2.7.13 Effects on Net Benefits to the Nation

The net benefits to the nation arising out of the action options can accrue from several sources. First, the action options should initially reverse and then slow the open-ended reallocation between commercial and guided sport sectors. This reversal should instill commercial quota holders with greater confidence in the value of their quotas, which will in turn support the market for quota shares and encourage appropriate investment and capitalization in the commercial sector. Further, the reallocation of halibut harvest amounts back to the commercial sector may affect the benefits realized by U.S. consumers through changes in product availability and price. This section summarizes the different effects of the options to allow comparison and conclusions concerning the overall effects of the options on net benefits to the nation.

No Action/Status Quo

If the current management of charter halibut harvests in Area 2C continues, the net benefits to the nation are likely to follow their current trend. The open-ended reallocation to the guided sport sector from the commercial sector will continue and likely grow as guided sport sector harvest has grown in recent years. This reallocation will increase uncertainty for commercial quota holders and could affect benefits realized by U.S. consumers through changes in product availability and price.

For prior analyses the SSC requested that the discussion of the no-action alternative be expanded to include estimates of consumer losses due to reductions in the commercial TAC if charter-based sport fishing overages continued. The analysis combined the overage estimates derived for the ex-vessel revenue losses analysis with a consumer surplus and total revenue model from Herrmann and Criddle

From: Kimberly Tebrugge [ktebrugge@hotmail.com]
Sent: Thursday, March 15, 2007 4:33 PM
To: Kimberly Tebrugge
Subject: HOUSE BILL NO. 186
Attachments: oledata.mso; image001.wmz; image002.pcz; image003.png; image005.gif; image001.wmz; image002.pcz



March 15, 2007

Dear Legislator,

The members of the Halibut Charter Coalition of Alaska request your support in moving the ADF&G Data Sharing bill forward.

As you know, the bill would allow ADF&G's Halibut Charter Log Book catch data, and other reports required of sportsfish guides, to be shared with federal agencies like NOAA and the North Pacific Fisheries Management Council (NPFMC), in order to allow them to more accurately manage the fishery.

The Halibut Charter Fleet, composed of approximately 835 charter businesses (1266 Vessels) in 2006, is currently regulated by nothing more than a "soft cap," or a Guideline Harvest Level (GHL), that has been exceeded in each of the last three years in South East, South Central or both.

Needless to say, there are many decisions currently being discussed to find a temporary solution to this overharvest. The HCCA upholds the need to wisely manage the halibut resource for the future; many of our seasoned members have seen the mismanagement of fisheries in the past and recognize in those scenarios, everyone loses. However, we advocate that a long-term, permanent solution, and any necessary interim solutions, be based on the most accurate data and facts available.

We hope you will provide the opportunity for decision-makers to have access to this already-collected data by providing wider access to existing ADF&G reports required of sportsfish guides. Data sharing with the State is necessary to the development of a correct permanent solution which allows growth for charters and continued tourism opportunities.

This matter is urgent. On March 28, the NPFMC plans to decide final action on the analysis of the charter halibut moratorium as one step toward a permanent solution. Without access to the already-gathered data, NPFMC will have no choice but to design management without accurate data.

The Halibut Charter Coalition of Alaska (HCCA) is a charter industry organization devoted to uniting Alaskan charter operators and business owners committed to the stable, long-term management of halibut as a vital part of Alaska's economy.

3/15/2007

tourism industry. Our primary goals include 1) advocating for proper long-term management of the halibut resource 2) educating the public, decision-makers and industry members on the halibut resource issues impacting the chart industry and Alaskan tourism. Our members are long-time, invested participants in the halibut charter industry with representative from all of the 10 major charter operating areas in Southeast and South Central Alaska (IPHC Regl Areas 2C and 3A). Three of our founding members currently serve on the Charter Halibut Stakeholders Committee the NF-FMC. Our members are dedicated to working towards a wise yet timely permanent solution to managing the Halibut resource.

Sincerely,

//Signed//

Kimberly Tebrugge
Executive Director

Louie Flora

From: Alfa Fish [alfafish@ptialaska.net]
Sent: Wednesday, March 14, 2007 3:26 PM
To: Rep. John Harris; Rep. Carl Gatto; Rep. Craig Johnson; Rep. Paul Seaton; Rep. Peggy Wilson; Rep. Vic Kohring; Rep. Bob Roses; Rep. Bryce Edgmon; Rep. David Guttenberg; Rep. Scott Kawasaki; Rep. Kyle Johansen; Rep. Gabrielle LeDoux; Rep. Lindsey Holmes; Rep. Mike Kelly; Rep. Bill Stoltze; Rep. Woodie Salmon; Rep. Bill Thomas; Sen. Bert Stedman
Cc: Halibut Coalition
Subject: Fw: Support for HB 186
Follow Up Flag: Follow up
Flag Status: Blue

Alaska Longline Fishermen's Association
403 Lincoln Street, Ste. 237
Sitka, AK 99835
(907) 747-3400
alfafish@ptialaska.net

Dear Representative Harris,

On behalf of the Alaska Longline Fishermen's Association (ALFA), I would like to thank you for introducing HB 186. Please know that ALFA strongly supports this legislation and encourages you to actively pursue its passage into law.

Effective resource management depends on timely access to data by all agencies engaged in active management. Currently there is a Memorandum of Understanding (MOU) between the Department of Fish and Game, the National Marine Fisheries Service, the Commercial Fisheries Entry Commission, and the International Pacific Halibut Commission that facilitates data sharing for commercial fisheries management and enforcement. This MOU is not specific for commercial fisheries but the Department of Law has decided that it does not extend to recreational fisheries. The inability of all engaged parties to readily access and share data has prevented effective resource conservation and management of the charter halibut fishery. Consequently passage of HB 186 is critical to the successful management of Alaska's recreational fisheries and is urgently needed to address management limitations in the halibut charter fishery.

Thank you again for your efforts. Please let me know how we can assist in advancing HB 186 into law.

Linda Behnken
(Director, ALFA)

3/14/2007

Louis Flora

From: Victoria O'Connell [v.oconnell@gci.net]
Sent: Wednesday, March 14, 2007 9:35 AM
To: Rep. John Harris
Cc: Rep. Carl Gatto; Rep. Craig Johnson; Rep. Paul Seaton; Rep. Peggy Wilson; Rep. Vic Kohring; Rep. Bob Roses; Rep. Bryce Edgmon; Rep. David Guttenberg; Rep. Scott Kawasaki; Rep. Kyle Johansen; Rep. Gabrielle LeDoux; Rep. Lindsey Holmes; Rep. Mike Kelly; Rep. Bill Stoltze; Rep. Woodie Salmon; Rep. Bill Thomas; Sen. Bert Stedman
Subject: Support for HB 186

Dear Representative Harris,
I am writing to thank you for introducing HB 186 and encourage you to actively pursue passage of this legislation into law.

It is critical that our fishery management organizations have the ability to properly manage our resources. This can only be accomplished if all agencies that are actively involved in management have access to data. Currently there is a Memorandum of Understanding (MOU) between Fish and Game, NMFS, CFEC, and the International Pacific Halibut fishery that facilitates data sharing for commercial fisheries management and enforcement. This MOU is not specific for commercial fisheries but the Department of Law has decided that it does not extend to recreational fisheries. Consequently passage of your bill is critical to the successful management of recreational fisheries and is needed as soon as possible for appropriate management of the charter halibut fishery.

Sincerely,

Victoria OConnell
Sitka, Alaska

3/14/2007

From: Robert Ward [bob@awardcharters.com]
Sent: Monday, March 12, 2007 9:48 PM
To: Rep. Paul Seaton
Subject: HB186

Paul,

We wish you to support the HB186 and see that it is moved swiftly through during this session please. The Homer Charter Association needs your support and this bill. Thanks Capt Bob

Robert Ward
A-WARD CHARTERS
P. O. Box 631
Anchor Point, AK. 99556
(907) 235-7014
(907) 399-7014 cell
bob@awardcharters.com
<http://www.awardcharters.com>
"IN GOD WE TRUST"
An AMERICAN Phrase

RE: HB 186

I would like to encourage support and swift action on this bill mainly for the purpose of getting a better handle on halibut harvest by the guided sport sector in all areas of Alaska. Without this legislation, harvest information, required in deciding good management measures, is not as available for analysis. Consequently, this makes for clumsy and inadequate management considerations by the various agencies trying to monitor and manage our resources to sustainable levels and for maximum socio-economic return to Alaskans.

As you know, we rely on the International Pacific Halibut Commission for science, to set area quotas and to recommend resource conservation measures among unregulated sectors. We also rely on the National Marine Fisheries Service via the North Pacific Management Council to allocate and enforce allocations of the halibut resource to the various user groups. Without data that the ADF&G collects from user groups, namely the Halibut Charter fleet, the agencies have difficulty in making important decisions that effect a public resource and those entities make a living off making that resource available to the public.

Passing this bill would help our resource management system be more efficient and accurate.

Thank you for understanding this very important Bill. I look forward to seeing it pass in an expedited fashion so data can be shared and analyzed starting this season.

Sincerely yours,

Rhonda A. Hubbard
Seward, Alaska